

1

2 ISSUES CONFERENCE VOLUME 16

3

4 In the Matter of the Applications of

5 CROSSROADS VENTURES, LLC

6

7 for the Belleayre Project at Catskill Park
8 for permits to construct and operate pursuant to
9 the Environmental Conservation Law

8

9 Margaretville Fire House
10 Margaretville, New York
August 24, 2004

11 B E F O R E :

12 HON. RICHARD WISSLER,
13 Administrative Law Judge

14 A P P E A R A N C E S :

15 WHITEMAN, OSTERMAN & HANNA, LLP.
16 Attorneys for Applicant,
17 CROSSROADS VENTURES, LLC
One Commerce Plaza
Albany, New York 12260

18 BY: DANIEL RUZOW, ESQ., of Counsel
19 BY: TERRESA M. BAKNER, ESQ., of Counsel

20

21 NEW YORK STATE DEPARTMENT
22 of Environmental Conservation
Region 3
23 21 South Putt Corners Road
New Paltz, New York 12561

24 BY: VINCENT ALTIERI, ESQ., of Counsel
25 Regional Attorney

□

1

2

3 LAW OFFICE OF MARC S. GERSTMAN
4 Attorneys for CATSKILL COALITION,
ROBINSON SQUARE
313 Hamilton Street

5 Vol. 16 (8-24-04crossroads)
Albany, New York 12210

6 BY: MARC S. GERSTMAN, ESQ., of Counsel
7 BY: CHERYL A. ROBERTS, ESQ., of Counsel
8 BY: ERIC GOLDSTEIN, ESQ., of Counsel

9
10 NEW YORK CITY LAW DEPARTMENT

11 OFFICE OF CORPORATION COUNSEL
12 , 100 Church Street
New York, New York 10007-2601

13 BY: MICHAEL BURGER, ESQ., of Counsel
14 BY: LINDA GEARY, ESQ., of Counsel

15
16 YOUNG, SOMMER...LLC
17 Attorneys for THE COALITION
18 OF WATERSHED TOWNS
19 DELAWARE COUNTY,
TOWN OF MIDDLETOWN,
TOWN OF SHANDAKEN
Executive Woods - 5 Palisades Drive
Albany, New York 12205

20 BY: KEVIN M. YOUNG, ESQ., of Counsel
21
22
23
24
25

□

1	CPC	3916
2	PRESENTERS	PAGE
3	BERNDT J. LEIFELD	3933
4	BERT DARROW	3959
5	THOMAS L. DANIELS	3980
6	MARY KOPASKIE	4017, 4184
7	THOMAS G. DALLESSIO	4040
8		
9	APPLICANT'S	
10	PRESENTERS	

vol. 16 (8-24-04crossroads)

11	KEVIN FRANKE	3928, 4178
12	EDWARD ARACE	4126
13	JOHN FEINGOLD	4145
14		
15	DEP PRESENTERS	
16		
17	JEFFREY DONOHOE	4002
18		
19	WATERSHED COMMUNITIES PRESENTER	
20		
21	KINGDON GOULD, JR.	4077
22	CHESTER JOHN STRAUB, JR.	4090
23	ALAN ROSA	4100
24		
25		

□

			3917
1	CPC EXHIBITS		
2			
3			
4	85/69	"GATEWAY TO GLACIER THE EMERGING ECONOMY OF FLATHEAD COUNTY"	3921
5			
6	86	RESUME OF CHRISTOPHER W. MENGE	3921
7			
8	87	RESUME OF NICHOLAS P. MILLER	3921
9			
10	88	LETTER FROM HARRIS MILLER MILLER & HANSON DATED 7/9/04	3922
11			
12	89	THREE LETTERS DATED 3/18/02, 11/19/99 AND 3/2/04	3922
13			
14	90	LETTER DATED 8/24/04 - FLY FISHING WITH BERT DARROW	3922
15			
	91	"FOREST AND STREAM MAY	3922

16		Vol. 16 (8-24-04crossroads)	
		1917 - THE CHARM OF THE	
		ESOPUS"	
17			
18	92	RESUME OF THOMAS L.	3923
		DANIELS	
19	93	PHOTOGRAPH	3925
20	94	STREETSCAPE PHOTOGRAPHS	4037
		OF THE HAMLETS IN WHITE	
21		BINDER	
22			
23	95	MAP "NEW ROADS & SEPTIC	4050
		PERMITS 1995 - 2003, IN	
24		THE TOWN OF MIDDLETOWN,	
		DELAWARE COUNTY, NEW	
25		YORK"	

□

3918

1			
2	96	REGIONAL PLAN	4050
		ASSOCIATION MEMORANDUM	
3		DATED 8/23/04	
4	97	PHOTOCOPY OF "THE	4180
		PHOENICIA TIMES" DATED	
5		5/22/03	
6			
7	APPLICANT'S		
	EXHIBITS		
8			
9	127	8 1/2 BY 11 PHOTOGRAPH	3926
		"BELLEAYRE MOUNTAIN FROM	
10		ROADSIDE EAST OF BIG	
		INDIAN"	
11	128	8 1/2 BY 11 PHOTOGRAPH	3927
		"BELLEAYRE MOUNTAIN FROM	
12		INTERSECTION OF ROUTE 28	
13		AND FIREHOUSE ROAD"	
14	129	8 1/2 BY 11 PHOTOGRAPH	3927
		"BELLEAYRE MOUNTAIN FROM	
15		BELLEAYRE BEACH AT PINE	
		HILL LAKE"	
16			
17	130	RESUME OF EDWARD L.	4125
		ARACE	
18	131	LETTER FROM AKRF	4125
		ENVIRONMENTAL AND	
19		PLANNING CONSULTANTS	
		FROM GRAHAM L. TRELSTEAD	
20			
21	132	BOOK, "ADIRONDACK GOLF	4125
		COURSES... PAST AND	

Vol. 16 (8-24-04crossroads)
PRESENT"

22 133 NEW YORK STATE DIGITAL 4125
23 IMAGERY FROM 1997, DATED
24 8/11/04
25

3919

1

2 CITY
3 EXHIBITS

4 29 AKRF TABLE 201, SLIDE 4017
5 60; AKRF TABLE 2-1,
6 SLIDE 59; ANDTABLE 3
7 POTENTIALLY DEVELOPABLE
8 LAND ON THE NYS ROUTE 28
9 CORRIDOR PRIMARY STUDY
10 AREA TOWNS"

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
WATERSHED
COMMUNITIES'
EXHIBITS

12 13 RESUME OF ALAN L. ROSA, 4077
13 EXECUTIVE DIRECTOR OF
14 CATSKILL WATERSHED
15 CORPORATION

14 14 RESUME OF CHESTER JOHN 4077
15 STRAUB, JR.

16 15 "DRAFT AUGUST 19, 2004 4077
17 DEP ADMINISTRATIVE
18 HEARING THE BELLEAYRE
19 RESORT AT CATSKILL PARK"

16 16 LETTER FROM FURLOW LODGE 4077
19 DATED 6/23/04

3920

1 Vol. 16 (8-24-04crossroads)
(August 24, 2004)
2 (9:44 A.M.)

3 P R O C E E D I N G S

4 ALJ WISSLER: For the record, I have
5 received a copy of a one-page letter to Erin
6 Crotty from a Joseph Kelly on behalf of the
7 Belleayre Coalition -- the Coalition to Save
8 Belleayre Mountain, and that will be received
9 as part of the public comments in this
10 proceeding.

11 Let me just note appearances for the
12 record.

13 MR. RUZOW: Dan Ruzow and Teresa
14 Bakner for the Applicant.

15 MR. ALTIERI: Vincent Altieri, DEC
16 staff.

17 MR. BURGER: Michael Burger and Linda
18 Geary for the City.

19 MR. GERSTMAN: Marc Gerstman and
20 Cheryl Roberts for the Catskill Preservation
21 Coalition.

22 ALJ WISSLER: Mr. Gerstman.

23 MR. GERSTMAN: Yes, your Honor. We
24 owed you an exhibit when Merna Hall testified,
25 Exhibit 85 for Catskill Preservation
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 Coalition. It's called "Gateway to Glacier,
2 The emerging Economy of Flathead County."

3 ("GATEWAY TO GLACIER, THE EMERGING
4 ECONOMY OF FLATHEAD COUNTY" RECEIVED AND
5 MARKED AS CPC EXHIBIT NO. 85, THIS DATE.)

6 MR. GERSTMAN: CPC Exhibit 86 is the
Page 6

Vol. 16 (8-24-04crossroads)

7 resume of Christopher W. Menge, senior vice
8 president of Harris, Miller, Miller and
9 Hanson.

10 (RESUME OF CHRISTOPHER W. MENGE
11 RECEIVED AND MARKED AS CPC EXHIBIT NO. 86,
12 THIS DATE.)

13 MR. GERSTMAN: CPC Exhibit 87 is the
14 resume of Nick P. Miller, president of Harris,
15 Miller, Miller and Hanson.

16 (RESUME OF NICHOLAS P. MILLER
17 RECEIVED AND MARKED AS CPC EXHIBIT NO. 87,
18 THIS DATE.)

19 MR. GERSTMAN: CPC Exhibit 88 is a
20 letter from Nicholas Miller to Cheryl Roberts
21 dated July 9th, 2004 concerning the review of
22 materials related to the Sound Impact Study
23 from the proposed Belleayre Resort.

24 (LETTER FROM HARRIS, MILLER, MILLER &
25 HANSON DATED 7/9/04 RECEIVED AND MARKED AS CPC
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 EXHIBIT NO. 88, THIS DATE.)

3922

2 MR. GERSTMAN: CPC Exhibit 89 are two
3 letters -- three letters from the Town of
4 Olive, the first one dated March 18th, 2002 to
5 Alec Ciesluk from DEC. Second dated
6 November 19th, 1999, from the Town of Olive to
7 the Town of Shandaken Town Board dated
8 November 19th, 1999. Third is March 2nd, 2004
9 to Alec Ciesluk.

10 (THREE LETTERS DATED 3/18/02,
11 11/19/99 AND 3/2/04 RECEIVED AND MARKED AS CPC

12 Vol. 16 (8-24-04crossroads)
EXHIBIT NO. 89, THIS DATE.)

13 MR. GERSTMAN: CPC Exhibit 90 is a
14 letter from Bert Darrow dated August 24th,
15 2004.

16 (LETTER DATED 8/24/04 - FLY FISHING
17 WITH BERT DARROW RECEIVED AND MARKED AS CPC
18 EXHIBIT NO. 90, THIS DATE.)

19 MR. GERSTMAN: Exhibit 91 is an
20 Article from -- May 1917 issue of Forest and
21 Stream entitled, "The Charm of the Esopus."

22 ("FOREST AND STREAM MAY 1917 - THE
23 CHARM OF THE ESOPUS" RECEIVED AND MARKED AS
24 CPC EXHIBIT NO. 91, THIS DATE.)

25 MR. GERSTMAN: CPC Exhibit 92 is the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 resume of Thomas L. Daniels. 3923

2 (RESUME OF THOMAS L. DANIELS RECEIVED
3 AND MARKED AS CPC EXHIBIT NO. 92, THIS DATE.)

4 MR. GERSTMAN: You might refer back to
5 our site visit on August 17th, I believe it
6 was, when we went from the summit of Belleayre
7 to Balsam.

8 I would like to put on the record that
9 during the beginning of the site visit, I was
10 informed by counsel for the Applicant that
11 there would be balloons floated during that
12 day. That was the first notice to us that
13 that would occur, and I put an objection
14 essentially on the informal record at that
15 time requesting -- stating that it was
16 inappropriate to get such late notice that a
17 balloon flight was going to be undertaken

18 without giving us the opportunity to provide
19 our own GPS monitoring and digital
20 photographic recording of the situation.

21 Mr. Ruzow agreed at that time to
22 provide us with digital photographs and the
23 GPS, the GPS data from that day.

24 ALJ WISSLER: For the locations of the
25 balloons?
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 MR. GERSTMAN: Yes, and also from the ³⁹²⁴
2 photographs that were being taken. I think
3 that was our understanding. I wanted my
4 objection to be noted for the record because I
5 think it was appropriate to provide notice to
6 your Honor and the rest of the parties that
7 that was going to occur.

8 I also note for the record that one of
9 the balloons, the balloon, I believe, that
10 reflected the height of the hotels was
11 actually a black balloon, which made it pretty
12 much impossible to see.

13 I only have one photograph at this
14 time. I would like to mark it as an exhibit
15 and will provide copies of it to the parties.

16 We were able to -- at the end of the
17 site visit, we were able to drive along Route
18 28 near, I believe what's called the Weyside
19 Motel. And what was clear from our visit,
20 because the balloons were visible from Route
21 28 right above the Big Indian Plateau, was
22 that the project site would be visible from a

23 Vol. 16 (8-24-04crossroads)
24 location along Route 28, that's one of the
25 gateways to the area.

□ 25 And we have taken several photographs,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 but for the record today I wanted to present 3925
2 this one, and we'll be able to provide copies
3 later on either today or tomorrow.

4 This will be CPC Exhibit 93, and it's
5 a view to the Big Indian Plateau from Route
6 28. I note for the record, your Honor, that
7 this was not the view that was reflected in
8 the DEIS.

9 (PHOTOGRAPH RECEIVED AND MARKED AS
10 CPC EXHIBIT NO. 93, THIS DATE.)

11 ALJ WISSLER: This was the last stop
12 at the end of the day?

13 MR. GERSTMAN: Yes.

14 ALJ WISSLER: Can we be more specific
15 as to where that site is? Is there a mile
16 marker or something along Route 28?

17 MR. GERSTMAN: We can check, the frame
18 of reference there is the weyside Motel.

19 ALJ WISSLER: That's enough.

20 MR. GERSTMAN: We'll provide copies.
21 We'll leave it here and provide copies.

22 MR. RUZOW: We have some other
23 exhibits, three sets of photographs from that
24 height as well that we can provide, and to
25 clarify, if it makes sense to do that and have
□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 it now, all the exhibits. 3926

2 MR. GERSTMAN: Before you start that,
Page 10

3 we will have further exhibits today. There
4 was an exhibit introduced on the site visit
5 that was essentially a panorama from Rose
6 Mountain with labels of the various mountains
7 and features that you can see from those
8 mountains. That will be reproduced once the
9 computer problems get cleared up.

10 we also have another panorama from
11 Rose Mountain that we want to introduce.

12 MR. RUZOW: For the record, we
13 continue to object to the Rose Mountain -- the
14 relevancy of the Rose Mountain visit, and
15 we'll respond, you know, appropriately to that
16 at that time.

17 MS. BAKNER: Let me introduce these.
18 This is Applicant's Exhibit, "Belleayre
19 Mountain from Roadside East of Big Indian."

20 ALJ WISSLER: This will be 127.

21 MS. BAKNER: And stapled to it is the
22 view with the wire frame simulation which
23 Kevin Franke will explain.

24 (8 1/2 BY 11 PHOTOGRAPH "BELLEAYRE

25 MOUNTAIN FROM ROADSIDE EAST OF BIG INDIAN"
□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 RECEIVED AND MARKED AS APPLICANT'S EXHIBIT NO. 3927
2 127, THIS DATE.)

3 MS. BAKNER: The next one is
4 Applicant's Exhibit 128, it's two photos,
5 Belleayre Mountain from intersection of Route
6 28 and Firehouse Road showing the photograph,
7 and then the photograph with the wire frame

8 vol. 16 (8-24-04crossroads)
simulation.

9 (8 1/2 BY 11 PHOTOGRAPH "BELLEAYRE
10 MOUNTAIN FROM INTERSECTION OF ROUTE 28 AND
11 FIREHOUSE ROAD" RECEIVED AND MARKED AS
12 APPLICANT'S EXHIBIT NO. 128, THIS DATE.)

13 MS. BAKNER: This is Applicant's
14 Exhibit 129, it's Belleayre Mountain from
15 Belleayre Beach at Pine Hill Lake. The top
16 copy is just the photo, the bottom copy is
17 rendered with the wire frame simulation.

18 (8 1/2 BY 11 PHOTOGRAPH "BELLEAYRE
19 MOUNTAIN FROM BELLEAYRE BEACH AT PINE HILL
20 LAKE" RECEIVED AND MARKED AS APPLICANT'S
21 EXHIBIT NO. 129, THIS DATE.)

22 MS. BAKNER: Your Honor, there will be
23 more photos and more wire frame simulations;
24 these were just the ones we were able to
25 complete by today.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 Kevin, if you could explain, first of ³⁹²⁸
2 all, where these were taken from and what they
3 show, and if you could also address the color
4 of the balloons.

5 MR. GERSTMAN: Excuse me.

6 MS. BAKNER: He's just going to point
7 them out, explain where they're from.

8 MR. RUZOW: So with respect to marking
9 the exhibits, there's a frame of reference for
10 it. That's all.

11 MR. FRANKE: Applicant's Exhibit 127
12 is essentially the same advantage point that
13 was contained in CPC Exhibit 93. You'll

14 notice that it's not exactly the same because
15 this photo was taken approximately -- oh,
16 probably three years ago. Same viewpoint, a
17 little later in the year, a little clearer
18 day. Dr. Futyma, who was on our hike with us
19 at Balsam, who actually took this photograph
20 as part of the original visual assessment
21 impact work.

22 Second page of Applicant's 127 is the
23 rendering of the proposed view, if you will.
24 what you will see on this photograph
25 essentially in the midpoint of the ridge line,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 you will see some tree clearing as well as 3929
2 some ground floor. what you're looking at
3 there is the clearing for golf holes 10 and
4 11.

5 You will also notice on the right-hand
6 side of the ridge line, there is a darker,
7 littler feature. what that represents is a
8 break in the tree line for the access road.
9 There's no ground floor visible for that
10 clearing activity, nor are there any
11 structures visible on the ridge.

12 Applicant's 128 is actually a
13 photograph that came from a CPC Exhibit -- I
14 apologize, your Honor, I don't recall what
15 number it was, but it was Mr. Sundell's
16 PowerPoint presentation. This is a view from
17 Firehouse Road, which is just across Route 28
18 from Moore's Market. The view, essentially

19 vol. 16 (8-24-04crossroads)
20 looking over the town park up onto Big Indian
21 Plateau.

22 The second page of Applicant's 128 is
23 the rendered view of post-development
24 conditions. What you're seeing there to the
25 left of the large pine in the foreground is
26 the clearing in the ground floor for portions
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 of golf holes number 4 and number 5. Again,³⁹³⁰
2 in this simulation, there are no structures
3 visible on the Big Indian Plateau.

4 Applicant's 129, likewise, is from
5 Mr. Sundell's PowerPoint presentation. It is
6 a view from the intersection of Main Street,
7 New York 28, looking over the day use area.
8 Belleayre Beach at Pine Hill Lake.

9 The second page is a rendered view of
10 post-development conditions. You'll see in
11 the middle of the ridge or above the lake,
12 there is almost a U-shaped darker line which
13 is, again, a break in the tree line for the
14 access road. What you're seeing there is the
15 lower switchback as the access road climbs up
16 the plateau.

17 Also visible in the upper right-hand
18 portion of plateau are breaks in the tree line
19 for golf holes 16 and 17.

20 In the nose of the plateau, if you
21 will, towards the middle of the picture, the
22 top of the plateau, again, that's a break in
23 the tree line associated with the access road.
24 Again, in this view there are no structures

25 visible, nor is there any ground floor visible
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3931

1 in the simulation.

2 MR. RUZOW: Kevin, could you just
3 clarify for the record the colors of the
4 balloons that were placed, and just where they
5 were placed so we actually have it on the
6 record.

7 MR. FRANKE: The balloons were flown
8 at the same location they were flown for our
9 initial visual impact assessment work. Two
10 balloons were flown at a height of 150 feet at
11 the hotel site. They were both red. Two
12 balloons were flown at those same two
13 locations at a height of 41 feet. Those
14 balloons were also red.

15 The two black balloons that were flown
16 were on the northern portion of the ridge
17 facing out towards New York Route 28, and
18 those location being Al's Rock, which is a
19 point marked on the drawings, as well as a
20 small clearing along the access of existing
21 winding Mountain Road. Those were two black
22 balloons flown at 150 feet as well.

23 So all of the balloons flown at the
24 hotel site were red, two of them were at
25 150 feet, two at 41 feet.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3932

1 MR. RUZOW: So the northern and
2 southern boundaries, is that where the black
3 balloons were flown?

4 MR. FRANKE: The black balloons were
5 flown originally to demark, if you will,
6 somewhat the eastern and western extent, to a
7 degree, the development, facing the Route 28
8 corridor; so it would be most visible from
9 that particular area, as well as land across
10 the valley to the north.

11 MR. RUZOW: Do we have GPS locations
12 for those?

13 MR. FRANKE: Yes, those are GPS
14 locations and those were shown on the plans
15 that I had with us on the hike.

16 MR. RUZOW: We'll provide copies of
17 the GPS locations for the balloons for the
18 parties.

19 MR. GERSTMAN: Electronically,
20 digital, so we can use them in creating
21 simulations?

22 MR. RUZOW: Sure.

23 MR. GERSTMAN: Off the record.

24 (10:15 - 10:16 A.M. - DISCUSSION OFF

25 THE RECORD.)
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3933

1 MS. ROBERTS: Your Honor, I direct
2 your attention to CPC Exhibit 89, and I would
3 like to introduce Berndt Leifeld.

4 I am going to have Mr. Leifeld sit up
5 here. He has a little bit of a hearing loss
6 so I want to make sure he can hear you.

7 Supervisor, could you state your name.

8 SUPERVISOR LEIFELD: Berndt J.
9 Leifeld.

10 MS. ROBERTS: You're the Supervisor
11 for Olive?

12 SUPERVISOR LEIFELD: Yes.

13 MS. ROBERTS: Can you tell us how long
14 you have been the Supervisor there?

15 SUPERVISOR LEIFELD: 18 years.

16 MS. ROBERTS: And before that?

17 SUPERVISOR LEIFELD: Before that, I
18 was on the town council for ten.

19 MS. ROBERTS: Can you talk about
20 Olive's Main Street. Is it Route 28?

21 SUPERVISOR LEIFELD: Olive doesn't
22 have a Main Street, but Boiceville and Shokan,
23 I guess 28 would be considered the main
24 street. It's the only street that they have
25 so -- yes.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3934

1 MS. ROBERTS: It represents your
2 community's character and what your
3 community's about?

4 SUPERVISOR LEIFELD: It represents the
5 main thoroughfare in and out of town. If you
6 live in West Shokan, if you live in
7 Olivebridge, Samsonville -- the only way out
8 of town is on Route 28, other than the fact
9 that you would go all the way over the
10 mountain to Route 209 which is kind of a
11 round-about way to get there.

12 But yes, Route 28 is the only road
13 basically that everyone would use.

14 MS. ROBERTS: And your concerns about

15 vol. 16 (8-24-04crossroads)
the Belleayre project are related to traffic?

16 SUPERVISOR LEIFELD: The concerns
17 about -- mine and the Town Board in the Town
18 of Olive is basically the increase in car
19 traffic that this would bring, and some of the
20 information that we got would be 3 to 400 cars
21 per hour. If that's true, we're going to need
22 some kind of traffic control.

23 We're going to need massive expansion,
24 which, by the way in Boiceville and Shokan, it
25 is almost impossible because you have a
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 two-lane highway there now, you have the ³⁹³⁵
2 businesses on one side in Boiceville, and the
3 school on the other. So if the road were to
4 be widened, the stream is on the Esopus, and
5 then you go up the mountain. So in that
6 particular hamlet, it would be very hard if we
7 did take away something.

8 Shokan, basically the same thing.
9 Through the years there has been a plan to
10 follow the old railroad track and bypass
11 Shokan -- not a very popular thing to do but
12 probably a feasible thing to do if it had to
13 be done, you could have a four-lane road.

14 MS. ROBERTS: Is it true, the City
15 owns some of that land?

16 SUPERVISOR LEIFELD: That's major
17 concerns with New York City on that, that's
18 their property.

19 ALJ WISSLER: Supervisor, let me ask
20 you this question: Has the Town of Olive done

21 any traffic studies on its own with respect to
22 this section of Route 28?

23 SUPERVISOR LEIFELD: No, not of any
24 significance, no.

25 ALJ WISSLER: What do you mean when
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3936

1 you say "not of any significance"?

2 SUPERVISOR LEIFELD: We didn't have
3 any surveyors or anybody do anything like
4 that. I believe at one time in the past year,
5 we got the State to put a counter strip
6 across, but that's a long time ago.

7 ALJ WISSLER: When was that done?

8 SUPERVISOR LEIFELD: I would say we
9 did that at least 15 years ago.

10 MR. RUZOW: How many years ago?

11 MS. ROBERTS: I think he said 15.

12 SUPERVISOR LEIFELD: I'm guessing.

13 Don't hold me to it, but I do remember the
14 Chamber of Commerce doing that on their own
15 basically with the Town Board. It has to be
16 at least 15 to 18 years ago.

17 ALJ WISSLER: But the most recent
18 thing you remember is a traffic count done by
19 DOT?

20 SUPERVISOR LEIFELD: I'm sure they
21 did, but I don't know when.

22 MS. ROBERTS: I direct your attention
23 to the exhibit -- these were stapled backward
24 by the secretary -- but I guess the third

25 letter in your packet is dated March 2nd.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 ALJ WISSLER: You're referring to
2 CPC 89?

3 MS. ROBERTS: Yes. In this letter on
4 the first page, it refers to a study done in
5 1990 by DOT about alternatives for dealing
6 with --

7 ALJ WISSLER: Which letter?

8 MS. ROBERTS: The third letter in your
9 packet dated March 2nd, 2004. The bottom of
10 that page talks about, I think, the study
11 you're referring to. The 1990 study done by
12 DOS which talks about the alternatives, and
13 the dangerous nature of this road. Would you
14 like to discuss that record?

15 SUPERVISOR LEIFELD: Would you like me
16 to read it?

17 MS. ROBERTS: Well, it talks about the
18 dangerous nature of this road and that it has
19 higher than normal accident rates; and that
20 there's not a whole lot of good alternatives.

21 SUPERVISOR LEIFELD: Well, it talks
22 about the four alternatives that they
23 suggested at the time; one being do nothing;
24 the other was interim improvements, and widen
25 to a four-lane highway, which is almost
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 impossible; two lanes on a new alignment
2 alternative; and four lanes on a new alignment
3 alternative.

4 Through Boiceville, that's -- a
5 four-lane highway through Boiceville, you

6 would have to take half of Boiceville's
7 business district out of there, or the school.
8 It wouldn't work. It's just not wide enough.

9 So I think the biggest thing that the
10 town would like to see at this time is --
11 we've never gotten answers to any of these
12 letters, by the way, from DEC.

13 what we would like to see is some sort
14 of a study explaining, you know, the
15 alternatives in more detail on if there's any
16 traffic devices that could be used. The town
17 as a whole hasn't stepped up to the plate and
18 criticized any of this project. We don't have
19 anything -- it's Shandaken's problem, let them
20 handle it, but as far as we are concerned,
21 we're talking about the impact on our
22 particular town, and we want to make sure that
23 we are down as an impacted town.

24 ALJ WISSLER: Supervisor, you
25 indicated that you were concerned that traffic
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 counts would go up by 3 to 400 trips per hour?³⁹³⁹

2 SUPERVISOR LEIFELD: That's what's in
3 these letters.

4 ALJ WISSLER: That was over present
5 levels; is that what you're saying?

6 SUPERVISOR LEIFELD: Yes.

7 ALJ WISSLER: In your understanding,
8 what are the present levels?

9 SUPERVISOR LEIFELD: I have no idea.
10 If I were to guess, I would say the present

11 levels at this particular point are -- got to
12 be 200, 250. That's just a guess.

13 MS. ROBERTS: Supervisor Leifeld, on a
14 normal weekend day, is it difficult to get out
15 onto Route 28 now?

16 SUPERVISOR LEIFELD: Weekends and
17 weekdays are two different things; weekends it
18 would be more. I'm trying to think of an
19 average.

20 There are two main roads that pull out
21 onto 28; 28A, the reservoir road, that takes
22 the whole western side of the town is the only
23 way they can get out. The traffic is -- if I
24 remember -- I've been living here for 40

25 something years. To me, it's an awful lot; to
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 someone in the city, it may not be anything. 3940
2 But when I have to sit at an intersection in
3 the Town of Olive for a good three to four
4 minutes, that's a long time to me. And what
5 happens is -- well, people take chances and
6 cut out into traffic when they think they can
7 make it, and we do have our share of
8 accidents.

9 I think this is a study that DEC did
10 here that states within ten years -- and this
11 is at the end of the ten years -- that the
12 road will be basically obsolete and there will
13 have to be something done by it anyway.

14 ALJ WISSLER: You say this was a study
15 done by DEC or do you mean DOT?

16 SUPERVISOR LEIFELD: It could be DOT,
Page 22

17 I'm sorry.

18 ALJ WISSLER: Is that the feasibility
19 study, final report that's referred to in this
20 paragraph?

21 SUPERVISOR LEIFELD: I read it here
22 somewhere. I got these things yesterday.

23 ALJ WISSLER: Ms. Roberts, is that a
24 document you intend to introduce, that final
25 report?

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 SUPERVISOR LEIFELD: One of Sylvia's³⁹⁴¹
2 letters states that.

3 MS. ROBERTS: We hadn't intended to do
4 that, but if your Honor would like it, we can
5 do that.

6 ALJ WISSLER: You're giving me a
7 letter that makes reference to that report;
8 right?

9 MS. ROBERTS: Yes. I can get it for
10 you.

11 ALJ WISSLER: If it's a matter of
12 public record, I'll take it in.

13 SUPERVISOR LEIFELD: You entered all
14 three of these?

15 MS. ROBERTS: Yes, but the Judge is
16 asking about the 1990 feasibility study which
17 I will get a copy of.

18 Do you notice that the traffic is
19 greater in the summer than in the winter?

20 SUPERVISOR LEIFELD: Well, used to be
21 that way. I think right now it's probably the

22 same in the winter as it is in the summer. My
23 personal non-scientific idea. It used to be a
24 lot more skiers, I believe, four, five years
25 ago than there are right now. We have a lot
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3942

1 more second homes which is -- brings the
2 traffic every weekend.

3 I don't find any particular time of
4 the year anymore where there's really a big
5 influx of cars. It seems to be a steady flow
6 on weekends all the time. That's mainly
7 because people are buying homes here and --
8 supposedly second homes. That has overpowered
9 that a little bit, but it has added to the
10 traffic. I'm not saying there's less skiers
11 coming, probably more, but the traffic flow is
12 more even.

13 ALJ WISSLER: What responsibility do
14 you have for maintaining Route 28 as it goes
15 through the town?

16 SUPERVISOR LEIFELD: None. Other than
17 we give police service to it, but that's it.
18 It's a State road; it's their responsibility.

19 ALJ WISSLER: They do the plowing, the
20 sanding, and all that kind of good stuff?

21 SUPERVISOR LEIFELD: Right.

22 MS. ROBERTS: I have nothing further
23 of this witness. You're done, unless you have
24 anything else to say.

25 SUPERVISOR LEIFELD: Nice talking to
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3943

1 you.

2 MR. GERSTMAN: In terms of the visual
3 exhibits just introduced by Crossroads, I
4 neglected to mention that we would like an
5 opportunity to respond to those exhibits
6 before the close of the record.

7 Judge, I refer you to CPC Exhibits 86,
8 87 and 88. Exhibits 86 and 87 are the CVs of
9 the expert witnesses that we have located to
10 evaluate the Draft Environmental Impact
11 Statement concerning noise impacts to
12 wilderness areas.

13 In response to several questions your
14 Honor raised over the course of the Issues
15 Conference concerning what are the likely
16 impacts of the project in the forest preserve
17 and to users of the nature resources in the
18 forest preserve, we have located essentially
19 the experts in the field who have vast
20 experience in evaluating noise impacts on
21 wilderness areas, and we presented Exhibit --
22 CPC Exhibit 88 --

23 ALJ WISSLER: Was this during
24 construction or after construction?

25 MR. GERSTMAN: This is after
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 construction. They do reference some of the ³⁹⁴⁴
2 construction impacts.

3 Your Honor obviously can review the
4 record -- the exhibit during your review of
5 the record, but briefly let me summarize what
6 the findings are that Nicholas Miller has put

Vol. 16 (8-24-04crossroads)
7 forth in this letter.

8 As you can see, both these experts who
9 have prepared this letter are, again, experts
10 in the field; they have done studies in
11 connection with the wilderness areas for the
12 National Park Service, specifically in
13 connection with overflights and the impacts of
14 airplanes and intrusion on the wilderness
15 experience.

16 what they have concluded is that this
17 resort will have potentially significant
18 impacts to wilderness and wild forest areas.

19 If you recall, your Honor, as we were
20 hiking, I somewhat, or sort of -- I won't
21 characterize how I did this -- but to identify
22 the areas where there was essentially a lack
23 of intrusion of noise from human activity in
24 various locations on our hikes, both in terms
25 of -- many of the site visits that we engaged,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 we would stop and noticed that the only noise³⁹⁴⁵
2 that we were hearing was our own breathing and
3 maybe the wind rustling in the trees.

4 ALJ WISSLER: Or birds, real and
5 otherwise.

6 MR. GERSTMAN: There were several
7 unreal birds.

8 MR. RUZOW: And the helicopter.

9 MR. GERSTMAN: Essentially, if one can
10 be in a location where there's -- for
11 significant periods of time where there is no
12 intrusion of noise from human activities, it's

13 a rare situation in the northeast.

14 Solitude is defined in this letter,
15 and essentially in the State Land Master Plan
16 as -- solitude essentially is the primary
17 value preserved, it's the freedom from sounds
18 produced by human activities. And what
19 Nicholas Miller has said is that there's an
20 accepted methodology --

21 ALJ WISSLER: Are you quoting from 88?

22 MR. GERSTMAN: Yes, I am. There's
23 also references in the Unit Management Plans
24 and the State Land Master Plan to solitude and
25 what the qualities that are preserved by
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3946

1 identifying and classifying lands as
2 wilderness and wild forest areas; and we can
3 provide those references, but they have been
4 introduced.

5 what Mr. Miller has said is that the
6 approach to identifying impacts to wilderness
7 and wild forest areas is very different from
8 the noise methodology that's set forth in the
9 DEC policy on assessing noise impacts. Here
10 what is important is audibility.

11 In terms of the DEC policy, the
12 evaluation is to determine what levels of
13 noise will provide what interference with
14 various levels of activities during the day
15 and the night.

16 Because the qualities and the wild
17 forest and wilderness are important and

18 solitude makes up one of the most important
19 aspects of that, audibility, essentially, is
20 the test by which one would evaluate a project
21 like this one, which is proximate to
22 wilderness and wild forest areas.

23 what Miller goes on to talk about is
24 that audibility occurs when there is
25 sufficient sound energy in the intruding sound
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 to approximately equal the sound energy from ³⁹⁴⁷
2 the ambient.

3 Now, the ambient noise would be both
4 what's -- interestingly, what's outside but
5 also he characterized it as, essentially,
6 self-created noise, breathing and just the
7 walking in the woods as being a level of sound
8 that creates the background noise in terms of
9 evaluating impacts for audibility.

10 Your Honor, after reviewing the DEIS,
11 and the noise impact analysis that was set
12 forth in the DEIS, Mr. Miller concludes that
13 there was essentially no evaluation of this
14 type of impact on the forest preserve solitude
15 and wilderness experience.

16 He has not visited this location, but
17 again, as our site visit demonstrated, the
18 ambient noise was extremely low. In fact, the
19 intrusion from human activities was
20 non-existent for very long stretches of time.

21 What Mr. Miller concludes is that both
22 construction activities and operations at the
23 resort will have an impact and could be

24 audible at considerable distances. And he
25 includes, in terms of activities that might be
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 audible, are power cuttings of greens, tees ³⁹⁴⁸
2 and fairways, aeration, powered applications
3 of herbicides and fungicides and insecticides.
4 He also indicates that snowmobiles and other
5 ATV-type vehicles may be used for
6 administrative -- recreational, administrative
7 or operational functions, and this would
8 introduce an additional dimension of potential
9 noise impact in winter months. I refer you to
10 footnote 4 on page 2.

11 He also raises the possibility that a
12 club like this, resort like this, might be
13 available for outdoor dances and recreational
14 receptions and other celebrations, which would
15 also have an impact on the wilderness
16 activities.

17 He includes a chart on page 3 of
18 Exhibit 88 which talks about the audibility
19 from snowmobiles in Yellowstone Park at a
20 distance of 3,000 feet, and he believes that
21 this correlates fairly closely with what would
22 be experienced here at this project.

23 You can see that the audibility occurs
24 at certain frequencies at 3,000 feet, and
25 it's -- 200 hertz. It rises above the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 ambient -- I'm sorry, background noise levels ³⁹⁴⁹
2 at 3,000 feet, which is considerable distance.

3 And I believe as we hiked around the trails
4 adjacent to the project site, many of those
5 distances where there was no intrusion from
6 human activity were within, clearly, a
7 distance of 3,000 feet.

8 This is an acceptable methodology. If
9 it were applied here, the evaluation would
10 show, as Mr. Miller concludes, that you would
11 be able to evaluate how much time the
12 intruding sounds might be audible, and how far
13 into the wilderness they might be audible.
14 And he strongly urges that this is an
15 appropriate evaluation for this project.

16 He actually said that there are no
17 actual standards prescribed by regulation or
18 law, except the one he refers to.

19 I identified for him the requirements
20 of the New York State Environmental Quality
21 Review Act to evaluate significant adverse
22 impacts, and to take into account potential
23 mitigation for those impacts, and he
24 understands that this type of evaluation is
25 entirely appropriate, in fact, is required
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 under the State Environmental Quality Review ³⁹⁵⁰
2 Act.

3 We also include as an attachment the
4 methodology that is generally used, and we
5 think, your Honor, in response to the
6 questions that you asked, that this is a
7 gaping hole in the record concerning the
8 impacts to the forest preserve and to the

9 community character, which includes in this
10 region the forest preserve, wilderness and
11 wild forest areas.

12 ALJ WISSLER: Did Mr. Miller utilize,
13 make use of the Department's noise policy?

14 MR. GERSTMAN: He was aware of it, he
15 looked at it, and concluded, in fact, in
16 the -- I believe the first paragraph, that the
17 DEC policy is not the appropriate approach to
18 evaluating noise impacts to wilderness areas.
19 The difference is audibility versus the level
20 of intrusion in an area where ambient sound
21 has a much higher level.

22 we're talking about a situation in
23 wilderness and wild forest areas where, again,
24 solitude is the primary value, where the
25 relative noise level, ambient level, is very,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 very low.

3951

2 I questioned him on this, and said:
3 If I'm standing in the woods with Dan Ruzow
4 who is breathing hard after hiking up the
5 mountain, do you consider that part of the
6 background level? He said: Yes, that's
7 exactly right.

8 So the levels of noise are extremely
9 low in terms of the evaluation of the impacts
10 in this situation because the background level
11 is so low, and because people go to these
12 areas to appreciate the solitude experience
13 that these areas offer.

14 So the DEC policy is a very different
15 approach, and it's measuring different --
16 essentially different levels of intrusiveness
17 in human activity. An industrial facility or
18 a facility that produces noise in suburban or
19 urban or other rural-type areas, the DEC noise
20 policy, that's the methodology should be used.
21 It does not apply to a situation like this.

22 ALJ WISSLER: I just need to
23 understand in what way. If I recall the noise
24 policy, it suggests that an ambient baseline
25 be established, and there are certain values
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3952

1 over that baseline that would not be
2 considered intrusive.

3 If it happens that your wilderness
4 baseline is exceptionally low, then it's
5 exceptionally low, but it's not clear to me
6 exactly how the policy is not applicable. It
7 may be something you may prefer to brief; I'm
8 not going to pin you down right now as to what
9 the difference is. The baseline is what the
10 baseline is, the ambient baseline is.

11 MR. GERSTMAN: I think the issue, and
12 he does explain it a little bit -- the issue
13 is certainly the ambient level is what it is,
14 and if it's very low and it's essentially
15 representative of a solitude and wilderness
16 experience, then you can establish that based
17 upon, presumably, sound meters and
18 measurements.

19 He says -- in fact, I think it's on

20 page 2, he talks about the use of A-weighted
21 scale for evaluation noise impacts, which is
22 recommended by the DEC policy, is
23 inappropriate; that what we're talking about
24 here is evaluating a sound and frequency
25 content in potentially very narrow ranges
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3953

1 which can be audible by the human ear.

2 ALJ WISSLER: So he would suggest that
3 L-90 would be a more appropriate measure of
4 the base as opposed to LEQ which would take in
5 the entire noise environment, which could
6 include a plane flying over or something like
7 that. Is that what you're trying to say?

8 MR. GERSTMAN: No, L-90, again, would
9 be based on an A-weighted average. In terms
10 of a Noise Impact Assessment, you need to take
11 into account the full range of impacts in
12 terms of frequency and octave band levels, and
13 all of those things.

14 From what I understand, I think what
15 he explains in the letter, is that the real
16 measure of impact here is audibility. And I
17 think what we're talking about in the DEC
18 policy is that there's a greater measure of
19 impact.

20 For instance, if there were noise that
21 were 5 dBA over the ambient in a wilderness
22 area, for an LDN, an average day or night
23 level, it would totally destroy the value for
24 which the wilderness experience is created.

25

It would be a constant level of noise above
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3954

1 the background, which is extremely low, so I
2 think the measure of valuation is very
3 different according to what Miller talks
4 about.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ALJ WISSLER: At some point, probably
in the final brief, I would like to hear your
comments on that, because the A-weighted
level, as I understand, it is the A-weighted
because that is the range for the human ear,
20 hertz to 20,000 hertz, something like that.
And it's an attempt to -- to me, in terms of
environmental analysis, I kind of like the
idea of A-weighted. That's what human beings
hear.

15

16

17

18

19

20

21

22

23

24

25

So establishing an ambient level with
an A-weighted scale doesn't seem to me to be
inappropriate, but it's an analysis we don't
have to go through right now.

19

20

21

22

23

24

25

MR. GERSTMAN: I do refer your Honor
to page 2, the first full paragraph, about the
fifth or so line up from the bottom, and he
does talk about the audibility of an intruding
sound occurs when there is sufficient sound
energy in the intruding sound to approximately
equal the sound of the ambient sound.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3955

1

2

3

4

Then he goes on to say: "The
important point is that the relationship need
only take place at a single or few frequencies
for a human to hear and recognize the

5 intruding sound."

6 Parenthetically, "Use of a single
7 matrix such as A-weighted sound level does not
8 permit this analysis." So he is making the
9 distinction. He anticipated the issue that
10 you raised, essentially saying that audibility
11 is a very different measure than what would
12 take place on an A-weighted scale, which is
13 broader measure; that audibility and intrusion
14 can take place at very limited or narrow
15 frequencies whereas A-weighted takes into
16 account, I guess, the entire range of
17 perception that a human has of a sound at
18 various octave levels and various frequencies.

19 If you like, your Honor, I can ask him
20 to expand upon this more, and before the close
21 of the record we could submit some
22 amplification of that distinction.

23 ALJ WISSLER: I'm just pointing out a
24 concern I have, and I need to be clear in my
25 mind.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3956

1 MR. GERSTMAN: Okay.

2 ALJ WISSLER: Did you want to respond?

3 MR. RUZOW: Your Honor, I did. First
4 of all, we will have to reserve to respond
5 substantively to this, and any additional
6 submissions, but I note for the record that
7 today is August 23rd, it's four months after
8 the close of the public comment period on the
9 DEIS, and this issue was never raised during

Vol. 16 (8-24-04crossroads)
10 the course of this -- of a four-month public
11 comment period on the EIS to begin with.

12 Also, the letter is dated July 9th,
13 and it's August 23rd, so with respect to both
14 the surprise and hanging onto this thing until
15 this point in time, I also find that
16 objectionable.

17 The DEC policy, we will address DEC
18 policy in our briefing, but I also note that
19 sitting right next to the Belleayre Resort on
20 either side of it is the Belleayre Ski Center.
21 And the Belleayre Ski Center has enormous
22 sources of noise unregulated in any fashion.

23 Immediately adjacent -- because it's
24 an intensive use area designated by the

25 State -- the State has made policy decisions
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3957

1 that notwithstanding the presence of
2 wilderness area immediately to the south of
3 this intensive use area, they can live in
4 harmony.

5 Our site is zoned for development and
6 use on both sides of -- east and west of
7 Belleayre -- and that factor is somehow
8 missing in this equation.

9 The reliance on yet another novel
10 theory, and approach to environmental
11 analysis, beyond that which the Department has
12 adopted in guidance, is another indication of
13 the strain which with the opposition is
14 seeking to attack the project.

15 we find, as I said, this objectionable

16 on several levels. We will deal with the
17 merits of what is being suggested in our
18 response, but I wanted to be heard on that.

19 MR. GERSTMAN: Just briefly, your
20 Honor. First, the date of the letter --
21 Mr. Ruzow is correct -- it's dated July 9th,
22 and it was dated at a point where we expected
23 that we were going to present it in connection
24 with our community character case, because of
25 the length of time that the Applicant took to
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 respond to our community character, we never³⁹⁵⁸
2 got to it.

3 This is the first convening of our
4 community character discussion since that
5 time, and this is the appropriate time to
6 present it.

7 In terms of a SEQRA comment period,
8 Mr. Ruzow, again, mischaracterizes the role of
9 the SEQRA comment period, vis-a-vis the
10 adjudicatory process. This raises substantive
11 and significant issues concerning the noise
12 impact analysis.

13 It is clearly not a novel approach.
14 Mr. Miller is a well-established firm that has
15 experience in this area of noise evaluation
16 for decades. There's a methodology used. And
17 if there was sensitivity on the part of the
18 Applicant, the location of its project in the
19 middle of a wilderness and wild forest area,
20 notwithstanding the intensive use area, then

21 this project would have been assessed for
22 purposes of evaluating noise impacts to the
23 use of forest preserve. If you choose to put
24 a site in the forest preserve -- next to the
25 forest preserve, then you have to evaluate the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3959

1 impacts of that project.

2 And whether Mr. Ruzow characterizes it
3 as a strained approach to impact evaluation or
4 not, the fact remains that the EIS is
5 deficient and the project analysis is
6 deficient in this regard. This is a
7 substantive and significant issue for
8 adjudication.

9 Thank you, Judge.

10

11 MS. ROBERTS: I would like to call
12 Bert Darrow. I refer you to CPC 90 or 91.

13 Mr. Darrow, can you go through your
14 background and bio.

15 MR. DARROW: I'll just go through
16 these quickly. I'm a member of an
17 organization called Trout Unlimited. I've
18 been a member for 25 years. It's a
19 conservation organization, and the chapter
20 that I'm a member of is the Catskill Mountain
21 chapter of Trout Unlimited. It's based in
22 Kingston; it's the oldest chapter of Trout
23 Unlimited in New York State. It was formed
24 March 14, 1962.

25 I'm a permit director of that chapter,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 I have been for 15 years. That means I can't
2 get away from it for some reason. I have
3 served as a regional vice president of Trout
4 Unlimited, as well as a chapter president of
5 Catskill Mountains chapter of Trout Unlimited.

6 I'm also presently serving on the
7 Board of Directors of Theodore Gordon Fly
8 Fishers, that's based in New York City.
9 That's also a conservation organization, and
10 it deals with the environment and conservation
11 of trout streams.

12 I'm presently the president of
13 Catskill Fly Fishing Center, a museum in
14 Livingston Manor, and have served on the
15 executive board of that organization for the
16 past five years.

17 I have fished the Esopus Creek for 35
18 years, maybe a little more, but I've put down
19 here I've fished it for well over 10,000
20 hours. I've instructed people to become fly
21 fishers on that river, and I've guided on that
22 river for many years.

23 And I put 10,000 hours in there for
24 one reason. It's probably really close to

25 20,000 hours. And that is this: A lot of
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 people say, how long have you fished or fly
2 fished for, and they give you a number of
3 years, and it may be 50 years because they go
4 fishing every other year, one time. I've
5 spent a lot of time out on the river.

6 I just finished writing a book, it's
7 called, Bert Darrow's Practical Fly Fishing -
8 How to Cast and Fish Naturally, and that will
9 be out this December.

10 I've taught fly fishing since 1978.
11 Most of that time has been teaching, and it's
12 involved fishing around and on the Esopus
13 Creek, both above and below the portal, which
14 is in Allaben on Route 28 there.

15 I've taught fly fishing in the
16 following states: Texas, Wyoming, Montana,
17 Idaho, Connecticut, Vermont, Pennsylvania, New
18 York.

19 I have been written about in many
20 magazines and newspapers, including New York
21 Times, but quite a list of magazines and
22 newspaper articles; most of them dealing with
23 environmental work, and some with fly fishing
24 schools.

25 I've received the New York State
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 Council Individual Conservation Award in 2003,³⁹⁶²
2 as well as the Silver Trout Award by the
3 Catskill Mountain Chapter of Trout Unlimited.
4 There's one of these awards by New York State
5 Trout Unlimited given out every year, and I
6 was the lucky recipient of it last year. I
7 received an -- Art Flick Conservation Award in
8 1990, and that was dealing with conservation
9 work in the Catskills.

10 I also received a conservation award
11 from the Catskill Mountain Chapter in 1982,

12 that was for the same thing. That was a lot
13 to do with the work on Esopus Creek, and
14 another legal battle that was going on then.

15 I've been a guest on ESPN 2, a show
16 called "In search of Fly water." I was also a
17 guest on "Red Hawk Outdoors," which is on the
18 Outdoor channel. I was a guest of two PBS fly
19 fishing shows, one in the Beaverkill, one on
20 the Willowemoc River over in Sullivan County.
21 I have a DVD that just came out, it's on,
22 "Time Flies."

23 My family -- actually there are a few
24 of them, I wrote one down here -- my family
25 roots go back to the 1600s. The Schoonmakers
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3963

1 were here first in the 1650s, the Vanwykes
2 [sic] were here in the late 1600s, and the
3 Darrows were here -- came over as immigrants
4 also in the late 1600s. And all of them have
5 been within the Hudson Valley.

6 I've lived here my entire life except
7 two years. I was in the Service, I was in
8 Korea from 1968 to 1969. I worked for AT & T
9 for 13 years, and New York Telephone for 17
10 years, before retiring to start a fly fishing
11 school and guide service.

12 MS. ROBERTS: Thank you. Can you give
13 us your statement now.

14 MR. DARROW: I am here today to
15 register my concerns about the construction of
16 the proposed golf courses and hotels and homes

17 associated with it. I believe that the whole
18 project will have a deleterious effect on the
19 community in general, and especially the
20 environment surrounding the Esopus Creek
21 watershed that flows partially from Birch
22 Creek and its tributaries.

23 My family settled in the Kingston area
24 in the 1600s and has lived here since then. I
25 am a resident of Tillson, New York, a small
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 hamlet just south of Kingston. I have lived³⁹⁶⁴
2 there since 1969, but prior to that I have
3 lived in Kingston and Hurley on the lower
4 Esopus Creek.

5 Fly fishing was a way of life for the
6 people along the Esopus Creek and Birch Creek
7 even before the portal was opened for the
8 water transport by New York City in the latter
9 part of the 1920s. There were many small
10 boarding houses and inns that were frequented
11 by anglers from all around the northeast.

12 The Esopus was a world-class river
13 that became a magnet for trout anglers from
14 everywhere. The Catskill rivers attracted
15 well-known anglers from everywhere during the
16 1800s, and became known as the birthplace for
17 fly fishing in America.

18 Theodore Gordon fished on the Esopus,
19 as well as the Neversink in the late 1800s and
20 early 1900s. He was known as the father of
21 dry fly fishing in America, and promoted the
22 rivers as a great place to fish to anglers in

23 England. Fly fishing in the Catskills became
24 the passion of many because of the local
25 rivers.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 I developed a serious interest in fly³⁹⁶⁵
2 fishing over 30 years ago, and have spent much
3 of my time in pursuit of that sport on the
4 Esopus Creek from the Ashokan Reservoir to Big
5 Indian.

6 More importantly than the years
7 engaged on the river is the number of hours I
8 have spent on the Esopus Creek, that now well
9 surpasses over 10,000 hours. I have walked
10 most of the river hundreds of times fishing by
11 myself, guiding others or teaching people how
12 to fly fish. My teaching of this lifetime
13 sport started in 1978.

14 Because of the years and hours spent
15 in and around the river, I have been able to
16 observe the positive and negative impacts on
17 both the river and the communities in close
18 proximity when the river has been in a good,
19 healthy condition and when it has not.

20 In the 1960s, '70s and '80s, the river
21 fished wonderfully except for brief cyclical
22 storm events that caused temporary problems.
23 The village of Phoenicia was a booming village
24 with two fly fishing stores, as well as many
25 other types of shops and restaurants. There
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 was also a store selling flies and tackle in³⁹⁶⁶

Vol. 16 (8-24-04crossroads)
2 the nearby Hamlet of Boiceville. Also, there
3 were stores at Winchell's Corners and Shokan
4 Bend, as well as a store just west of
5 Phoenicia that sold tackle and bait.

6 A new fishing store opened at Catskill
7 Corners that was only open for a short time, a
8 few seasons I believe, before finally closing.

9 The only store that is fishing related
10 today left in the area is in the Village of
11 Phoenicia. It was once the well-known Folkert
12 Brothers store, but now has only a very small
13 supply of fishing related items compared to
14 what it once had.

15 The loss of most, if not all, of these
16 fishing businesses came about after the flood
17 of January 19, 1996. The river ran red or
18 brown for almost six years because of water
19 coming from the portal, a diversion of water
20 from one New York City reservoir to another.
21 We called it Yoo-hoo Creek because it looked so
22 much like that popular drink with the same
23 name.

24 The river was not only ugly and
25 depressing to look at by everyone that saw it
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 but was really not fishable for many reasons.³⁹⁶⁷
2 The river above the portal has remained clear
3 most of the time, and although has less trout
4 than below the portal, mostly because of the
5 volume of water and size of river, has
6 remained a steady producer of both wild
7 rainbow and brown trout.

8 when taking part in an
9 electro-shocking study to check the trout
10 population as well other fish species in the
11 Esopus Creek a couple of years ago with the
12 NYSDEC and students from Ulster County
13 Community College, I was able to observe the
14 importance of the upper Esopus Creek, above
15 the portal with regards to numbers of trout in
16 the river.

17 while three areas tested below the
18 portal there were many more trout than the
19 section shocked above the portal, the ratio of
20 fingerlings to adult trout above the portal
21 far exceeded the numbers below. The ratio of
22 fingerlings to adults above the portal was
23 about 11 to 1, and below the portal, the ratio
24 was between 1 to 1, or less than 2 to 1.

25 I have read that for good
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3968

1 survivability of the species, it should be
2 about 10 to 1. This emphasized to me the
3 importance of Esopus Creek above the portal
4 and its tributaries for the wild trout to
5 spawn.

6 The main reason I didn't fish the
7 Esopus below the portal much after the 1996
8 storm event or take people fishing in those
9 years was because of the safety factor when
10 wading. It was impossible to see where you
11 were wading. Even in knee-deep water, you
12 never knew how deep a hole the next step might

13 vol. 16 (8-24-04crossroads)
put you in or what you might trip over.

14 Also, the number of fish that were
15 seen by the anglers that did fish that section
16 of the river was far fewer than what had been
17 there in previous years. The insect life had
18 changed drastically in their numbers, and in a
19 negative way. They were greatly reduced.

20 As the fishing decreased, so did the
21 people visiting the area, and this affected
22 other businesses as well, like restaurants,
23 motels, local merchants, antique shops, et
24 cetera. Most of the people that I taught or
25 guided came with other family members that
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 looked for other things to do and most stayed ³⁹⁶⁹
2 overnight at a local motel.

3 Along with the reduction in people,
4 fish and aquatic insects, there has also been
5 a reduction in the bird and animal life along
6 the river that survives on what grows in it
7 when it is healthy. Many different types of
8 birds have had their numbers reduced due to
9 the lack of food that they get from the river.

10 The aquatic insects have now started
11 to come back, but still not in the numbers
12 that were there before. The trout that
13 survive on those insects seem to be holding
14 their own as far as their numbers go, but now
15 they seem to be smaller in size. The silt in
16 the river had definitely taken a toll on the
17 stream life.

18 Birch Creek is a major tributary to
Page 46

19 the Esopus above the portal and is a spawning
20 area for wild fish. I do not fish in it
21 nearly as often as the Esopus Creek from Big
22 Indian down, but it has never failed to
23 provide beauty in the form of wild rainbows
24 and browns when I do get there.

25 As I stated at the outset of this
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3970

1 comment, I have concerns about the Crossroads
2 project. The upper section of Birch Creek and
3 its tributaries are streams of a high gradient
4 for the water to flow down, so it does so
5 quickly and with little warning most of the
6 time during the heavy rain events.

7 I have watched as people have done
8 small excavations for single driveways or dug
9 holes for foundations, and when fast-moving,
10 strong storms move through the area, there are
11 rivers of red that flow down the hills and
12 into those mountain streams. They become
13 quickly swollen and bleed red with silted
14 water, only to ultimately flow into the Esopus
15 Creek, and then the Ashokan Reservoir.

16 I have seen the effects of catch
17 basins, pipes and roadside ditches that
18 overflow because of blockage into the Esopus
19 Creek and many other rivers. They may work
20 when in perfect condition and under moderate
21 storms, but the possible problems of
22 maintenance is something that is always
23 present.

vol. 16 (8-24-04crossroads)
This is not a short-lived project and

24

25

I don't know of any guarantees that will make
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

3971

1

sure these types of mitigation will be

2

maintained. Once the ground has been

3

disturbed, erosion in that type of gradient

4

takes place very quickly, silt will swiftly be

5

moved downhill to the bigger river.

6

In my guiding and teaching experiences

7

with people from all over the world, I have

8

heard the same idea expressed over and over

9

again. The Esopus valley is a great place to

10

visit because of its intimate atmosphere. The

11

mountains are beautiful, it is not

12

over-developed like so many areas are.

13

In closing, I must say that the idea

14

of golf course and hotels and home complexes

15

would be a tragic idea for the mountaintop

16

environment and communities, the Esopus River

17

valley below them, as well as the communities

18

along the river.

19

MS. ROBERTS: Mr. Darrow, you just

20

heard a discussion about noise impacts in

21

places like the forest preserve and other

22

places in the wilderness where this is quiet,

23

where people expect quiet.

24

Can you talk about your experience;

25

and also the people that you take to guide,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

3972

1

what is their expectation and experience of

2

noise in the wilderness?

3

MR. DARROW: I'll try and do this as
Page 48

4 well as I can. When I started fly fishing, I
5 did so because I wanted to learn the sport.
6 As I got to learn the sport, I got to
7 appreciate many things that went along with
8 the sport, and one of those was solitude.

9 I had a life that was very busy in
10 corporate America, and I like to escape, and I
11 escaped to the Esopus Creek. When I was able
12 to go there, the noises that I heard weren't
13 trucks, trucks backing up, beeping noises,
14 traffic and many other noises. The loud
15 noises I heard were from the river itself or
16 the fish that was jumping, or the birds
17 overhead or the beavers maybe swimming up and
18 down the river. But they're all natural
19 noises.

20 I separate noise not so much by level
21 but by man-made or wild. And when I go out to
22 fish, and I have taken hundreds, actually
23 thousands of people onto the river, they're
24 looking for that same experience, the solitude
25 that you find in the wilderness.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 And it's a hard thing to define for
2 me, other than the fact of man versus
3 non-man-made noises. And when you get to
4 where you can find nothing else, whether it's
5 wind or yourself breathing or the sound of an
6 animal in the forest or water, that is what
7 people are looking for. That is why they come
8 to this area, to find that solitude that you

3973

Vol. 16 (8-24-04crossroads)
9 only find in the wilderness.

10 MS. ROBERTS: First of all, you
11 testified that about six years ago or so there
12 was a storm event that really created a
13 serious problem with siltation in the river.
14 Is it your testimony that it takes a great
15 deal of time for the river to clear up so that
16 fishing is, again, not only safe, but also
17 worthwhile?

18 MR. DARROW: Basically, what I have
19 seen is when we have an event or something
20 like a continuous event -- and I see this as a
21 construction event to start off with for eight
22 years, not a one-year event but a continuous
23 thing -- it takes years for insects to come
24 back. And the insects feed the fish and
25 everything that lives along the rivers,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 whether it's birds or the animals that live³⁹⁷⁴
2 off the fish or the fish carcasses.

3 I've watched these be depleted greatly
4 in the Esopus Creek since 1996, drastically
5 below the portal. Above the portal, that has
6 not really happened. But below the portal, we
7 had a drastic impact that happened in 1996,
8 and not until really 1993, seven years later,
9 did we start to see a real improvement. It
10 hasn't come back yet, but there's starting to
11 be a improvement, so it does take long.

12 MS. ROBERTS: You said 1993, you meant
13 2003?

14 MR. DARROW: 2003, right.
Page 50

15 MS. ROBERTS: Can you talk about the
16 business impact from the decline in fishing
17 because of the event in '96 in terms of
18 dollars? Did you give me numbers about
19 dollars?

20 MR. DARROW: Yes. Back in the '70s
21 and the '80s, I was involved -- Trout
22 Unlimited was involved with a lawsuit that
23 dealt with PASNY and -- a pump storage project
24 that PASNY wanted to build.

25 And the study was done back then as
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 far as -- an economic study was done as to the ³⁹⁷⁵
2 amount of dollars that came into the area
3 20-some years ago, and I believe it was
4 somewhere between 5 and \$7 million because
5 fishing was brought into the area at that
6 time.

7 If you fast-forward that now to today
8 because of what has happened with the loss of
9 fishing revenue in the area, it has been
10 decreased in today's dollars from back then
11 just because of the loss of fishing since
12 1996.

13 Motels have gone out of business --
14 you can see that -- restaurants have, all the
15 fishing businesses that I stated in here have
16 gone out of business. It's been a great
17 decline, and you can see it driving up and
18 down Route 28 -- for sale signs -- and it just
19 increased rapidly because of the fishing.

20 MS. ROBERTS: So folks come from
21 literally around the world?

22 MR. DARROW: I have taken people
23 fishing that have come from Hong Kong, Italy,
24 Japan, Bermuda, England, France, and all over
25 the country, they come to the Catskills --
□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3976

1 when and this was the premiere stream, the
2 Esopus Creek was for years, to come fishing
3 to.

4 MS. ROBERTS: Would you say the Esopus
5 is now a critical stage of its comeback
6 gradually?

7 MR. DARROW: It's very fragile right
8 now. We just started to see fingerlings
9 coming back as far as -- the number of
10 fingerlings as far as rainbow trout. They're
11 nowhere near what they used to be.

12 Now it's broken, and we're trying to
13 put it back together again. If something else
14 comes along to do it -- I foresee it, and many
15 other people do, it's become what we call a
16 put-and-take river; and that means basically
17 the State will come in, they'll put so many
18 fish in every spring, within a month to two
19 months those fish will be gone. And that will
20 be the type of river it is.

21 Now it is a self-producing river for
22 trout, not nearly what it was in the '60s and
23 '70s and '80s, and prior to when I started
24 fishing, but it will be going to a place we'll
25 call a put-and-take type fishery, and that

3977

1 doesn't bring people from all over the world
2 to fish.

3 MS. ROBERTS: I anticipate some kind
4 of objection because you're not a scientist,
5 and we're going to have scientists on tomorrow
6 to talk about aquatic habitat, but you have
7 worked with DEC to do fish counts. Can you
8 talk about your experience on the river in
9 terms of your observations of the health of
10 the fish and how it's connected.

11 MR. DARROW: Right. When I started
12 fishing the river and for many years, the DEC
13 had done studies, and they found there to be
14 over 10,000 trout per mile in the Esopus
15 Creek. I think those numbers have dropped off
16 drastically. I think now they refer to it as
17 biomass, pounds per acre, and it's hard to get
18 a real count at DEC.

19 what I found, I just did my little
20 math, the numbers have dropped off drastically
21 as far as the number of wild rainbows and
22 browns, and the number of brown trout that are
23 stocked, those numbers are getting higher,
24 compared to the numbers of the wild browns and
25 rainbows that were in there. The stock trout
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3978

1 are moving up, and the wild trout are moving
2 down in numbers. Let's say the stock trout
3 are staying the same, but the wild numbers are
4 moving down closer.

5 MS. ROBERTS: Just to go back to noise
6 again for a moment. You heard counsel for the
7 Applicant talk about the Belleayre Ski Center
8 adding noise to the environment. In terms of
9 fishing, though, has that been an issue for
10 you?

11 MR. DARROW: The fishing opens up on
12 the Esopus Creek April 1st, and it ends
13 November 30th. We don't get involved with
14 skiing at all. So these people come up here
15 for the solitude, the quietness that they find
16 out there, and skiing has absolutely no effect
17 or impact on it at all.

18 MS. ROBERTS: One last question. Are
19 you hopeful about the river coming back and
20 the businesses coming back if this is not --
21 if the river is not threatened or damaged?

22 MR. DARROW: Yes. When I started my
23 fly fishing business when I retired, I thought
24 my business would be taking place in and
25 around the Esopus Creek. Because of that, it
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 has cost me money because I have to travel to ³⁹⁷⁹
2 other places, I have to spend money on motel,
3 lodging of some type, longer distances to
4 drive, meals and whatever, so my costs have
5 gone up drastically.

6 Since I have been living in this area,
7 I would love to see this area come back to
8 what it was. I think the fishing will do
9 that. It will absolutely do that if it comes
10 back. I attend shows -- fly fishing shows

11 every year -- in Somerset, New Jersey, and
12 people can ask: when is the Esopus going to
13 get better again? Because there's this huge
14 number of people -- I mean tens of thousands
15 of people that want to come to this area and
16 fish, the Esopus Creek area specifically, and
17 they haven't been doing it for years. Yes, I
18 want to see it come back.

19 MS. ROBERTS: The river has been
20 rebounding slowly?

21 MR. DARROW: It's coming back. It's
22 coming back slowly, but it doesn't need
23 another shock.

24 ALJ WISSLER: why don't we take five
25 minutes.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3980

1 (11:12 - 11:32 A.M. - BRIEF RECESS
2 TAKEN.)

3 MS. ROBERTS: we'd like to call Thomas
4 Daniels.

5 we've already submitted his resume for
6 the record as CPC Exhibit 92.

7 Go ahead.

8 MR. DANIELS: My name is Thomas L.
9 Daniels, I am a full professor of City and
10 Regional Planning at the University of
11 Pennsylvania. Previously, I was a full
12 professor of Community and Regional Planning
13 at the State University of New York at Albany.

14 I have a Bachelor's Degree in
15 Economics from Harvard, a Master's Degree in

Vol. 16 (8-24-04crossroads)
16 Agricultural and Resource Economics from the
17 University of Newcastle in the United Kingdom,
18 and a Ph.D. in Agricultural and Resource
19 Economics from Oregon State University.

20 I have several years of experience as
21 a rural planner and am the author or co-author
22 of several books and articles on rural
23 planning and growth management.

24 In particular, I have worked as a
25 consultant on two large ski area/resort
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 expansion proposals in Vermont, Killington and ³⁹⁸¹
2 Stowe.

3 The Catskill Preservation Coalition
4 contacted me to conduct a review and analysis
5 of the proposed Belleayre Resort. Two key
6 issues in evaluating the Belleayre Resort
7 proposal are, one, whether the resort will
8 have substantive and significant impacts on
9 community character; and two, whether the
10 proposed resort will promote substantive and
11 significant secondary development off-site in
12 the form of scattered housing developments and
13 commercial strip development.

14 I have reviewed the Draft
15 Environmental Impact Statement submitted by
16 Crossroads Ventures, LLC in regard to the
17 proposed Belleayre Resort project. In
18 particular, I have focused on the community
19 character impacts and the secondary growth
20 impacts in the DEIS.

21 I have reviewed the testimony of Peter
Page 56

22 J. Smith and Company in response to the DEIS,
23 and I have reviewed the testimony on community
24 character presented on June 9th, 2004.

25 The Belleayre Resort project is
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3982

1 proposed in the Town of Shandaken and Ulster
2 County and the Town of Middletown in Delaware
3 County. The resort is a very large project
4 for a rural area.

5 In planning terms, it is called a
6 "development of regional impact," known as a
7 DRI, because the impacts of the project are
8 felt not only beyond the boundaries of the
9 project, but also on several communities in
10 the region and the entire region. These
11 impacts include traffic, housing, economic
12 activity and community character.

13 Community character consists of
14 recognizable resources described on SEQRA,
15 such as visual, cultural and historic
16 resources, and noise levels.

17 The resort would be situated on a
18 1900-acre site adjacent to the Belleayre State
19 Ski Center, a publicly owned facility, and to
20 the Catskill State Forest Preserve.

21 The resort would operate year-round as
22 a four-season resort. The resort would cost
23 approximately \$250 million to build over an
24 eight-year period. The resort complex would
25 include two hotels with a total of 400 rooms,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3983

1 two 18-hole golf courses, a conference center
2 and five restaurants with seating for 825
3 people, 341 units of attached housing, 21-lot
4 subdivision for single-family homes, two spas,
5 tennis courts, pools and clubhouses.

6 The developed part of the resort would
7 encompass approximately 527 acres, of which
8 85 acres would be devoted to buildings and
9 infrastructure. The other 442 acres would be
10 devoted to the two golf courses.

11 The DEIS claims that the resort would
12 provide an estimated 2,114 full-time
13 person-year jobs over the eight years of
14 construction, and 747 full-time equivalent
15 jobs in the resort's operation phase.

16 Impacts on community character: The
17 Catskill region is famous for its clean air,
18 clean water, forest, mountains, villages and
19 hamlets, people, lifestyles, recreation
20 activities and aesthetic values. These are
21 the features that give the Catskill region its
22 sense of place and community character.

23 Community character is also an
24 economic asset. It describes how the natural
25 environment and built environment interact
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 with each other, and it generally defines the
2 local quality of life.

3 In Rural Planning and Development in
4 the United States, a book I co-authored, my
5 colleagues and I identified three stages of
6 large resort development in rural areas, based

3984

7 on the experiences of the 1960s and 1970s.

8 And I quote -- this is quite a long
9 quote: "In the pre-boom phase, a town is
10 typically remotely situated with a population
11 of a few hundred to a few thousand people.
12 Public services are not sophisticated, but are
13 generally adequate. An attitude of self-help
14 and neighborliness exists among the
15 townspeople. The local economy may be based
16 on forestry, agriculture or mining, as well as
17 retail sales and some tourism.

18 "Then an area is discovered for its
19 recreation potential. Capital, labor and
20 technology are brought in to develop specific
21 kinds of recreation projects. This
22 construction boom includes both and the
23 creation of a recreation facility and the
24 development of second homes and hotel/motel
25 units to house visitors. A construction boom
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 normally lasts from two to five years." In ³⁹⁸⁵
2 the case of Belleayre, it would be 8 years.

3 "About midway through the construction
4 boom, a secondary boom occurs as local
5 businesses expand and new businesses move in
6 to provide more goods and services to the
7 increased population. The secondary boom in
8 recreation areas often exceeds the
9 construction boom in length of time and total
10 dollars invested.

11 "In the post-boom phase, a rural

12 recreation area may, one, decline in
13 popularity; two, diversify its economy and
14 continue to grow; or three, maintain a stable
15 economy and population. The post-boom phase
16 will also depend on how well a town is able to
17 maintain a high quality of life in
18 accommodating economic, social and
19 environmental changes.

20 "The most obvious effect of rural
21 recreation facilities is that they often
22 induce greater economic activity. The size
23 and length of the economic impact will be
24 directly related to the size of the recreation
25 project.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3986

1 "The influx of capital and labor
2 during both the construction phase and the
3 secondary phase tends to raise local
4 employment and incomes, which in turn produces
5 an increased demand for goods and services,
6 especially housing. The locals are often
7 priced out of the land market as the number of
8 second homes increases and the town becomes
9 more dependent on recreation for its
10 livelihood.

11 "For example, land sales data in
12 Vermont indicate a trend of fewer purchases by
13 local residents in ski resort towns."

14 This is based on an article that I did
15 with my colleague, Mark Lapping, in 1984,
16 entitled, "Has Vermont's Land Use Control
17 Program Failed?" which appeared in the

18 Journal of the American Planning Association,
19 Volume 50, page 507.

20 "Rural recreation areas have brought
21 about many pronounced changes in local social
22 structure and personal interaction. Newcomers
23 consist of well-to-do, part-time residents,
24 transient workers seeking seasonal employment,
25 and members of the secondary boom who intend
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 to become permanent residents. Each of these ³⁹⁸⁷
2 three groups causes a change in the
3 community's image of itself."

4 The DEIS maintains that: "Because the
5 resort will be fairly self-contained, there
6 will not be an effect on community character."
7 This statement runs counter to my experience.

8 In the Killington, Vermont Ski Resort
9 Expansion case in 1999, Douglas Kennedy, a
10 consultant for Sno.Engineering, Inc.,
11 testifying in favor of the expansion, noted
12 that: "A case study assessment of mountain
13 resorts that have developed villages in recent
14 years indicates that the growth of these
15 villages has been accompanied by substantial
16 increases in retail, commercial activity in
17 nearby communities. We have not found an
18 instance in which the introduction of a new
19 mountain village resulted in a decline in
20 business activity in an adjacent community."

21 This is from the Vermont Environmental
22 Board case that was decided October 22nd,

23 1999.

24 It was my understanding that a
25 representative from Sno.Engineering also
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3988

1 testified on behalf of Crossroads Ventures,
2 LLC in this Issues Conference, and stated
3 similar findings.

4 Subsequent to the DEIS, Crossroads
5 Ventures, LLC has stated that any off-site
6 development would be located within existing
7 hamlets and villages or on abandoned sites.

8 In the Killington case, the
9 development and growth of the ski area had
10 already resulted in scattered commercial
11 development along the US Route 4 corridor. I
12 would expect similar scattered commercial
13 development to occur along Route 28 where
14 businesses would have greater visibility.

15 visual impacts. As identified by
16 Daniel Sundell, a consultant for the Catskill
17 Park Coalition, who offered his opinion
18 earlier in the Issues Conference, the proposed
19 Belleayre Resort would have significant
20 impacts on the visual character of the region,
21 especially during the construction phase.

22 An estimated 527 acres of trees would
23 be clear-cut, an area of nearly one square
24 mile. Blasting would occur as part of the
25 preparation for construction of building and
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3989

1 infrastructure on 85 acres.

2 On the other 442 acres where the two
Page 62

3 golf courses would be located, only 4,100
4 trees are proposed to be planted. In other
5 words, what had been forest will be
6 transformed into open, manicured golf courses
7 and buildings.

8 In addition, the Visual Impact Study
9 in the DEIS conducted by the LA Group involved
10 a set of photographs of the resort site from
11 different locations. The consultants did not
12 use computerized visual simulation such as
13 Community Viz to demonstrate what the resort
14 would look like in its setting, and how
15 visible the resort would be from different
16 locations.

17 Moreover, visual impacts vary
18 according to different seasons because of
19 varying foliage cover. It is my understanding
20 that during a recent site visit, balloons
21 flown by the Applicant demonstrated that the
22 resort will be clearly visible from Route 28.

23 visual impacts also occur from
24 secondary development generated by the
25 construction and operation of the resort.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 These include new housing for people who work ³⁹⁹⁰
2 at the resort but live off-site, new
3 vacation/second home development, housing for
4 new permanent residents attracted during the
5 secondary boom, and commercial strip
6 development along Route 28.

7 Consistency with Smart Growth

8 Principals. The Belleayre Resort is not
9 consistent with principles of the American
10 Planning Association's Smart Growth Policy
11 Guide, or the New York Quality Communities
12 Policies.

13 Smart growth principles feature, one,
14 compact development in or adjacent to existing
15 settlements; two, a human scale of buildings;
16 and three, environmental protection with
17 economic development.

18 The resort is located more than a mile
19 from the nearest hamlet or village. The size
20 of the resort is enormous for a rural area.
21 Taken as a whole, the Belleayre Resort has the
22 scale of a small city; a total of 400 hotels
23 rooms, 362 housing units with at least 850
24 bedrooms are planned, and dozens of acres of
25 commercial space.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3991

1 Developments should be on a human
2 scale to blend in with the community. Human
3 scale refers to the size of buildings,
4 generally no more than three stories and
5 covering less than an acre of space, and a
6 pedestrian pace and orientation to the pattern
7 of development.

8 The pattern of the community should
9 promote compact development with a pedestrian
10 orientation and minimize scattered, leapfrog
11 development.

12 Based on my experience with comparable
13 developments, in my professional opinion, the

14 resort will induce housing and commercial
15 strip development outside of hamlets and
16 villages, reducing visual quality and
17 character of the region, as well as drawing
18 economic vitality away from the settlement
19 centers.

20 The zoning outside the hamlets and
21 villages currently allows such scattered
22 housing and commercial strip development with
23 little regard for the qualities that make up
24 the community character of the region.

25 Secondary growth impacts. It is
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□
1 important to understand the secondary growth³⁹⁹²
2 effects of the proposed resort because an
3 accepted planning principle is that problems
4 caused by cumulative growth should be
5 addressed before they occur.

6 During the construction phase, the
7 Belleayre Resort would provide an estimated
8 2,114 full-time person-year jobs. During the
9 operation phase, the resort would provide 747
10 full-time equivalent jobs.

11 The Towns of Shandaken and Middletown
12 had a total of 200 unemployed adults at the
13 2000 census. Thus, several hundred workers
14 would have to be imported into the region
15 during the construction phase, and more than
16 500 workers would have to be imported into the
17 region for the operation phase.

18 The DEIS did not explain where these

19 workers would come from or where they would be
20 housed. Also, it is my understanding that on
21 rebuttal, Crossroads experts testified that
22 the needed workers would likely commute to
23 obtain the benefits and salary offered by the
24 resort.

25 In my opinion, however, it is unlikely
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3993

1 that the average resort employee making less
2 than \$20,000 a year will be able to afford to
3 commute almost an hour each way to work.
4 Instead, the average resort worker will need
5 to find affordable local housing.

6 The State of Washington has
7 experienced the draw of resorts for outside
8 labor, noting that: "Although successful
9 resorts can be expected to generate jobs, the
10 jobs will not necessarily go to local
11 residents. It is not unusual for a resort to
12 bring in top managers from other areas. News
13 of job opportunities in a resort setting may
14 draw job seekers from afar who compete with
15 local job seekers.

16 Housing for most of the workers at the
17 resort would have to be provided within the
18 Catskill Region. Again, as most of the jobs
19 at the resort would not pay more than \$20,000
20 a year, making long-distance commuting of more
21 than 45 minutes each way is not
22 cost-effective.

23 Housing vacancies in the Towns of
24 Shandaken and Middletown total about 220 units

25 in the 2000 census. How many of these units
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 would be affordable for people who work at the ³⁹⁹⁴
2 resort is uncertain. Thus, there is a strong
3 likelihood that new housing would have to be
4 built to support at least some of the workers
5 at the resort. The location of at least some
6 of this housing will occur outside of existing
7 hamlets and villages.

8 Housing for resort workers is a major
9 issue. In Colorado, many communities have
10 pushed the housing issue by requiring that
11 large employers, such as ski resorts, provide
12 housing for a percentage of their employees.
13 Keystone and Copper Mountain Resorts are
14 required to provide housing for 40 percent of
15 their employees.

16 MS. ROBERTS: Excuse me. Can you
17 provide your quote for that?

18 MR. DANIELS: Yes, it's from the
19 Denver Business Journal, March 16th, 2001.

20 Another aspect of housing that the
21 DEIS did not explore is the demand for
22 vacation/second homes.

23 Kenneth Johnson and Calvin Beale of
24 the U.S. Department of Agriculture conducted a
25 study of rural recreation counties, and
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 included the Catskills in that study because ³⁹⁹⁵
2 of the large percentage of second homes in the
3 region.

Vol. 16 (8-24-04crossroads)
Johnson and Beale wrote:

"Recreational areas have long attracted large numbers of the visitors. Recent data show that they are also attracting many permanent residents. Increased recreation activity, the appeal of second homes, and the influx of former urbanites into rural areas all create a demand for housing and for an expanded business, service and governmental infrastructure to support it."

This quote is from a publication entitled, Rural America, the article is called, "Nonmetro Recreation Counties," and this appeared winter of 2002. It was published by the U.S. Department of Agriculture.

The presence of the Belleayre Resort will spur demand for new vacation/second homes off the project site but within a fairly easy driving distance. As with new housing for workers, at least some of these vacation/second homes will be located outside
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3996

of existing hamlets and villages.

The increase in workers at the resort and a likely increase in vacation/second homes outside of the resort will result in both seasonal and permanent population increases. By contrast, the DEIS ignores the induced population growth that will be generated as a direct result of the proposed Belleayre Resort.

10 The increased population will increase
11 demands on local services, including road
12 construction and maintenance, schools, police
13 and fire protection, and sewer and water
14 supplies. The DEIS does not provide a full
15 fiscal impact study of costs and revenues.

16 The magnitude of the Belleayre Resort,
17 both the construction cost at \$250 million and
18 the employment of 747 full-time equivalent
19 workers in the operation phase, would have
20 major multiplier effects on the local economy.

21 The DEIS estimate that 70,000-plus
22 square feet, slightly less than two acres, of
23 new commercial construction would occur is
24 probably on the low side, given the size and
25 length of the resort construction phase, and
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

3997

1 the magnitude of the resort.

2 Moreover, the DEIS does not indicate
3 either the type or location of this new
4 commercial development. Gas stations, fast
5 foods and outlet malls along Route 28 would
6 greatly impact the economic and physical
7 character of the region. Commercial
8 development outside of the hamlets and
9 villages would draw economic vitality away
10 from those settlements.

11 Conclusion. In conclusion, it is my
12 opinion that the scale of the proposed
13 Belleayre Resort is too large for this region
14 of small settlements and rural landscape. I

15 concur with the finding of the 1994 Route 28
16 Corridor Study that four or five hotels of 100
17 units located in hamlets and villages would
18 better fit with the character of the region,
19 minimize sprawl, and yet produce the kind of
20 economic growth that the region desires.

21 Thank you.

22 MS. KREBS: Thank you, Dr. Daniels.
23 Do you have anything?

24 ALJ WISSLER: Professor Daniels, the
25 statement that you just read, is that one of
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 your exhibits in your petition?

3998

2 MS. ROBERTS: No, it is not, your
3 Honor.

4 ALJ WISSLER: There are several
5 references to quotes; do you intend to put
6 them in?

7 MS. ROBERTS: Yes, I can get you a --
8 I can get you a copy of it.

9 ALJ WISSLER: Of that statement?

10 MS. ROBERTS: Yes. It's just that
11 there's a couple of points that we had been
12 editing last minute, so I wanted to get you a
13 clean copy. So I will do that.

14 ALJ WISSLER: When you say a clean
15 copy, it will be a copy verbatim what I just
16 heard?

17 MS. ROBERTS: Yes, it will.

18 ALJ WISSLER: With references?

19 MS. ROBERTS: Yes, it will be.

20 ALJ WISSLER: Professor Daniels, the
Page 70

21 Community Viz program, what is that?

22 MR. DANIELS: It's a computerized
23 simulation program that's produced by the
24 Orton Foundation based in Vermont, and also in
25 Colorado, and has been used by a number of
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 communities to produce a visual simulation of³⁹⁹⁹
2 what a proposed development would look like.

3 ALJ WISSLER: Of just the buildings of
4 that development?

5 MR. DANIELS: well, the buildings in
6 their setting. It's not just an architect's
7 drawing; it's actual -- and you can actually
8 move around the community in it, in a 3-D type
9 of environment.

10 ALJ WISSLER: while it may have
11 facilitated review here, are you saying that
12 the DEIS in this case is defective because
13 they didn't use that program?

14 MR. DANIELS: I said such as Community
15 Viz. It's not specifically that, but in the
16 DEIS they do not include a simulation of what
17 the buildings would look like in their
18 setting, and because the technology exists, I
19 think that that's reasonable to expect for a
20 project of this magnitude.

21 MS. ROBERTS: We have nothing further.

22 ALJ WISSLER: Thank you.

23 MR. DANIELS: Thank you.

24 MR. BURGER: I'm handing out now

25 exhibits we're going to use that Mr. Donohoe
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 will refer to.

2 ALJ WISSELER: These are already City
3 Exhibits?

4 MR. BURGER: These are City Exhibits
5 and the Applicant's Exhibits. These are
6 slides from the AKRF testimony of July --

7 ALJ WISSELER: I understand that, but
8 do you know the exhibit numbers?

9 MR. BURGER: The two slides are AKRF,
10 Applicant's Exhibit 84, and Table 3 is from
11 Appendix B3 of the City's petition.

12 ALJ WISSELER: Okay.

13 MR. BURGER: We are now just
14 submitting our rebuttal testimony -- our
15 initial presentation and submission on the
16 issue of secondary growth.

17 As a general matter, the Applicant
18 attempts to treat the City's offer of proof as
19 comments suitable for a public hearing, as
20 opposed to as an offer of proof. It thereby
21 attempts to absorb the challenges posed in
22 these submissions to the substance of the DEIS
23 and characterize them as inconsequential, and
24 thereby avoid any actual analysis of the
25 secondary growth impacts.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 As further -- as Jeff Donohoe will
2 further testify to today, the City has
3 presented issues that are both significant and
4 substantive under SEQRA.

5 In particular, in slide 16 of
Page 72

6 Applicant Exhibit 84, which is not one of the
7 ones that was handed out earlier, the
8 Applicant admits that one of the primary
9 concerns of the DEIS was the project's effect
10 on land use within the Route 28 corridor, but
11 then unreasonably concludes that there will be
12 no changes in land use along that corridor,
13 including no additional commercial growth or
14 commercial businesses that will open up along
15 the Route 28 corridor.

16 Part of this conclusion is based on
17 insufficient -- an insufficient case study
18 analysis. The scoping document did require
19 the Applicant to look at Windham, Gore
20 Mountain and Greylock, but it did not so limit
21 the Applicant to those; and in fact, required
22 them to look beyond those three case studies
23 for other case studies that would shed light
24 on what kind of impacts can be expected from
25 this development.

□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4002

1 Similarly, the DEIS predicts that
2 there will be zero new residences that arise
3 as a result of secondary growth from the
4 project. This is on its face an unreasonable
5 conclusion. It's also based on a manipulation
6 of inaccurate workforce data and other data.

7 Taken all together, the inconsistent
8 and unreliable data that the DEIS relies on,
9 as well as the unreasonable conclusions in
10 regards to commercial growth and residential

11 growth, are significantly different from the
12 conclusions raised by RKG, and basically we
13 believe we have submitted issues that are both
14 substantive and significant.

15 And with that, I'll turn it over to
16 Mr. Donohoe.

17 MR. DONOHOE: Thanks, Mike. I'm going
18 to raise issues in four general areas; the
19 first will be commercial growth, the second
20 will be workforce issues, third will be
21 residential growth, then inaccuracies and
22 inconsistencies in the DEIS, and the
23 subsequent presentation by AKRF.

24 In the area of commercial, our
25 analysis concluded approximately 80,000 square
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4003

1 feet of new commercial demand will be
2 generated as a result of the proposed project,
3 and that because of development economics, new
4 construction is likely to be preferable to
5 re-use of existing structures, primarily
6 because of locational considerations, access,
7 visibility and parking.

8 We also believe that demand will be
9 strongest along Route 28, particularly those
10 parcels closest to the Belleayre development,
11 and parcels with access to sewer.

12 Slide 5 of AKRF's socioeconomic
13 analysis presentation recognizes new
14 development occurring within the region,
15 particularly along Route 28, referring to the
16 proposed hotel project in Pine Hill and the

17 expansion of the Margaretville Motel --

18 During our tour with the Judge, the
19 owner of that motel indicated that the
20 availability of sewer was a key concern for
21 his expansion. However, the Applicant later
22 stated that existing buildings within hamlets
23 will be the primary focus of new commercial
24 activity. This ignores parcels along Route 28
25 with access to sewer service and is
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4004

1 inconsistent with elements in the market
2 place. (Indicating)

3 slide 17 of AKRF's socioeconomic
4 analysis presentation misstates or
5 misinterprets RKG's GIS analysis and seems to
6 compare acreage for the entire study area
7 rather than the Route 28 corridor.
8 (Indicating)

9 RKG's analysis identified 3,300 acres
10 of undeveloped land which could be developed
11 along the Route 28 corridor, as shown in
12 Table 3, which Mike just handed out. This
13 number is consistent with the Applicant's
14 estimate on slide 17 of 3,900 acres.

15 The issue is, at the bottom of
16 slide 17, they indicate that RKG identified
17 43,000 acres of land that could be developed,
18 and indicated that RKG's analysis did not
19 include limitations from steep slopes, access
20 or hydrography.

21 As you can see in Table 3, acreage

22 vol. 16 (8-24-04crossroads)
with slopes less than 20 percent have clearly
23 been delineated. (Indicating)

24 Appendix B3, we indicated: "Once the
25 developable land parcels were selected, they
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4005

1 could then be overlaid with various
2 development constraint features, such as steep
3 slopes and wetlands, in order to estimate the
4 net developable area that may be available for
5 future development."

6 Again, AKRF had totally misstated our
7 analysis in order to try to support the
8 argument that they were making. (Indicating)

9 slide 18 of AKRF's socioeconomic
10 analysis presentation recognizes the
11 likelihood of conversion of residential
12 properties along Route 28 to non-residential
13 uses, but this conversion is totally ignored
14 in the DEIS.

15 One of the key issues to review in
16 that regard would be the increase in
17 impervious surfaces because of the higher
18 parking requirements associated with
19 commercial development. (Indicating)

20 slide 40 of AKRF's socioeconomic
21 analysis presentation tries to relate the
22 estimated demand for space to RKG's finding
23 that approximately 80,000 square feet of
24 commercial space was vacant in the market at
25 the time of our survey.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4006

1 while the two numbers are similar,
Page 76

2 that's totally coincidental. RKG doesn't
3 believe that the 80,000 square feet of new
4 demand could be accommodated in the existing
5 structures. (Indicating)

6 In particular, as seen on our tour of
7 the Village of Fleischmanns, many properties
8 suffer from dramatic disinvestment and lack of
9 maintenance. And it's unlikely that a
10 development professional would invest
11 significant funds without subsidy from the
12 community or the State.

13 AKRF also indicated during their
14 presentation that hamlets will have a
15 competitive advantage due to the availability
16 of sewer, but again, ignored those areas along
17 Route 28 with access to sewer. This is a
18 driving factor in the expansion of the
19 Margaretville Motel, and the location of the
20 proposed hotel in Pine Hill on Route 28.

21 As stated previously, development
22 economics dictates that new construction is
23 much more likely along the Route 28 corridor
24 because of visibility, access and parking
25 availability.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 In the area of workforce, our analysis⁴⁰⁰⁷
2 identified the primary concern as the
3 insufficient availability of labor, which is
4 expected to lead to the need of new low-cost
5 housing, affordable by employees of the
6 resort. AKRF testified that RKG's analysis of

7 vol. 16 (8-24-04crossroads)
workforce was insufficient since RKG focused
8 on 200 unemployed residents in industries
9 related to hotel and golf course operations.

10 AKRF also included that there were
11 five potential labor sources for the project,
12 including existing employees within the labor
13 market area, under-employed and seasonal
14 employees, residents who are employed outside
15 the local market area, existing residents who
16 might otherwise leave the area, such as
17 children of existing residents looking to find
18 opportunities elsewhere, and unemployed people
19 both inside and outside the region.

20 It is our position that RKG did
21 recognize some of these issues when we
22 indicated: "There is a possibility that
23 future employment at the proposed Belleayre
24 Resort would cannibalize the workforce at
25 existing businesses in this sector, since it
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□
1 represents 47.8 percent of those employed at ⁴⁰⁰⁸
2 this sector, adjusting for a commute of 45
3 minutes or more."

4 That information appears in Appendix
5 B1 on page 21 of the City's submittal.
6 Cannibalizing existing businesses is likely to
7 lead to wage inflation in the area, which
8 could put some marginal business at risk of
9 failure. This issue is not addressed in the
10 DEIS.

11 AKRF also criticized RKG's use of wage
12 rates by industry sector as being too general.

13 AKRF testified that their wage rate estimates
14 had been developed using national averages
15 from a trade industry group.

16 It is not clear whether a national
17 average is more or less specific than the
18 information provided by RKG. However, AKRF
19 now has provided more specific data which they
20 chose not to utilize in the DEIS to show that
21 their estimates are credible. It is not clear
22 whether using data for the Hudson Valley or
23 the southern tier is the best available, and
24 some of the job categories included in AKRF's
25 presentation seem to skew the numbers
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4009

1 somewhat.

2 The impact of these higher wages for
3 some job categories cannot be reasonably
4 evaluated since the DEIS does not include
5 detailed information on either anticipated job
6 categories or the number of workers in any
7 specific job category.

8 Finally under workforce, AKRF
9 interpreted RKG's analysis by testifying that
10 RKG's analysis shows that every new job would
11 require a new housing unit. This is an
12 incorrect interpretation.

13 RKG estimates that approximately 650
14 new housing units would be required over the
15 20-year period of analysis in the primary and
16 secondary market areas. RKG's analysis also
17 showed that using the REMI model, more than

18 vol. 16 (8-24-04crossroads)
1,200 direct and indirect jobs would be
19 created as a result of the project.

20 The key issue here is the importation
21 of labor is going to create the demand for new
22 housing units, and that issue wasn't evaluated
23 at all in the DEIS.

24 Our housing analysis, as I said,
25 indicated significant demand for new units
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 will occur, that roughly \$15.7 million in 4010
2 residential stock in the primary market area
3 will be invested over the first ten years.
4 That new demand will be driven primarily by
5 new workers, and we estimated that 158 units
6 would be required in the primary market area
7 over the first ten years of the project.

8 AKRF testified that they found our
9 estimate of 15.7 million in investment in
10 residential capital stock to be reasonable.
11 This directly contradicts the DEIS which
12 states on page 7-16 of Appendix 26: "Since
13 the resort is estimated to result in
14 negligible new seasonal or year-round housing,
15 the impacts are anticipated to be
16 insignificant."

17 Also, AKRF contends that current
18 activity in the market indicates an average
19 size of 1,500 to 2,000 square feet, and an
20 average construction cost of \$135 per square
21 foot, based on discussions with local
22 realtors. This equates to an average total
23 cost per housing unit of 200 to \$270,000 per

24 unit.

25 Also AKRF assumed, based on EA's
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4011

1 estimates of impervious surface and
2 phosphorous generation, that these are all
3 single-family housing units. Our response is
4 that this approach is simplistic and designed
5 to understate the number of units, and
6 therefore the associated impacts.

7 RKG's estimates of new housing units
8 are for an average unit, recognizing that a
9 broad-spectrum of new housing products will be
10 necessary. Some will be expensive, some will
11 be inexpensive.

12 For example, a small apartment unit of
13 800 square feet or less, which would be
14 affordable to somebody working at the proposed
15 resort, could be constructed for less than
16 \$70,000 per unit.

17 Affordability is certainly an issue if
18 one assumes that AKRF's estimate of 200 to
19 \$270,000 per housing unit is correct. A
20 worker earning \$27,000 annually at the resort
21 would have to spend 46 to 62 percent of his
22 income to support 90 percent financing on a
23 home in this price range. This range of 46 to
24 62 percent of income is well above what the

25 Housing and Urban Development Department
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4012

1 considers to be a reasonable price range for
2 people to provide housing. HUD recommends

Vol. 16 (8-24-04crossroads)
3 housing costs be less than 30 percent of
4 income.

5 Even at the median household income in
6 the area of \$39,000, mortgage costs would be
7 in the range of 32 to 43 percent to support
8 the housing units that AKRF has recommended.

9 Simply put, lower cost rentals are
10 likely to be needed to meet the needs of
11 resort workers. Assuming HUD's 30 percent
12 guideline, housing in the range of \$750 per
13 month could be supported by the average wage
14 of the resort of \$27,000 per year.

15 In addition, AKRF testified that even
16 if RKG's numbers are assumed to be correct,
17 158 units of housing in the primary market
18 area is consistent with what occurred during
19 the last 10 years.

20 This is an incorrect evaluation.
21 Since the model already assumes baseline
22 economic conditions and growth, the 158 units
23 estimated to be added to the inventory as a
24 result of the Belleayre project would be in
25 addition to other activity in the economy.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 In short, there would be 158 more
2 units in a market that only added 300 units in
3 all of the 1990s. This represents more than a
4 50 percent increase in the pace of growth of
5 housing units in the area.

6 Inaccuracies and inconsistencies. As
7 you may have read in all of these appendices
8 that were submitted by the City with their

4013

9 petition, we have a significant concern
10 regarding inaccuracies and inconsistencies of
11 the data.

12 Specifically one of the points that
13 causes concern is the case studies. While the
14 scoping document does specify Windham, Gore
15 and Greylock should be evaluated, the scoping
16 document also calls for a larger analysis of
17 issues associated with case studies, which it
18 appears the Applicant has not complied with.

19 Our analysis included an evaluation of
20 as many as 18 different resort developments.
21 Some were rated high, some were rated low.

22 We provided some re-information on two
23 case studies, Snowshoe and Mountain Creek.
24 Both of those projects are golf course and
25 residential developments with hotel
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 components. The Applicant's case studies are ⁴⁰¹⁴
2 all ski area case studies.

3 Our goal in presenting those two case
4 studies, and the other 15 or so that we
5 included, was to show that there are better
6 comparables that could be evaluated.

7 In the area of hotel feasibility, the
8 owner of the Alpine Inn testified on behalf of
9 the Applicants that year-to-date occupancy for
10 his property was in the range of 25 percent,
11 and that February was his best month of the
12 year at an average occupancy of 40 percent.
13 This calls into question the viability of the

14 vol. 16 (8-24-04crossroads)
15 proposed resort which relies on average
16 occupancy in the range of 60 to 80 percent,
17 depending on which portion of the DEIS you
18 read.

18 slides 59 and 60 of AKRF's
19 socioeconomic analysis, which Mike passed out,
20 are indicative of the data inconsistencies
21 which are pervasive in the DEIS, and even in
22 AKRF's response.

23 These two slides indicate that the
24 population in number of households in the
25 study area for 1990 have changed. This is
□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 curious, since the data was 13 years old at ⁴⁰¹⁵
2 the time the DEIS was prepared. It is
3 unusual, to say the least, for the Census
4 Department to amend data that's 13 years old.
5 However, as you see on the first page, the
6 population for the study area in 1990 is shown
7 as 10,472, and on the amended submission by
8 AKRF, it's 12,000 in '92. The number of
9 households changed from 4,339 to 5,005.

10 It's not clear how the 1990 census
11 data would have changed between these two
12 tables unless the Applicant redefined the
13 study area. If the study area were redefined,
14 that would call all other data provided in the
15 socioeconomic analysis into question.

16 Finally, AKRF testified that RKG's
17 assumptions exaggerate the conclusions. Our
18 contention is that the conclusions in the DEIS
19 defy reality. To contend that \$240 million

20 construction project in a rural location, and
21 the operation of 400 hotel rooms, two golf
22 courses, 11 restaurants and more than 340
23 lodging units will have minimal secondary
24 growth impacts is not consistent with the
25 experience of other communities which have
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4016

1 experienced large-scale investment in new
2 facilities in a short period of time.

3 Given a limited labor pool, combined
4 with average wages, which makes commuting long
5 distances financially unattractive, it is
6 highly likely that low-cost housing will be
7 constructed in the area. whether that
8 low-cost housing takes the form of apartments
9 or townhomes, or some other housing option, it
10 is our professional opinion that some new
11 housing units will be necessary directly as a
12 result of this project.

13 The best example is the developer
14 himself, Mr. Gitter, who indicated at a
15 meeting with DEP and the consulting team, that
16 he provided worker housing for workers at his
17 property, which is substantially closer to the
18 larger labor market of Kingston than the
19 proposed resort.

20 MR. BURGER: Jeff, by "his property,"
21 which property?

22 MR. DONOHOE: The Emerson.

23 MR. BURGER: Do you have any
24 questions?

25

4017

1 MR. BURGER: We are all done.

2 ALJ WISSLER: Mr. Burger, you made
3 reference to these three documents here as
4 being parts of other exhibits and so forth.
5 Do you want to take them -- since they were
6 central to his presentation, do you want to
7 take these in as an exhibit?

8 MR. BURGER: I don't think that's
9 necessary. I just passed them out as
10 reference for everyone to look at during the
11 course of his testimony.

12 ALJ WISSLER: Right, but he did, in
13 fact, refer to them. Why don't we staple them
14 all together and call them City's Exhibit 29.

15 (AKRF TABLE 201, SLIDE 60; AKRF TABLE
16 2-1, SLIDE 59; AND TABLE 3, "POTENTIALLY
17 DEVELOPABLE LAND ON THE NYS ROUTE 28 CORRIDOR
18 PRIMARY STUDY AREA TOWNS" RECEIVED AND MARKED
19 AS CITY EXHIBIT NO. 29, THIS DATE.)

20 MS. ROBERTS: We recall Mary Kopaskie
21 from Peter J. Smith Company.

22 MS. KOPASKIE: I want to reiterate the
23 point we heard today regarding the testimony
24 on community character. There are nine points

25 I want to go through.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4018

1 The first one is smart growth, and
2 Thomas Daniels talked a little bit about what
3 smart growth was, compact development,
4 creating a sense of place, pedestrian scale.

5 what smart growth is not, which is a
6 lot of what the resort really would result in,
7 is it's not a sea of asphalt, a large
8 expansive parking lot that would have to
9 accommodate the hotel that would be developed.
10 It's not development that requires new
11 servicing, the running of new roads, new
12 sewer, new water lines, new gas and electric
13 lines. It's not development on pristine
14 environmental areas. It's not a place where
15 you can't work from destination to
16 destination.

17 Smart growth is really focussing in on
18 developed areas at pedestrian scale where it's
19 a very walkable area. It's a sense of place.
20 It's a destination, in effect.

21 That leads me to my second point which
22 is the impacts on the hamlets. We have had
23 witnesses indicate that there has been a
24 decline -- that the decline of the hotel
25 industry has caused the decline of the economy
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

4019

1 of the Catskill region.

2 As a matter of fact, the Applicant's
3 witness, George Raymond, stated that -- and we
4 agree -- that the decline of the economy,
5 increased mobility of income, and the changes
6 in tourism trends are really what lead to the
7 decline of both the hotels and the hamlets in
8 the Catskill areas. You can't show that
9 casualty of the decline of the hotels caused

10 Vol. 16 (8-24-04crossroads)
the decline of the hamlets.

11 We also agree that tourism is
12 important to the Catskill region and to the
13 future of the villages and the hamlets. And
14 really what it comes down to is what is the
15 sale of that tourism.

16 There are a lot of likely impacts of
17 the resort. As DEP has indicated, visibility,
18 servicing, land availability and parking along
19 Route 28 will likely encourage linear valley
20 development along that corridor. Related
21 development would likely develop along there
22 because people will overcome those constraints
23 to have access to those things; to that
24 visibility, to that servicing.

25 If we look at the historical
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 development patterns of the Catskill area, we⁴⁰²⁰
2 really see a lot of nodal valley development.
3 These are the hamlets; Margaretville
4 Phoenicia, the small, quaint areas that people
5 have come to know and to love here in the
6 Catskill area. And this project is really in
7 direct contrast to that historic pattern.

8 The economic impacts on the villages
9 and hamlets can have a significant impact on
10 the viability of businesses. As new
11 development occurs along Route 28, there's the
12 potential for the businesses within the
13 hamlets to follow suit. To say: I'm going
14 out there because that's where the people are
15 because that's where the money is.

16 And what happens is you start to get a
17 lot of empty storefronts, and the whole urban
18 fabric of these small hamlets, which seem to
19 have a revitalization that's occurring now,
20 would really be strongly impacted by the
21 moving of those businesses out of the hamlet
22 areas.

23 It's obvious throughout downtowns,
24 throughout the entire country, that strip
25 development is really impacting the center
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 cities of -- cities and villages not only in ⁴⁰²¹
2 New York State, but throughout the country.

3 The new development along 28 then has
4 secondary growth impacts that includes higher
5 density residential. As DEP's expert witness
6 just indicated, the potential for apartments
7 or townhousing, which leads to increased
8 impervious surfaces and runoff. It also
9 impacts the safety along Route 28 because you
10 have traffic, more points of ingress and
11 egress, and the potential for more conflicts
12 along that corridor.

13 There's also the potential for the
14 visual impacts along Route 28 of the
15 buildings, the parking and the signage. As I
16 drove down this morning from Oneonta, one of
17 the experiences is, you're coming through a
18 leaf-tunnel effect, you're on a rural corridor
19 where there is not a lot of development that's
20 really infringing on your experience as you're

21 vol. 16 (8-24-04crossroads)
driving that.

22 That's why people come the Catskills.
23 As this new development occurs along Route 28,
24 we start to get cuts in that natural
25 experience along Route 28.
□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 The next issue, the third issue then, ⁴⁰²²
2 is zoning. We agree that the review of
3 individual projects absolutely should be at
4 the local level, and that really the current
5 zoning, because it's using older concepts,
6 really is appropriate for smaller scale
7 development that the towns have experienced
8 historically; and that what's happened with
9 the scale of this development, because it has
10 regional and state-wide impacts, we have to
11 consider more than just what's happening in
12 these two towns because it's the entire
13 Catskill region that's being impacted.

14 This will effect, as I indicated
15 earlier, the hamlet development versus the
16 Route 28. Hamlet development will tend to be
17 infill development. There will be minimized
18 impacts because the businesses will locate at
19 existing buildings, the roads are already in
20 place there, the servicing is in place there;
21 where Route 28 is really greenfield, or it's
22 virgin land being developed. It would likely
23 be on a larger scale. And again, there would
24 be those negative impacts of the visual and
25 the traffic impacts.
□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 One of the most important things is
2 the precedent this kind of a project would be
3 setting. As I drove down this morning from
4 Oneonta, I looked at the mountaintop
5 specifically to see how much development do
6 you see up on top of the mountains in the
7 Catskills, and there's limited, if any,
8 development that you see as you're driving
9 along Route 28. And this is just an extension
10 of that experience.

11 The next point I want to talk about
12 are the socioeconomic impacts and the analysis
13 that was completed. We fully agree with DEP
14 on the inadequacy of the economic impact
15 completed for the DEIS. It's based on data
16 that is wrong, which then exacerbates itself
17 in the conclusions that are then wrong, and we
18 believe a new analysis needs to be completed
19 with accurate information.

20 And the Applicant can't ask these
21 communities to evaluate the impacts on
22 community character based on data and
23 assumptions that are clearly inaccurate and
24 that are wrong. It underestimates the
25 population impacts, it underestimates the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 housing needs, it underestimates the cost of
2 servicing and it underestimates the employment
3 needs.

4 I just wanted to talk a little about
5 the potential labor force. We also never

6 assumed that just the unemployed would be used
7 as the potential labor force, and recognized
8 that people within the existing -- employed in
9 the labor market area were considered.

10 But our objection to that is that most
11 of the people who are traveling an hour or so
12 to go to a job outside of the area are going
13 to Kingston, Oneonta, Delhi, and what they're
14 doing is they're traveling to a professional
15 job. And it's very unlikely that they're
16 going to be willing to quit that professional
17 job to take on a job as a server in a
18 restaurant or as a housekeeper or as a
19 groundskeeper for a golf course.

20 Residents that might otherwise leave
21 the area -- if they're seeking a higher-paying
22 professional job, again, those jobs are likely
23 not the ones that are going to keep them here
24 in the area; the ones at the hotel, the ones
25 at the golf courses.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4025

1 The seasonal and the unemployed, we
2 absolutely agree that they are part of the
3 labor market, but what that does is it strips
4 away employees from existing businesses; and
5 as DEP had indicated earlier, there's that
6 potential for the wage inflation or that wage
7 battle to go on to get the better employees.
8 what does that do to those marginal
9 businesses; are they going to be put out?

10 Then obviously the unemployed are part
11 of that market. But that number can never be

12 zero. It has to be an elastic number. It
13 increases and it decreases, and so there's
14 always going to be a certain number of
15 unemployed.

16 So the labor pool is simply not here
17 to accommodate the number of workers that this
18 resort is going to need.

19 We believe that this is both a
20 substantive and significant issue, and it's
21 more than just an update of charts and data.
22 It's really an analysis that needs to be done
23 fairly so the communities can look at the
24 impacts and assess the impacts before they
25 make a decision on these projects.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

4026

1 My fifth point is on the age of the
2 trees in the forest. And during my
3 presentation, I misstated and I talked about
4 it as 100-year-old forest. It's not
5 100-year-old forest, yet there are
6 100-year-old trees that probably are on-site
7 there, up on top of that mountain.

8 Historically, it has been clear-cut
9 for logging but there are very few built
10 structures. Clear-cutting of forest has an
11 impact, has a land use impact, yet nature will
12 regenerate itself.

13 So it wasn't a permanent change. The
14 forest has regenerated, where buildings
15 forever change a landscape. Once you put in a
16 built form -- and this is obvious as you drive

17 down any street where a Walmart or an Ames or
18 a K-Mart has closed -- there's this empty
19 shell that sits there that -- it can sit there
20 for 10, 20, 30 years before anything ever
21 happens to it. Once that built form is there,
22 it's something that is permanently there.

23 where that regenerated forest, it's
24 been undisturbed for many decades. And

25 learning from the history of what had been
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4027

1 done to that mountaintop at one time, it's
2 probably important that we learn from that
3 history and allow that forest to continue to
4 regenerate itself.

5 The sixth point I want to talk about
6 are secondary growth impacts. My first point
7 under this is the potential for secondary and
8 vacation homes and year-round housing.

9 The Applicant's expert from
10 Sno.Engineering stated that selling real
11 estate is what the mountaintop real estate
12 industry is all about. He's talking about the
13 potential for second homes. The DEIS totally
14 ignores this potential and no impacts are
15 identified for the second homes. Both the
16 resort and the Belleayre Ski Center users
17 should be evaluated as part of this market,
18 and as part of the impacts that this area is
19 going to experience because that's -- in his
20 words -- selling real estate is what the
21 mountain resort industry is all about.

22 Year-round housing is going to be

23 needed for these lower-paid workers that will
24 be needed to fill the jobs. Again, we support
25 DEP's findings and the analysis that they have
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 done on the number of housing units, the types ⁴⁰²⁸
2 of housing units, whether they're
3 single-family, mobile homes, apartments. The
4 DEIS's economic analysis dismisses any need
5 for these housing units for these lower-paid
6 employees. They also ignore the labor
7 shortage that will require immigration and a
8 place for these people to live.

9 we also agree with DEP in the
10 potential to be able to afford housing for the
11 lower-paid employees; and HUD's standard of
12 about 30 percent is accurate.

13 And if you look at somebody who is
14 making \$15,000 a year, they're going to be
15 able to afford \$450 a month for rent. That
16 includes your gas and your electric. It
17 includes all your housing expenses. That's
18 not a lot of money to be able to put into a
19 house. I don't know what kind of a mortgage
20 you could get for \$450 a month. So those are
21 clearly going to be rental-type units.

22 The DEIS, again, ignores this
23 potential, and there's no assessment for the
24 need for this affordable housing, where it
25 would be located and what those impacts would
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 be. 4029

Vol. 16 (8-24-04crossroads)
The second point under secondary

2
3 growth is the additional commercial
4 development. 76,000 square feet seems to be
5 the number that everybody -- somewhere around
6 there -- that everybody throws out that this
7 new development is going to occur.

8 The economic impacts that I talked
9 earlier about on the hamlet areas, if
10 businesses develop along this Route 28
11 corridor and pull these businesses out, not
12 only is there going to be the potential for
13 this 76,000 square feet, but what happens to
14 the businesses if there's a restaurant within
15 the village. This is an additional type of
16 development that would occur on Route 28 that
17 would also impact that corridor.

18 There would be the potential pressure
19 for residential land uses along Route 28 to
20 change into commercial uses. Zoning is not
21 something that's static, it's something that
22 changes over time, and these areas likely
23 could see commercial development.

24 It is historically what has happened
25 throughout this country. It is, again, likely
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 to occur along Route 28 where the sewer and 4030
2 the water, the visibility and the access is
3 available.

4 The third point under this is the
5 cumulative impacts of expansion at the
6 Belleayre Ski Center. There obviously is
7 going to be increased usage at Belleayre ski

8 Center once that expansion occurs, and there's
9 been no consideration in terms of traffic, in
10 terms of land use changes that have been done
11 in the DEIS as part of that development and
12 that expansion.

13 The fourth point is induced growth and
14 off-site spending. The DEIS doesn't consider
15 the impacts of employees at the resort who
16 would be spending off-site, and what those
17 induced-growth impacts would be on the two
18 towns and the region. People who will be
19 working at the resort will spend money off of
20 the resort, and those impacts have to be
21 considered.

22 MS. ROBERTS: What kind of impacts are
23 you talking about?

24 MS. KOPASKIE: It could be that I have
25 to go grocery shopping even though I'm an
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 employee of the resort. So there's more 4031
2 induced growth because the people at the
3 resort work have to live every single day.
4 They have to go grocery shopping, they have to
5 go to a video store. They might want to go to
6 a restaurant for dinner. So there are growth
7 impacts that way that have to be considered.

8 Finally, the overall fiscal impacts to
9 the two towns because of the secondary growth.
10 There would be an increased need for road
11 maintenance. It might not be along Route 28,
12 but it might be other town roads for

13 vol. 16 (8-24-04crossroads)
14 snowplowing, for paving. All the costs of
15 maintaining those roads would be put onto the
16 communities -- and not only just the two
17 towns, but in surrounding communities.

18 There's also the need for the fire and
19 police protection to increase. The Fire
20 Protection District Chief indicated that there
21 would be a potential need for additional
22 equipment, during his testimony here. He also
23 indicated that his number of volunteers is
24 limited, and so their ability to respond to an
25 emergency is questionable now; and to have all
these incentives to get people to join the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 forces does not guarantee that that, in fact,
2 will occur. 4032

3 And finally, the increased cost of
4 schools. Once the population increases,
5 obviously there are additional costs to school
6 taxes, in school taxes and town taxes to be
7 able to deal with these overall fiscal
8 impacts.

9 The seventh point that I have are the
10 Route 28 visual impacts. The DEIS states that
11 the Big Indian Resort is visible from Route
12 28, and I think you guys all clearly saw that
13 during your hike on August 17th. These
14 impacts would impact the person who is driving
15 along Route 28 for a scenic drive. It would
16 absolutely impact their experience, and it
17 can't be dismissed from a community character
18 point of view.

19 We have new photo simulations here
20 that show how this mountaintop from 2,400 feet
21 to 2,000 feet is going to be impacted with
22 golf course. This is a significant amount of
23 a mountaintop that basically is going to be
24 clear-cut and lawned. And the green lawn has
25 a very different visual impact as you're
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 driving along Route 28 than the mountains and ⁴⁰³³
2 the trees and the canopy that we see.

3 Route 28 has been looked at for about
4 30 years to be considered as scenic drive, and
5 it's obviously a resource here in the Catskill
6 area that has to be protected, especially from
7 a community character point of view.

8 Finally -- I actually only have eight
9 points, I'm sorry. The eighth point would be
10 the significant land use impacts.

11 Counsel for the Applicant indicated
12 that this area was intensively used. Yes, it
13 was intensively used but it was not
14 intensively developed. Clear-cutting has a
15 very different impact from the drastic
16 increase and intensity in the built
17 environment.

18 According to the DEIS, there are
19 currently two camps at Big Indian; there's the
20 Brisbane Mansion at Belleayre Highlands,
21 there's two 17-room hotels and eight
22 efficiencies, an educational camp and the
23 Marlowe Mansion at Wildacres.

24 vol. 16 (8-24-04crossroads)
what they're proposing is one hotel, a
25 clubhouse and spa, 35 four-bedroom structures,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4034

1 20 triplex structures, for three-bedroom
2 units, and a maintenance building at Big
3 Indian alone.

4 At Belleayre Highlands, they're
5 proposing 22 structures, which are 88 detached
6 hotel units, and then the Brisbane Mansion
7 returns. That's just at Belleayre Highlands.

8 At Wildacres, they're proposing a
9 hotel, a conference center, chapel, clubhouse,
10 21 structures that would include 168 housing
11 units, a children's center, maintenance
12 building, and the Marlowe Mansion would
13 remain.

14 These buildings would have a permanent
15 impact on the character of the mountaintop.
16 The forest has regenerated itself over the
17 past 50 years. It would impact the number of
18 people that would be in the forest preserve,
19 it would impact their experience along the
20 trails, and this scale of development is so
21 significant and will increase the intensity of
22 the use of this area, that those community
23 character impacts cannot be ignored. That's
24 all I have to say.

25 MS. ROBERTS: Do you have any
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4035

1 questions, your Honor?

2 ALJ WISSLER: No.

3 MS. KREBS: Your Honor, we will be
Page 100

4 introducing some hamlet streetscape
5 photographs. Unfortunately, we're having a
6 problem with our color copier, so we're hoping
7 to get those to you.

8 In addition, we'll get to you the 1990
9 DOT report we referred to earlier during
10 Supervisor Liefeld's testimony, and a copy of
11 Professor Daniel's testimony.

12 Before we turn it over to our last
13 witness, I just wanted to state for the record
14 that we will want to be briefing on this
15 issue, if that's agreeable to your Honor,
16 because of the regional impacts of this
17 facility on community character.

18 During our last meeting on community
19 character, Mr. Ruzow went on at length to talk
20 about putting into context some of the reports
21 we have heard about, the Route 28 Corridor
22 Report and the Tourism Report put out by the
23 Central Catskills Planning Alliance; and I
24 just wanted to point out to you that while the
25 Route 28 Corridor Study was adopted,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 apparently by the towns, we would request, 4036
2 first of all, that the resolution be put on
3 the record, and we submit the Route 28
4 Corridor Study and its recommendations.

5 However, the Alliance study report is
6 really a different animal altogether. It
7 was -- Mr. Gitter actually, the Applicant,
8 participated in that study. It's our

9 understanding that he eventually left before
10 it was adopted finally, but I think that that
11 indicates some concern on our part because he
12 also had owned property that became part of
13 the resort eventually while this report was
14 being built.

15 In addition, folks that served on that
16 committee testified here for the Applicant, as
17 well as the LA Group was one of the
18 consultants -- who obviously is here and has
19 been here for the Applicant during the entire
20 process.

21 So we really would like you to
22 consider that when you're reading this report.
23 It was not adopted, and it really focuses on a
24 market study that looked at what folks wanted
25 who lived in the metropolitan New York area,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 not what folks wanted that live here.

4037

2 And one of the best indicators of what
3 folks here want that's very recent is CPC
4 Exhibit 31, which is the Shandaken
5 Comprehensive Plan Survey in which golf was
6 ranked, I think, second from the bottom.

7 It gives a very different picture from
8 the picture that's represented in this
9 Alliance report that seems to suggest that the
10 best thing and only thing to do is to have a
11 golf course conveniently and coincidentally
12 wedged right up against the Belleayre Ski
13 Resort. So we hope that you will consider
14 this for what it may or may not be worth.

15 with that, I would like to -- if we
16 have time --

17 MR. GERSTMAN: We would like to resume
18 after lunch with our final witness on
19 community character.

20 ALJ WISSLER: Okay. We'll break for
21 lunch.

22 (STREETSCAPE PHOTOGRAPHS OF THE
23 HAMLETS IN WHITE BINDER RECEIVED AND MARKED AS
24 CPC EXHIBIT NO. 94, THIS DATE.)

25 (12:40 - 1:40 P.M. - LUNCHEON RECESS
COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4038

1 TAKEN.)

2 ALJ WISSLER: Mr. Gerstman.

3 MR. GERSTMAN: I just want to
4 introduce for the record CPC Exhibit 94, a
5 hard copy for your Honor, and a CD version,
6 and I don't know what format it is in, for the
7 parties. These are streetscape photographs of
8 Arkville, Fleischmanns, Margaretville,
9 Phoenicia and Pine Hill. And Ms. Kopaskie is
10 going to conclude her offer of proof with
11 comments about that.

12 MS. KOPASKIE: What you have in this
13 notebook is a series of streetscape shots that
14 show the various hamlets in the region. And
15 what they really are showing is a lot of the
16 smart growth principles that we had talked
17 about earlier.

18 One thing I wanted to mention is that
19 I sat on the National American Planning

Vol. 16 (8-24-04crossroads)
20 Association Delegate Assembly that adopted
21 both the smart growth and the sustainability
22 policy papers. I was the upstate New York
23 chapter of the APA representative on those two
24 delegate assemblies. So I have had a lot of
25 involvement with the smart growth debate, and
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4039

1 what the various issues would be.

2 what this series of photos shows, if
3 you look through those, you see a pedestrian
4 scale. You don't see overwhelming buildings;
5 you see a two-lane highway with a sidewalk and
6 then buildings that contain that pedestrian
7 area. There aren't large parking areas that
8 are just this huge sea of asphalt that you
9 walk through like you would get at a mall.

10 You see attractive building facades.
11 You see active building facades. There is an
12 obvious economic viability of the businesses
13 that are shown. The storefronts are all
14 filled. They are obviously taking care of
15 their properties.

16 what this does is it creates a
17 destination. It creates a community that's
18 walkable, where I can go from place to place;
19 whether it's to a restaurant, an antique
20 store. If I need to walk to the post office,
21 and it creates that sense of place, which is
22 really what smart growth is all about.

23 MS. ROBERTS: Thank you.

24 MR. GERSTMAN: Mr. Goldstein, I failed
25 to note the appearance of Eric Goldstein from

1 NRDC will be presenting the final CPC witness
2 on community character.

3 MR. GOLDSTEIN: Good afternoon, your
4 Honor. Once again, my name is Eric Goldstein,
5 with me is Robin Marks from NRDC. We are
6 presenting our final witness today from the
7 Catskill Preservation Coalition, the CPC,
8 Mr. Thomas Dallessio, who will be discussing
9 the issue of secondary growth. Unfortunately,
10 due to some production problems, we were not
11 able to reproduce Mr. Dallessio's resume, but
12 we will submit it into the report.

13 We might start then, appropriately, by
14 asking you, Mr. Dallessio, to briefly
15 summarize your education background and
16 professional experience.

17 MR. DALLESSIO: Thank you, your Honor.
18 I'm Tom Dallessio, I'm the New Jersey Director
19 of Regional Plan Association. Regional Plan
20 Association is the nation's oldest independent
21 planning organization, covering the tri-state
22 area of New York, New Jersey and Connecticut.
23 I am here today after consulting with Bob
24 Yaro, RPA's president, and with Rob Pirani,
25 who is RPA's Director of Environmental

1 Programs.

2 Unfortunately both Rob and Bob are on
3 vacation this week and could not be here for
4 this hearing, but we have talked about this

5 issue. They have briefed me on this and asked
6 me to attend on their behalf.

7 MR. GOLDSTEIN: Mr. Dallessio, can you
8 briefly explain the role of RPA in the New
9 York/New Jersey/Connecticut region, and its
10 function with respect to planning and
11 development?

12 MR. DALLESSIO: Yes. Regional Plan
13 Association, as I said, is the nation's oldest
14 independent planning organization. It started
15 in 1922 by a number of business, community and
16 civic interests, who got together, decided
17 that we need to develop a regional plan that,
18 in fact, the City of New York and its
19 surrounding areas depend upon each other, and
20 that in 1929 the first regional plan was
21 developed.

22 That includes a number of investments
23 and infrastructure items that we consider
24 today essential, such as the George Washington
25 Bridge, the Palisades Interstate Park, and a
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 number of other items that we consider crucial⁴⁰⁴²
2 to our quality of life.

3 The second regional plan in the 1960s
4 provided a number of recommendations that led
5 to the formation of the Metropolitan Transit
6 Association, the New Jersey Transit operation
7 in New Jersey, and a number of other ideas,
8 including the idea that will we need to
9 concentrate growth in our cities and our
10 regional centers.

11 The third regional plan in 1995,
12 talked about -- in fact, the title was, "A
13 Region At Risk," and it talked about how in a
14 new economy where you can live anywhere, work
15 anywhere, play anywhere -- we, if we want to
16 maintain our quality of life, need to invest
17 in our infrastructure and we need to make sure
18 that we have a quality of life that will
19 attract people.

20 And included in those infrastructure
21 investments was the idea of greensward, the
22 idea that we ought to create a green belt
23 around the New York metropolitan area; and in
24 fact, the highlands forms the greenbelt for

25 New York City and the surrounding areas.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

4043

1 MR. GOLDSTEIN: You mentioned that one
2 element of RPA's regional plan was to
3 concentrate development in center areas. Can
4 you tell us a little more about that and how
5 that might apply outside of New York City?

6 MR. DALLESSIO: Yes. Following up on
7 the conversations we heard earlier today about
8 smart growth, RPA, in fact, throughout its
9 80-year history has talked long and hard about
10 using the existing infrastructure,
11 concentrating development where you have
12 water, sewer, streets, other types of
13 infrastructure, and where you need to create
14 new development to create opportunities to be
15 able to revitalize our older neighborhoods.

16 So it's not just Manhattan, it's not
17 just Brooklyn and Queens. It's also New
18 Jersey, Newark, Patterson, New Brunswick; in
19 Connecticut, Stamford and New Haven; and here
20 in New York State, it's a number of the
21 regional centers and villages and hamlets that
22 we consider to be part of our quality of life.

23 MR. GOLDSTEIN: Would you say smart
24 growth, is that more important or less
25 important in areas where ecosystems such as
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4044

1 watersheds are involved?

2 MR. DALLESSIO: We think it's actually
3 much more important.

4 MR. GOLDSTEIN: Why is that?

5 MR. DALLESSIO: Well, it's obvious
6 that we rely upon water for our livelihood.
7 It's also obvious that the economic
8 development of this region depends upon water
9 and the quality of life here. And what we're
10 finding more and more, as I said, in an
11 economy where you can live anywhere or work
12 anywhere, if you lose your water supply or
13 your water quality, you can pack it in.

14 When I used to work for Governor
15 Whitman as our senior policy advisor, we wrote
16 the Million-Acre Bill, the bill to preserve
17 the million acres throughout New Jersey, in
18 part as an economic development tool. The
19 fact that if you preserve open space and
20 concentrate development in existing centers,
21 you can have a higher quality of life. We see

22 that idea as being expounded on throughout the
23 tri-state region through this regional plan.

24 MR. GOLDSTEIN: Following the Regional
25 Plan Association's smart growth approach,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 where would be the places in an area like the ⁴⁰⁴⁵
2 Catskills where you would want to see
3 development concentrated?

4 MR. DALLESSIO: Well, it seems to make
5 most sense to concentrate development in your
6 existing villages and hamlets, in the places
7 where you already have involvement, places
8 where people already live and work, where you
9 already have schools, parks and other forms of
10 infrastructure. To the extent possible that
11 the capacity is there, we ought to encourage
12 growth in those places.

13 And to the extent that you need to
14 expand capacity, it makes more sense to expand
15 capacity in areas where you already have
16 infrastructure than to have to put in a whole
17 new set of infrastructure, because in the long
18 run, you ultimately have to maintain two forms
19 of infrastructure which is highly inefficient
20 and highly costly.

21 MR. GOLDSTEIN: Just one last question
22 on Regional Plan Association. Would you say
23 RPA is an anti-growth organization?

24 MR. DALLESSIO: Not at all. In fact,
25 we're agnostic on the issue of how much growth
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 should happen. We are, in fact, in the New
2 Jersey case, we develop work for the State
3 Planning Commission, we accept the premise of
4 the New Jersey State Plan, which is that
5 another -- approximately million people will
6 come to New Jersey in the next 20 years, and
7 around 700,000 new jobs.

8 what we're arguing is that there is a
9 right and a wrong place to put that growth;
10 and in fact, if you put it in the wrong place,
11 you can inhibit the long-term viability of the
12 area.

13 MR. GOLDSTEIN: What is secondary
14 growth? When people are talking about
15 secondary or induced growth in projects like
16 the one under consideration here, what do we
17 mean by that?

18 MR. DALLESSIO: Often when you have a
19 form of development, you will often have
20 additional development in the surrounding area
21 that will either find itself growing because
22 of original development that's happened, or
23 find a need for that.

24 Specific example is that if you end up
25 creating a resort community, you may end up
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4047

1 needing ancillary services; such as dry
2 cleaning, such as daycare, such as possibly a
3 deli, restaurants, gas stations, et cetera.

4 MR. GOLDSTEIN: Why might secondary
5 growth be a problem from an environmental or
6 planning perspective?

7 MR. DALLESSIO: Well, simply put,
8 development has its benefits, but also its
9 consequences. There are issues of pollution,
10 there are issues of runoff. There are
11 situations where you might end up with
12 development that may end up creating
13 impervious surfaces that may reduce the
14 ability for land to absorb the water, as well
15 as to be able to naturally filter the
16 pollutants that come through.

17 MR. GOLDSTEIN: What kind of projects
18 generally trigger secondary growth?

19 MR. DALLESSIO: We find that
20 large-scale projects tend to do that, be they
21 either large-scale corporate campuses,
22 large-scale housing developments, large-scale
23 recreational developments. Anything of a
24 certain magnitude, or anything that is of a
25 single nature, it tends to require additional
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4048

1 services outside of that area.

2 MR. GOLDSTEIN: Are there any special
3 growth-inducing aspects of golf resorts?

4 MR. DALLESSIO: Clearly, there is a
5 situation where, and I will admit I'm not a
6 golfer unless there's a windmill -- and I have
7 a five year-old son -- so you can better
8 understand that, but for those folks that do
9 golf, as I understand, do like to make a day
10 of it, do like to have food with that, perhaps
11 even drink. There are golfers that are

12 serious enough that want to have the right
13 clubs. There are those that may even be
14 serious enough to have the right towel to go
15 on the golf course. So there are services
16 that are related to that.

17 There are also folks that use the golf
18 outing as a business, so they may very well
19 need fax service, copying service, or may
20 actually want to have offices nearby.

21 MR. GOLDSTEIN: Have you reviewed the
22 Environmental Impact Statement, sections
23 dealing with secondary growth, Appendix 26 and
24 the AKRF analysis, and discussed those issues
25 with your colleagues at the Regional Plan
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

4049

1 Association?

2 MR. DALLESSIO: Yes.

3 MR. GOLDSTEIN: I'd like to turn now
4 to a number of the weaknesses that you and
5 your colleagues have identified with the AKRF
6 presentation and analysis, one of which dealt
7 with the issue of existing constraints being
8 sufficient to prevent secondary growth.

9 By existing constraints, the AKRF
10 folks referred to such things as existing
11 zoning, steepness of slopes, et cetera, which
12 they suggested would largely limit development
13 and that whatever development would occur
14 would be concentrated on the hamlets.

15 Let's take that hamlet issue first if
16 we may. Has RPA undertaken a review of the
17 issue of hamlet growth versus non-hamlet

18 growth in the project area?

19 MR. DALLESSIO: Yes.

20 MR. GOLDSTEIN: Can you briefly
21 describe for us what you did and what are the
22 results of that analysis?

23 MR. DALLESSIO: As I mentioned before,
24 Rob Pirani, our Director of Environmental
25 Programs, and Jennifer Cox, who is our Manager
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4050

1 of Geographic Information Systems, put
2 together some analysis, and we have a two-page
3 memo, as well as a map that we would like to
4 identify. In particular -- if the Judge will
5 allow me, I'd like to read a few statements
6 from this.

7 ALJ WISSLER: Is this in?

8 MR. GOLDSTEIN: It's getting there,
9 your Honor. We would like to introduce as
10 CPC 95 the RPA map, "New Roads and Septic
11 Permits for the Town of Middletown."

12 (MAP "NEW ROADS & SEPTIC PERMITS 1995
13 - 2003, IN THE TOWN OF MIDDLETOWN, DELAWARE
14 COUNTY, NEW YORK" RECEIVED AND MARKED AS CPC
15 EXHIBIT NO. 95, THIS DATE.)

16 MR. GOLDSTEIN: We would also like to
17 introduce CPC Exhibit 96, the Regional Plan
18 Analysis that goes along with that map.

19 (REGIONAL PLAN ASSOCIATION MEMORANDUM
20 DATED 8/23/04 RECEIVED AND MARKED AS CPC
21 EXHIBIT NO. 96, THIS DATE.)

22 MR. GOLDSTEIN: Mr. Dallessio, can you

23 vol. 16 (8-24-04crossroads)
24 please summarize for us the RPA analysis that
25 was just introduced as CPC Exhibit 95 and 96.

MR. DALLESSIO: As you see from the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 memo and the map, we have conducted analysis ⁴⁰⁵¹
2 of the Belleayre Resort area and the DEIS. I
3 would like to just quote a couple passages of
4 this memo, because I think they're to the
5 point.

6 First, we say right off the bat,
7 "After examining recent development trends in
8 the project study area, it appears that the
9 Draft Environmental Impact Statement does not
10 adequately account for or address the impacts
11 caused by secondary housing growth to be
12 expected by the Crossroads Ventures' proposed
13 Belleayre Resort at Catskill Park."

14 And in Section 7 of the DEIS,
15 Crossroads acknowledges only minimal new
16 potential residential and commercial
17 development which, "May be accommodated by
18 improvements to existing businesses,
19 re-occupancy of existing structures, or infill
20 development in the hamlets and villages,"
21 along Route 28 corridor, east and west of
22 Belleayre.

23 We have done some research, as I have
24 said before, and found that recent local
25 development trends suggest that new growth
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 would certainly not be limited to the older ⁴⁰⁵²
2 residential clusters; indeed Crossroads'

3 Belleayre Resort is but one example of
4 proposed greenfield development.

5 This information is corroborated from
6 several sources of information, from the Town
7 of Middletown and the Villages of Fleischmanns
8 and Margaretville, and is illustrated on the
9 attached map that you have.

10 According to the Town of Middletown
11 and the Villages of Fleischmanns and
12 Margaretville, 68 new homes were built in
13 Middletown since 1997. Of those, two homes
14 are in the Village of Fleischmanns and none in
15 the Village of Margaretville. At a
16 conservative estimate of about 7 percent
17 impervious cover per four-acre lot, 68 homes
18 could result in about 20 acres of impervious
19 surface being added to the watershed.

20 We go on to further say that NYC DEP
21 received 153 applications for new septic
22 systems, and we have mapped them on the map as
23 identified, with those areas that were near
24 the Villages of Fleischmanns and
25 Margaretville.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

4053

1 New York City Department of
2 Environmental Protection data for the new
3 septic tank permit applications also indicate
4 that recent post-1997 residential development
5 in the Towns of Shandaken, Olive, Middletown
6 Roxbury and Andes also occurred largely in
7 rural and unincorporated areas, and not in the

8 vol. 16 (8-24-04crossroads)
villages and hamlets.

9 We also did some study and analysis of
10 the road network. You'll see that on the map
11 also, the thin red lines identified there.
12 (Indicating)

13 You will see a significant amount of
14 development in the last number of years,
15 between 1995 and 2003. In fact, in 1995,
16 there was 69 miles of roads in Middletown; and
17 in 2003, there were 79 miles of roads, a
18 14 percent increase.

19 Assuming that the new road average is
20 about 30 feet wide, means 1.584 million square
21 feet of new roads, 36 new impervious acres,
22 and we have further data for additional towns
23 identified there.

24 we believe that this development will
25 cause impacts that are not now addressed in
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 the DEIS. New homes and new or newly paved ⁴⁰⁵⁴
2 roads increase the extent of impervious areas,
3 that concentrates and pollutes
4 stormwater-carrying nutrients, petrochemicals,
5 pesticides and metals associated with human
6 land use into surface water supplies, as well
7 as groundwater.

8 Secondary growth also destroys and
9 fragments the remaining wildlife habitat.

10 we also believe that new homes will
11 impair the vistas from the Catskill roads,
12 trails and streams, including public
13 recreation lands, for which the State has

14 invested considerable tax dollars to purchase
15 and maintain.

16 The memo concludes by saying that the
17 Regional Plan Association suggests that the
18 DEIS be revised to address these impacts by
19 undertaking further study, including a
20 build-out, to project where secondary growth
21 is most likely to occur. Statements that
22 simply define the issues away are not
23 adequate.

24 MR. GOLDSTEIN: Thank you,
25 Mr. Dallessio. Let me make sure we all
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 understand this map before we move on. The ⁴⁰⁵⁵
2 reds dots on this map indicate what?

3 MR. DALLESSIO: New septic permits
4 that were granted.

5 MR. GOLDSTEIN: And the RPA review
6 indicates -- what's the connection between the
7 new sewer permits and the new housing?

8 MR. DALLESSIO: Clearly what you see
9 there from the septic permits is that most of
10 the new septic permits were approved in areas
11 outside of the existing villages.

12 MR. GOLDSTEIN: That's where your
13 number, 68 new homes built in Middletown since
14 1997 and of that --

15 MR. DALLESSIO: Only two were actually
16 in the Village of Fleischmanns, and none were
17 actually in the village of Margaretville.

18 MR. GOLDSTEIN: And that's what the

19 vol. 16 (8-24-04crossroads)
red dots represent?

20 MR. DALLESSIO: That's correct.

21 MR. GOLDSTEIN: And the red lines
22 indicating new roads?

23 MR. DALLESSIO: The red lines
24 indicate, yes, new roads that were built
25 between 1995 and 2003.

(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 MR. GOLDSTEIN: Again, your point in ⁴⁰⁵⁶
2 preparing this map is to demonstrate that the
3 bulk of those roads were not in the existing
4 hamlets?

5 MR. DALLESSIO: That's correct, and in
6 fact, further to say that new roads will
7 portend additional growth in the future; that
8 in fact, it's not just the impervious cover of
9 the roads, but eventually impervious cover of
10 homes, driveways and other development
11 associated with the roads.

12 MR. GOLDSTEIN: So would it be fair to
13 conclude from your review of the existing and
14 new septic permits and existing and new roads
15 that the existing regime of zoning, land use,
16 limits on development because of steep slopes
17 and other land characteristics are not
18 presently succeeding in channelling new growth
19 and development into the hamlets?

20 MR. DALLESSIO: Yes.

21 MR. GOLDSTEIN: What conclusion would
22 you then draw about the AKRF, the project
23 sponsor's testimony, that, in fact, it's these
24 existing protections that will insure that

25 there's no secondary growth impacts from the
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4057

1 proposed Belleayre Resort?

2 MR. DALLESSIO: We find that statement
3 highly doubtful.

4 ALJ WISSLER: Mr. Dallessio, let me
5 ask you about this map. Are any of these
6 septic systems -- are these all new septic
7 systems, permits for --

8 MR. DALLESSIO: Yes.

9 ALJ WISSLER: -- or are they -- these
10 are outside any kind of watershed program to
11 upgrade existing septic systems?

12 MR. DALLESSIO: I don't have the
13 answer to that question.

14 MR. GOLDSTEIN: The City may be able
15 to respond to that. Obviously there's an
16 existing program to upgrade septic systems that the
17 Catskill Watershed Corporation is
18 implementing, and that is slowly upgrading
19 existing septic systems, but there's obviously no
20 prohibition on new septic systems.

21 ALJ WISSLER: But this map doesn't
22 necessarily break out the two here?

23 MR. GOLDSTEIN: That's correct. My
24 understanding of this map is that this

25 indicates new septic systems, and therefore
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4058

1 indicating where new growth is taking place
2 with existing protections.

3 MR. RUZOW: It says permits -- septic

4 vol. 16 (8-24-04crossroads)
permits were issued?

5 ALJ WISSLER: Which is my question.
6 Was it a permit to upgrade an existing system,
7 or is it a permit for a brand-new system?

8 MR. DALLESSIO: I don't know. We
9 could find that out.

10 MR. GOLDSTEIN: We'll find out, your
11 Honor, and get that into the record.

12 MR. YOUNG: Your Honor, I just want to
13 state that the Coalition was pushing for new
14 septic dollars, and we were limited by the
15 number of septic systems that could actually
16 be installed in a year, and there was only --
17 within the entire watershed, I think it was
18 300 -- we determined that the most we can
19 install in one year is 300 septic systems in
20 the entire watershed based on the available
21 capacity to install septic systems. So I find
22 it hard to believe that 150 of them would have
23 been in Middletown.

24 ALJ WISSLER: So you would surmise
25 that this is a majority of new permits?
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 MR. YOUNG: No, I would surmise -- no, ⁴⁰⁵⁹
2 that these are both the programs that the
3 septic rehabilitation program is
4 rehabilitating and new permits.

5 MR. RUZOW: I assume we can get an
6 answer for the record between the City and
7 RPA.

8 MR. GOLDSTEIN: Right. This is again
9 over an eight-year period.

10 Now, let's turn to the AKRF testimony
11 regarding retail space needs. As you recall,
12 the project sponsor represented there was
13 essentially a sufficient capacity within the
14 corridor, within existing establishments, and
15 that primarily, by either extending the hours
16 of operation or changing the stock of the
17 retail establishments, that could address the
18 new needs that were created as a spin-off of
19 the Belleayre Resort.

20 Has RPA taken a look at that issue,
21 and if so, what's your conclusion?

22 MR. DALLESSIO: We looked at retail
23 issues on a number of levels, looking at not
24 only the assumptions underlying the estimates
25 of off-site spending, we've also looked at new
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 retail square footage; the contention that new ⁴⁰⁶⁰
2 retail development will be attracted to
3 existing village and hamlet centers rather
4 than Route 28, and the neglected role of image
5 and promotional prudence that is spurring
6 renewed interests in the Catskills.

7 MR. GOLDSTEIN: Let's take off-site
8 visitor spending first. What have you
9 concluded about the project sponsor's analysis
10 and claims in that area?

11 MR. DALLESSIO: The estimates of
12 off-site retail spending by guests of the
13 resort facility appear low, and they're not
14 adequately documented in this study. We found

15 that the estimates for hotel visitors are even
16 lower.

17 Two specific points on that. First,
18 looking at the spending by guests, we note
19 that the report identifies different units,
20 will attract different size parties, an
21 average from 3.5 to 6 persons, and the stays
22 will be at different lengths of time; yet the
23 estimate of per-day spending for each party
24 type is estimated to be exactly the same, at
25 \$85.

□ (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4061

1 So there's no differentiation between
2 the number of people in a party or how long
3 they're staying for the purposes of estimating
4 off-site retail spending.

5 Looking at hotel visitors, the
6 estimates are lower, at \$25 per visitor per
7 day. We find that that figure is barely
8 enough -- especially today -- to fill a
9 visitor's gas tank, much less allow for other
10 off-site expenditures, such as gifts,
11 antiques, restaurant meals, et cetera.

12 MR. GOLDSTEIN: By raising those
13 concerns, is it RPA's position that if the
14 off-site visitor spending was more accurately
15 reflective of what you believe it would be,
16 there would be additional secondary impacts?

17 MR. DALLESSIO: Absolutely. Clearly,
18 if you just had 100,000 estimated hotel visits
19 a year, as they say is indicated, a variation
20 of just \$10 -- that estimate would change the

21 estimated annual spending by almost a million.
22 So you have more money being spent in the
23 area, more likelihood of a market, more
24 likelihood of additional retail.

25 MR. GOLDSTEIN: Let's get back to that
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 retail space needs for a moment. Did RPA have ⁴⁰⁶²
2 any conclusion with respect to the AKRF
3 position that no additional -- or essentially
4 no additional retail space would be necessary?

5 MR. DALLESSIO: Yes, we did. We had a
6 significant issue with that. We found that
7 the method that was applied is crude and
8 likely to lead to a mis-estimation of the
9 total square footage of new retail as you go
10 through.

11 MR. GOLDSTEIN: Why is that?

12 MR. DALLESSIO: The table that was
13 identified there includes total retail sales
14 estimated for a variety of retail categories,
15 yet the same average sales-per-square-foot
16 figure was used for each retail category,
17 notwithstanding the fact that there are
18 different retail categories, and they tend to
19 have different sales-per-square-foot averages.

20 For example, many restaurants have
21 sales-per-square-foot figures that are
22 significantly lower than general merchandise
23 stores.

24 To the extent that much of the
25 visitors' spending is in categories such as
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 restaurants, the DEIS may have underestimated
2 the amount of retail square footage that the
3 estimated spending would support. And we have
4 cited -- there is specific information such as
5 "Urban Land Institute's Dollars and Sense of
6 Shopping Centers," as a document that one
7 could look to for information on this.

8 MR. GOLDSTEIN: Now, if there were a
9 need for additional secondary development,
10 where would it be likely that that would occur
11 in RPA's view?

12 MR. DALLESSIO: The whole location of
13 where retail may occur is one that we find of
14 significant importance, because we think this
15 is where the secondary impacts dramatically
16 change the quality of life in this region. We
17 think that the analysis of new retail
18 locations is overly simplistic and it ignores
19 the draw that the viability of the Route 28
20 location would have for retailers.

21 First, we find that retailers who are
22 looking to capture spending from the new
23 resort patrons will tend to locate in areas
24 near the resort itself, and preferably the
25 area east of the resort, where they can be
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 seen by patrons en route between the resort
2 and Interstate 87, and that description could
3 include the centers of Phoenicia, Pine Hill,
4 but does not include such centers as Arkville
5 or Margaretville.

11 population concentration in the nation, yet it
12 has not really captured its share of tourist
13 dollars.

14 A development of this nature could
15 very well bring a significantly large number
16 of new tourists to the area, and what we
17 found, obviously, is the growth of the tourist
18 economy becomes a virtuous cycle. That is to
19 say, increases in visitation spur the
20 development of more tourism infrastructure,
21 which would attract more tourism, and could
22 continue on.

23 MR. GOLDSTEIN: The AKRF analysis,
24 however, they examined this, according to
25 their report and testimony, and what they did
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 is look at the impacts from Boiceville to
2 Margaretville. Could there be secondary
3 impacts beyond those points on the Route 28
4 corridor or elsewhere?

4066

5 MR. DALLESSIO: Clearly. And again,
6 just my own drive here from the Thruway up 28
7 to here. We saw the road itself changes from
8 a four-lane road down to a two-lane road.
9 There is at this point a number of
10 establishments, commercial and retail, along
11 28 in the four-lane road. There are still
12 significant opportunities for re-development
13 of that area, and for new development. There
14 is also, obviously, new development
15 opportunities further along the two-lane road.

16 As you find more and more people
Page 126

17 coming to this area, especially with people
18 with higher incomes and more disposable
19 income, you'll find a greater likelihood of
20 spending in the area, and greater market
21 conditions for additional development and
22 re-development.

23 MR. GOLDSTEIN: So in your view, the
24 analysis in Appendix 26 and the testimony from
25 AKRF that looked in terms of secondary impacts
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 from Boiceville to Margaretville doesn't tell⁴⁰⁶⁷
2 the full story?

3 MR. DALLESSIO: Absolutely. As I said
4 before in the first memo that we circulated,
5 we suggest that the DEIS be revised to address
6 the impacts by conducting a further study, a
7 build-out of the entire region.

8 MR. GOLDSTEIN: The AKRF analysis also
9 indicates that it was completed prior to
10 September 11, 2001. Is that an issue of
11 concern; and if so, why?

12 MR. DALLESSIO: Significantly an issue
13 of concern. Most people believe, and I think
14 rightly so, that the world changed on
15 September 11th. What we found more and more
16 is that people are looking for security,
17 they're looking for opportunities to raise
18 their family, and to conduct a life that is a
19 higher quality than what was there before
20 9/11. And the issue of security keeps coming
21 back to folks.

22 The market for second homes, the
23 market for new homes that are in areas where
24 people feel safe is of critical interest. The
25 whole idea of home as a sanctuary has become
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4068

1 much more significant in the last two or three
2 years; even more so than the idea of a home as
3 investment, and we're finding more or more --
4 again, throughout the tri-state area,
5 including Connecticut and New Jersey, is that
6 there is now markets for and areas for new
7 development to address that whole issue of
8 security.

9 MR. GOLDSTEIN: So what does that tell
10 you, or what recommendations would you have
11 with respect to an analysis that looked at
12 secondary impacts but didn't look at secondary
13 impacts as they might occur after
14 September 11th?

15 MR. DALLESSIO: I would suggest that
16 we need a new market analysis. I would
17 suggest that not only has the issue of
18 security affected people's buying power and
19 their purchasing issues, but I think also the
20 issue of where people recreate has been
21 changed. A number of people are not traveling
22 as far as they used to. They are also not
23 flying as much as they used to. So markets
24 within the tri-state area are becoming much
25 more attractive.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4069

1 So what we're finding, as we go
Page 128

2 through this, is that we need to consider the
3 greater likelihood that this area will develop
4 because of people looking for places not only
5 to live and work, but also to recreate.

6 MR. GOLDSTEIN: What impacts might the
7 proposed project have on that demand for
8 secondary recreation opportunities, secondary
9 home opportunities, in RPA's opinion?

10 MR. DALLESSIO: I think it would fuel
11 the interest. And as it was mentioned earlier
12 today, opportunities for affordable housing, I
13 think that this area will become attractive
14 not just for the well-to-do, but I think also
15 for folks who are on limited incomes and for
16 the middle class, and what we need to do is to
17 address those opportunities and needs.

18 MR. GOLDSTEIN: Your Honor, we're
19 moving on to our last set of issues.

20 Mr. Dallessio, have you had an
21 opportunity to review the comments prepared by
22 the U.S. Environmental Protection Agency in
23 the Environmental Impact Statement hearing
24 process in connection with this project?

25 MR. DALLESSIO: Yes.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4070

1 MR. GOLDSTEIN: Your Honor, at this
2 time we'd like to introduce as CPC Exhibit 97,
3 the comments of the U.S. Environmental
4 Protection Agency.

5 MR. RUZOW: I believe they're in.

6 ALJ WISSLER: Is this a letter?

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12

MR. GOLDSTEIN: They may well be.

MR. GERSTMAN: I believe we introduced this, Judge.

ALJ WISSLER: Walter Mugdin?

MR. GOLDSTEIN: Yes.

Mr. Dallessio, have you reviewed the comments of the U.S. Environmental Protection Agency that have been identified as Crossroads Exhibit 59?

MR. DALLESSIO: Yes.

MR. GOLDSTEIN: Can you tell us generally what the Regional Plan Association's view is of EPA's comments regarding secondary impacts of the proposed Belleayre Resort?

MR. DALLESSIO: We support the findings within the letter dated March 23rd, 2004; in particular, the identification of the fact of the hierarchy that's identified there that the Belleayre Resort developer -- the (COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4071

fact that the developer has overcome several of the list of the constraints, we believe, as EPA does, that it calls into question the validity as a measurement of future growth potential. Indeed looking at this, coming down to protected lands --

MR. GOLDSTEIN: Excuse me one second. You're referring here to the discussion in the technical comments and recommendations, page 4 of the March 23, 2004 EPA letter; is that correct?

MR. DALLESSIO: Yes.

13 MR. GOLDSTEIN: Right now you're
14 looking at the chart in the induced future
15 growth impact section?

16 MR. DALLESSIO: Yes, looking at the
17 constraints in decreasing order of severity.
18 Clearly we saw in the past, and see in the
19 future, that zoning is temporal and that that
20 can't be considered any type of significant
21 constraint.

22 We clearly believe, obviously, that
23 the best constraint is protected lands.
24 That's one of the reasons why in New Jersey
25 we're in the effort to preserve the million
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4072

1 acres.

2 Clearly, looking at topography, soils,
3 even sewers, we're finding that those are
4 temporal issues that can be addressed in one
5 form or another; and in fact, again, the
6 application has addressed a number of those
7 issues in its own application. If that were
8 to happen, what's to stop other developers
9 from also addressing those issues?

10 MR. GOLDSTEIN: Now, in their
11 presentation, the AKRF analysis also talks
12 about three case studies as part of an effort
13 to justify the project sponsor's conclusion
14 that the secondary growth impacts here would
15 be minimal. EPA addresses those case studies
16 in this analysis and I'm wondering what RPA's
17 assessment is of EPA's assessment?

18 MR. DALLESSIO: Clearly, the three
19 case studies that were addressed have
20 similarities with respect to topography,
21 population density and ski center
22 characteristics, but we support EPA's finding
23 that none has been subject to development on a
24 scale that is planned for in this case, the
25 Belleayre Ski Center project; and therefore,
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

4073

1 any potential and any insights on the
2 potential of induced future growth is nearly
3 impossible, as EPA has identified it.

4 MR. GOLDSTEIN: Finally, EPA also
5 comments on its concerns regarding secondary
6 growth and the impacts that secondary growth
7 might ultimately have on the downstate
8 drinking water supply. Would you comment on
9 those, and what is RPA's position on those EPA
10 comments?

11 MR. DALLESSIO: We fully support the
12 statement that EPA made regarding the impact
13 the project may have on future development in
14 the watershed outside of existing town
15 centers.

16 If I may, your Honor, I would like to
17 read the statement that the EPA has written in
18 this memo that we fully support: "The DEIS
19 has not provided a substantial basis for its
20 conclusion that commercial and residential
21 development resulting from this project will
22 be negligible. Indeed, if this project does
23 portend to increase development in forested

24 areas outside of town centers, it would call
25 into question the ability of this city to meet
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 one of the major requirements of the surface⁴⁰⁷⁴
2 water treatment rule for an unfiltered
3 system;" and it goes on further to state what
4 that requirement is. We fully support that
5 statement.

6 MR. GOLDSTEIN: Is there any final
7 comment you would like to make, either about
8 the EPA letter or about other aspects of the
9 secondary growth impacts analysis that the
10 Regional Plan Association has performed?

11 MR. DALLESSIO: We are available if
12 there's any questions further on this.

13 When I introduced myself, I neglected
14 to mention that I am a professional planner in
15 New Jersey and certified by the American
16 Institute of Certified Planners.

17 I also wanted to say that even though
18 I'm from New Jersey, we have encountered a
19 number of these types of projects in the
20 tri-state area, including a major project in
21 New Jersey, and we've tried to build upon
22 research in that area as well.

23 MR. GOLDSTEIN: Any questions, your
24 Honor?

25 ALJ WISSLER: No.
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

1 MR. GOLDSTEIN: Thank you very much.⁴⁰⁷⁵

2 MR. DALLESSIO: Thank you.

3 MR. GERSTMAN: That concludes CPC's
4 offer with respect to community character and
5 secondary growth. At this time, we reserve
6 the right to respond to the Applicant, DEC's
7 or the Coalition of Watershed Towns or
8 Delaware County's submission.

9 ALJ WISSLER: Okay.

10 MR. BURGER: The City would like to
11 state for the record we haven't seen this
12 before.

13 ALJ WISSLER: You're talking about CPC
14 95?

15 MR. BURGER: We're talking about CPC
16 95.

17 Our understanding is that this is the
18 result of a FOIL request, and to the extent
19 that we have any information that can clarify
20 whether or not these are new septic systems or
21 rehab. septic systems, we will do what we can.

22 ALJ WISSLER: Thank you, Mr. Burger.
23 Where am I going?

24 MR. YOUNG: I think we go.

25 ALJ WISSLER: Do you want five
(COMMUNITY CHARACTER & SECONDARY GROWTH ISSUE)

□

1 minutes?

4076

2 MR. YOUNG: Yes.

3 ALJ WISSLER: We'll take five.

4 (2:25 - 2:32 P.M. - BRIEF RECESS
5 TAKEN.)

6 MR. YOUNG: This offer of proof is
7 being made by Delaware County, and the issue
8 is community character and the impact of a

9 destination resort on community character.
10 And I have Exhibit 13, 14, 15 and 16 that we
11 will be introducing. Copies have been given
12 to each of the parties.

13 Exhibit 13 is the resume of Alan Rosa.

14 Exhibit 14 is the resume of Chester
15 John Straub.

16 Exhibit 15 are written comments
17 submitted by Mr. Straub to the -- to you, your
18 Honor, in this proceeding.

19 Exhibit 16 is a letter written by
20 Kingdon Gould dated June 23rd, 2004 to Judge
21 Wissler, again, comments that were submitted
22 in this proceeding.

23 ALJ WISSLER: What's the date of the
24 letter?

25 MR. YOUNG: June 23rd.
(COMMUNITY CHARACTER ISSUE)

4077

1 In addition, we'll be relying on
2 Exhibit 83, Applicant's Exhibit 83, I think
3 it's CPC Exhibit 16, which is what is called
4 the Route 28 Corridor Study.

5 Our first witness is Kingdon Gould.

6 ALJ WISSLER: We're going to take a
7 moment to mark these.

8 (RESUME OF ALAN L. ROSA, EXECUTIVE
9 DIRECTOR OF CATSKILL WATERSHED CORPORATION
10 RECEIVED AND MARKED AS WATERSHED COMMUNITIES
11 EXHIBIT NO. 13, THIS DATE.)

12 (RESUME OF CHESTER JOHN STRAUB, JR.
13 RECEIVED AND MARKED AS WATERSHED COMMUNITIES

14 Vol. 16 (8-24-04crossroads)
EXHIBIT NO. 14, THIS DATE.)
15 ("DRAFT AUGUST 19, 2004 DEP
16 ADMINISTRATIVE HEARING - THE BELLEAYRE RESORT
17 AT CATSKILL PARK" RECEIVED AND MARKED AS
18 WATERSHED COMMUNITIES EXHIBIT NO. 15, THIS
19 DATE.)

20 (LETTER FROM FURLOW LODGE DATED
21 6/23/04 RECEIVED AND MARKED AS WATERSHED
22 COMMUNITIES EXHIBIT NO. 16, THIS DATE.)

23 MR. GOULD: I'm here, your Honor,
24 neither as a proponent for this project, nor
25 as an opponent for the project.
(COMMUNITY CHARACTER ISSUE)

4078

1 I'd like to give you a little
2 background. My great-great-grandfather is
3 buried in Roxbury, in the little yellow church
4 graveyard just outside of Roxbury. My
5 great-grandfather surveyed Delaware County.
6 My great-aunt lived her life primarily in
7 Roxbury, where, among other things, she built
8 a golf course on top of the hill known as
9 Shepherd Hills which is still in play today.

10 My grandfather bought property in 1890
11 in Dry Brook Valley and built a house there,
12 and since I was a little boy, I have lived in
13 that house and lived in Dry Brook Valley,
14 where over the years we acquired approximately
15 6 or 7,000 acres of land which we hold in
16 private preservation for agriculture and
17 forestry.

18 When I was a boy, Dry Brook Valley had
19 44 farms. Today there is only one, our farm.

20 I have witnessed the transformation of the
21 Catskills' economy from one based on
22 agriculture and lumbering to one based on
23 recreation and tourism.

24 In my life, I have done a variety of
25 things. I have built single-family houses,
(COMMUNITY CHARACTER ISSUE)

1 hotels. I have operated corporations, small ⁴⁰⁷⁹
2 manufacturing companies, light manufacturing.
3 I know something about farming. I know
4 something about the hotel industry. I know
5 something about the skiing industry because my
6 brother, Thadeous Thorn, together with other
7 members of his family, myself included, built
8 Mount Attitash in New Hampshire into a major
9 resort over the past 40 years.

10 I'm familiar with resorts in Europe,
11 Fairmont, Clark City, Telluride, where, by
12 coincidence, my son-in-law is now the mayor.
13 Cannon Mountain, Cranmore in New Hampshire,
14 Killington, Sunday River, Mount Snow, Bear
15 Peak, and so forth.

16 So I know something about the resort
17 business, and I know something about the
18 skiing business.

19 I am not technically qualified as an
20 economist, nor as a scientist for water
21 quality or whatever, but I have some general
22 knowledge and I'd like to express my views to
23 you about what is happening with this
24 particular project.

Vol. 16 (8-24-04crossroads)
I see our community up here being
(COMMUNITY CHARACTER ISSUE)

25

4080

1 driven apart by the proponents of the project
2 and the contestants of this project. I think
3 this is very unfortunate, and I would say now
4 that my hope is that conciliation between
5 these two groups would take place, and result
6 in a beneficial result for the economy with
7 benign use for the environment, and I'll
8 conclude my remarks along that line.

9 There's a tremendous amount of talent
10 in this room, tremendous expertise in this
11 room, and my view of this project -- although
12 I only know its generalities and not its
13 specifics -- is that the good of this project
14 should be viewed by the opponents; select the
15 good, show them how to make it environmentally
16 sound, and we can proceed further.

17 I very much resent the implication
18 that the Catskills should be the poor cousins
19 of New York City and New Jersey. I think we
20 have a destiny of our own. I see up here a
21 Catskill Institute, one day like the Rocky
22 Mountain Institute. We already have a great
23 summer music program which has occurred, and
24 the possibilities for the Catskills and the
25 people who live permanently here I think
(COMMUNITY CHARACTER ISSUE)

4081

1 should be in their hands and not decided by
2 experts from out of the area who have only
3 come here one day.

4 Having said that, I would like to tell
Page 138

5 you that I myself am an environmentalist, I
6 believe, and I was one of the four people who
7 formed the Catskill Center for Conservation
8 and Development at the time of its formation,
9 probably 30 years ago.

10 The word "development" was very much
11 in our minds because we realized that the
12 economy up here was suffering with the
13 dissipation of the main function which were --
14 economic function which was agriculture and
15 was being transformed. And in my particular
16 valley, I could see abandoned farms being
17 turned into so-called hunting lodges by
18 running a school bus up into the woods,
19 pulling off the wheels, putting it on cinder
20 blocks, sticking a pipe through the window and
21 this was a hunting lodge. It really was the
22 start of a rural slum.

23 In our particular case, in our
24 particular valley -- this was before the time
25 of zoning and various building controls -- we
(COMMUNITY CHARACTER ISSUE)

1 were concerned, very much concerned with the ⁴⁰⁸²
2 direction that the Catskills was turning.

3 So with three other gentlemen, a man
4 called Armand Erph, who lived here in
5 Margaretville; a man called Sherret Chase, who
6 is an outstanding forester and geneticist from
7 Shokan and the then head of the New York Bar
8 Association, George Caflud [sic] and myself.

9 We formed an organization called the

10 Catskill Center for Conservation and
11 Development because we believed that until the
12 economy up here improved, until there were
13 opportunities for the year-round residents to
14 have gainful, interesting employment, the area
15 would never reach its potential or have the
16 quality of life that the long-term residents
17 up here deserved.

18 We were part-time residents. I guess
19 you would call me a part-time resident, though
20 my house is open year-round, and I come up
21 here nine months of the year.

22 My residence is where my business and
23 law practice are, which is in Maryland, but as
24 you have heard, my roots go way back and I'm
25 dearly committed to this area, and I'm
(COMMUNITY CHARACTER ISSUE)

1 committed, and try to be understanding, of the ⁴⁰⁸³
2 people, year-round residents, who must make
3 their living in this area.

4 At the time we formed the center, the
5 economy was deteriorating. I don't think the
6 economy is particularly bright today. I would
7 tell you that I wanted to make reservations
8 for dinner on a Monday night. I called up the
9 four restaurants I generally go to last week.
10 They were closed Monday, Tuesday, Wednesday
11 and Thursday. This, to me, is not a brilliant
12 economy. Maybe that's a simplistic way to
13 look at it.

14 My wife's family, as I mentioned, are
15 in New Hampshire where my brother-in-law built

16 Attitash. This is in the Presidential Valley.
17 The center is North Conway.

18 Mount Cranmore is the major generator
19 for that area. It was the first major skiing
20 area in the east -- probably in the United
21 States. It was built by a man called Harvey
22 Gibson, who was a citizen, home-grown citizen
23 of North Conway, who wanted to generate some
24 business for the people of North Conway. You
25 couldn't get into a restaurant last week at
(COMMUNITY CHARACTER ISSUE)

4084

1 North Conway.

2 By the way, the Presidential Valley is
3 served by a two-lane road, Route 16. I
4 mention this because there are similarities,
5 my way of thinking, between the Catskill
6 Mountains and the Presidential Valley in New
7 Hampshire.

8 I therefore have followed this
9 proceeding, watching through the press and
10 what I hear from neighbors, the divisiveness
11 that has occurred, and I very much hope that
12 this can be overcome.

13 I think that in the case of the
14 Crossroads Venture, you have a very ambitious
15 program, probably from the perspective of
16 environmental concerns, overly ambitious. One
17 of the projects they propose is to build a
18 golf course opposite the parking lot, the
19 lower parking lot, of the Belleayre Ski Area.

20 Incidentally, the Belleayre Ski Area

21 is supported by no housing at all proximate to
22 it, except for Pine Hill, but that's some
23 distance away.

24 I know of no other of the various ski
25 areas I've mentioned to you -- and I've been
(COMMUNITY CHARACTER ISSUE)

1 to all of them -- where quality housing is not⁴⁰⁸⁵
2 an essential part of a ski area, and I know
3 that it adds to the quality of the ski area
4 and is supportive of it.

5 One of the good things about having
6 that type of housing in a ski area is that the
7 people instead of going up and going back, and
8 going up and going back are up and staying;
9 and they have -- I have checked this out with
10 the operators of these various places like
11 Loon Mountain and Attitash. It is an
12 essential part and valuable contributing part
13 to the success of the ski area.

14 Now, they are proposing on the south
15 side of Route 28 in Delaware County a hotel
16 and a golf course. This has attracted a great
17 deal of controversy. The golf course would be
18 on former property, a beautiful farm of a lady
19 called Effie Gunnison, who had a large house
20 where we went as children and played on the
21 only grass tennis court that I know of in the
22 Catskills. And we played there with the
23 Arthur Brisbane children who had a home in
24 Pine Hill, which has since been restored.

25 That house burned down, the land is all
(COMMUNITY CHARACTER ISSUE)

1 growing up. The farm is gone.

2 Now, across the way on the north side,
3 when I was a boy, was the Grand Hotel, a large
4 hotel that was served by the railroad which
5 stopped at Highmount. The Grand Hotel of
6 where my grandparents came up from New York
7 City and stayed when they came over to Dry
8 Brook, the neighboring valley where we live,
9 to look at the property which they
10 subsequently bought and built the home in
11 which I live in today. Going down from the
12 Grand Hotel was their golf course where, as
13 kids, we played.

14 So when I hear that a project is
15 proposed across the way for a golf course at a
16 hotel, and across the way there had been a
17 golf course and a hotel, to me this is
18 restoration, not innovation.

19 I'm not qualified scientifically to
20 say what the environmental impact would be,
21 but so far as the economy, so far as the
22 overall perspective of the area, surely this
23 is not a radical change.

24 I live over the hill. I have no
25 desire to subdivide my property. We keep it
(COMMUNITY CHARACTER ISSUE)

□

1 in farm and try to maintain the rural
2 characteristics through the farming process.
3 I would love to see my taxes reduced. I
4 believe that this project would lead -- in
5 minutia -- to a reduction of my taxes and so

6 for that reason, I would benefit by it, but I
7 have no interest in the project, no direct
8 financial interest in the project.

9 I do think that it appears to be well
10 financed. I believe the developers have
11 demonstrated previously in the construction
12 they have done further down 28 that they do
13 deliver quality, and I've been to a resort
14 called the Greenbriar, I've been to a resort
15 called the Homestead, which as you know, are
16 based on a variety of outdoor activities like
17 horseback riding, golf courses and so forth.

18 I believe that to transplant one or
19 the other of those to the site by Belleayre
20 would be a very good thing for this area. I
21 can see it having no deleterious effect.

22 I would hope that the economy of this
23 area can improve, and I would call upon those
24 people who wish to find technical reasons for
25 preventing such places developing in the
(COMMUNITY CHARACTER ISSUE)

4088

1 Catskills to consider carefully what the
2 consequence is of the signal that they're
3 sending to other developers along the way, and
4 I would hope that the Catskill Center, in
5 particular, would remember it's the Catskill
6 Center for Conservation and Development.

7 That's why I speak to you today, to
8 express these views. And I wind up, again,
9 calling for a conciliation, a serious
10 conciliation between these gentlemen over here
11 who have financing and an environmental -- an

12 economic and entrepreneurial attitude and are
13 willing to risk their money to bring something
14 potentially of quality to the area, the only
15 drawback being is it environmentally sound;
16 and those people who wish to make sure that
17 everything that is done is environmentally
18 correct. They need to get together.

19 This hearing is going to go on for
20 months, it's going to wind up, at the rate
21 that it's going in appeals and counter-appeals
22 and briefs filed. There is so much talent
23 that it seems to me very sad and so
24 counterproductive that these two bodies, who
25 really have the same objective, which is see
(COMMUNITY CHARACTER ISSUE)

□

1 the quality of life in the Catskills improve ⁴⁰⁸⁹
2 and see quality jobs maintained in this area,
3 for them not to come together, your Honor.

4 This is an area who cannot support a
5 hospital. This is an area which is losing its
6 ambulance service, even as we speak. So if we
7 do not have economic development up here, how
8 are we going to maintain these necessary
9 community services.

10 Therefore, again, I would hope that
11 there could be a recess in these proceedings.
12 I myself would be glad to serve as a
13 co-mediator and see if we cannot find those
14 aspects of this proposal which the proponents
15 would say: okay, let's start with this, and
16 then have the very technically oriented and

17 very gifted and environmentally concerned
18 parties look at it and say, Okay, but you have
19 to do this or if you do this or do that, okay,
20 we'll support it. This is what the Catskills
21 need. Thank you.

22 MR. YOUNG: Thank you very much. Does
23 anyone have any questions?

24 ALJ WISSLER: No, thank you.

25 MR. YOUNG: Does anyone want to take
(COMMUNITY CHARACTER ISSUE)

4090

1 Mr. Gould's suggestion?

2 ALJ WISSLER: Do you need some time?

3 MR. YOUNG: I was looking to see
4 whether people wanted to come together.

5 My next witness is Chester John
6 Straub. Should I call you Chester?

7 MR. STRAUB: That's fine.

8 MR. YOUNG: Chester, can you just
9 identify yourself for the record.

10 MR. STRAUB: Chester John Straub, Jr.
11 I'm the President of the Ulster County
12 Development Corporation, as well as the
13 administrative director of the Ulster County
14 Industrial Development Agency.

15 MR. YOUNG: What is the Ulster County
16 Development Corporation?

17 MR. STRAUB: The Development
18 Corporation is a private not-for-profit that
19 has as its basic mission acting as a catalyst
20 for economic growth within the county by
21 providing financial and technical assistance
22 to aid existing businesses grow and expand, as

23 well as to help new businesses to establish
24 themselves within the county.

25 MR. YOUNG: What is your role in the
(COMMUNITY CHARACTER ISSUE)

4091

1 IDA?

2 MR. STRAUB: I'm the Administrative
3 Director of the County's Industrial
4 Development Agency.

5 MR. YOUNG: That's a separate agency
6 from the UCDC?

7 MR. STRAUB: Right, the Industrial
8 Development Agency is a public benefit
9 corporation established under New York State
10 law, and its members are appointed by the
11 County Legislature.

12 MR. YOUNG: Prior to working for UCDC,
13 who did you work for?

14 MR. STRAUB: Most immediately, I was
15 with the U.S. Government as part of the
16 Economic Development Administration for
17 approximately eight-plus years, during which I
18 had a variety of positions, including the
19 acting administrator for about 14 months, from
20 2000, 2001 timeframe.

21 MR. YOUNG: And prior to that?

22 MR. STRAUB: Just before that, I was
23 with the Battery Park City Authority, which is
24 a public benefit corporation created to
25 develop and manage the Battery Park City world
(COMMUNITY CHARACTER ISSUE)

4092

1 Financial Center in Lower Manhattan.

2 MR. YOUNG: Have you submitted
3 comments in this proceeding?

4 MR. STRAUB: Written comments were
5 provided during the open period earlier this
6 year.

7 MR. YOUNG: Can you summarize those
8 comments?

9 MR. STRAUB: Sure. One of the areas
10 that we tried to emphasize in our comments
11 were the importance of tourism to Ulster
12 County. During the past couple of decades, we
13 have seen a shift from traditional -- at least
14 traditional for Ulster County industries,
15 agriculture and manufacturing being two of
16 them, to a very heavy emphasis on public
17 employment, as well as service-oriented and
18 retail-oriented business.

19 One of the constants, though, in that
20 time period and before that and to this day,
21 has been tourism. It's been one of the top
22 industries in Ulster County, and it continues
23 to be the case today.

24 Looking at a variety of statistics
25 prepared by the New York State Department of
□ (COMMUNITY CHARACTER ISSUE)

1 Tax and Finance, New York State Department of
2 Labor, as well as the Ulster County
3 Government, you can see why that is.

4 In the year 2000, it was estimated
5 that tourist and visitor spending in the
6 county was approximately \$656 million. The
7 direct positive impact of tourism for county

8 residents was also quite evident in over
9 \$100 million in annual wages, and the
10 employment of over 7,300 people.

11 Most recently, the Ulster County
12 government, as part of its official statement
13 for the issuance of bond anticipation notes,
14 they noted that Ulster County ranks third
15 highest in New York State in hotel and motel
16 sale receipts. That's something which
17 benefits, obviously, the businesses and the
18 employees, but also the county because they
19 share in the sales tax receipts that come from
20 the visitors at those facilities.

21 MR. YOUNG: Third highest, the first
22 two were --

23 MR. STRAUB: The first two were
24 Manhattan and Sullivan County. So Ulster
25 ranked third amongst the counties in New York
(COMMUNITY CHARACTER ISSUE)

1 state in those receipts. Statistically, you⁴⁰⁹⁴
2 can see the importance, but also from a
3 perspective of the heritage of the county.

4 while I did not grow up in Ulster
5 County, I did grow up in the Hudson Valley,
6 and while I was with the Economic Development
7 Administration had the opportunity to travel
8 widely across New York State, as well as the
9 country.

10 One thing that became evident was that
11 the Hudson valley has a long history as a
12 tourism destination as a recreational

13 vol. 16 (8-24-04crossroads)
14 location, but the Catskills, and Ulster County
15 in particular, were very strong in those
16 areas.

17 As was mentioned earlier, 9/11 has
18 greatly changed the way individuals and
19 families look at their recreation and tourism
20 activities, and that has heightened the
21 attractiveness of the Catskills as a location.

22 Today, if you look around the county,
23 there are a number of businesses that reflect
24 that, the Mohonk Mountain House, the
25 Minnewaska Lodge, the Nevele Grand, Hudson
 valley resorts; places like the Rocking Horse
 (COMMUNITY CHARACTER ISSUE)

1 Ranch and Emerson Place are good examples of⁴⁰⁹⁵
2 destination locations which are strong
3 economically as well as attractive as
4 recreation locations.

5 Other offerings in the county include
6 the recently established Horse Shows in the
7 Sun facility in Saugerties, the Woodstock Film
8 Festival, just down the road, Belleayre
9 Mountain, as well as a number of golf courses
10 throughout the county which attract local,
11 regional and out-of-state visitors, as well as
12 any number of opportunities, such as skydiving
13 in the Gardiner, climbing in the Gunks and
14 rafting and hiking here in the Catskills.

15 One of the things that we look at as
16 an economic development organization is to
17 help industries like this remain viable and
18 build upon the existing offerings. We see

19 that as one of the principal ways to
20 strengthen the economy in the county.

21 A project, as proposed for the
22 Belleayre Resort, is, in our estimation, a
23 good example of building upon that existing
24 base.

25 The economic impact, I think, is
(COMMUNITY CHARACTER ISSUE)

4096

1 equally evident, both in terms of direct as
2 well as indirect economic impact. The project
3 proponents have estimated that during their
4 eight-year development cycle, significant
5 number of jobs will be created, as well as
6 wages and salaries, 260-plus jobs, and 10-plus
7 million dollars.

8 while in the grand scheme of things,
9 those numbers may not seem substantial, but
10 when looking at the construction industry, and
11 the fact that many of those working in the
12 construction industry can -- whether they're
13 unionized or not need to travel substantial
14 distances outside of Ulster County to find
15 work. Having a project of this type with this
16 duration in the county is a great boom for the
17 construction industry.

18 Indirect wages and salaries also would
19 be high, estimated at eight-plus million
20 dollars a year. The total economic output,
21 direct as well as indirect construction
22 spending has been estimated to be
23 \$451 million.

24 We looked at -- in relation to other
25 projects within relation to Ulster County --
(COMMUNITY CHARACTER ISSUE)

4097

1 this makes it, in terms of total expenditures,
2 the largest single project ever in Ulster
3 County. No small feat, given some of the
4 previous investments made by businesses such
5 as IBM.

6 Upon completion of the project, the
7 Belleayre Resort is projected to result in
8 over 500 full-time positions, as well as
9 300-plus seasonal positions in the most rural
10 and unfortunately economically stagnant
11 locations in the county.

12 If you look at the projected full-time
13 salary of over \$27,000, it compares favorably
14 with the county-wide salary of per capita
15 income of about \$21,000, and the annual
16 average wages of workers in the arts,
17 entertainment and recreation industry, as well
18 as the accommodation and food service
19 industries -- as well as to the overall number
20 through the private sector, which by the way,
21 is only \$25,000.

22 These are numbers that come from the
23 New York State Department of Labor, based upon
24 North American industry code system.

25 So if you look at the projected
(COMMUNITY CHARACTER ISSUE)

4098

1 employment levels, as well as the average
2 annual wages, they will either meet or exceed
3 those in other comparable industries here in

4 the area, as well as throughout the county.

5 Another important impact is the
6 interconnected nature of the proposed project,
7 as well as the winter employment currently
8 available through Belleayre Mountain. Now,
9 there will be year-round opportunities for
10 those who work in the recreational/hospitality
11 industry in their local community.

12 Based upon the 2000 census, the mean
13 travel to work for residents in the Town of
14 Shandaken was approximately 32 minutes.
15 That's evidence of a lack of available
16 opportunities for employment within the area.
17 Having both of these facilities up and
18 running, complimenting each other, would in
19 part help alleviate the need to travel longer
20 distance for employment.

21 One other area of economic impact,
22 obviously, is the generation of spending, both
23 on-site and off-site, which this project is
24 projected to generate; as well as the local
25 property tax revenues which will be generated
(COMMUNITY CHARACTER ISSUE)

□

1 by the project, even after any incentives
2 might be incorporated into the project. That
3 is something not to be forgotten, given the
4 current state of finances, both at the state
5 as well as the county level.

4099

6 Additional revenues generated in the
7 form of property taxes, as well as sales
8 taxes, make available additional resources for

9 vol. 16 (8-24-04crossroads)
10 the local community to address a wide range of
11 public needs.

12 Generally speaking, myself and the
13 Board of Directors of the Ulster County
14 Development Corporation feel that from a
15 historical perspective, that this is a project
16 consistent with the tourism and hospitality
17 industry of the county, and it's also a
18 compliment to the economic growth of the
19 county as a whole, but in particular the
20 western part of the county.

21 MR. YOUNG: Thank you. Any questions?

22 ALJ WISSLER: No. Thank you.

23 MR. YOUNG: Okay. Thank you very
24 much.

25 Next witness is Alan Rosa.

 Alan, can you identify yourself.
(COMMUNITY CHARACTER ISSUE)

1 MR. ROSA: I'm Alan L. Rosa, currently ⁴¹⁰⁰
2 the Executive Director for the Catskill
3 Watershed Corporation, but I would like to go
4 on record that I'm here not to talk or take a
5 position for the Catskill Watershed
6 Corporation.

7 MR. YOUNG: You're taking the position
8 as an individual?

9 MR. ROSA: I'm taking the position as
10 an individual and also the past Supervisor for
11 the Town of Middletown.

12 MR. YOUNG: Your resume indicates that
13 you were a former accountant and small
14 business owner. Can you describe what you did

15 prior to joining public service?

16 MR. ROSA: I worked for A & P Tea
17 Company, it's a food chain store, as a
18 bookkeeper and accountant and auditor and
19 assistant manager for that firm.

20 In 1987, I got the opportunity to buy
21 a small business here in Margaretville. We
22 did satellite installations and appliance, got
23 to do some traveling around for the State,
24 working for OTB, and then I ran for Town
25 supervisor in 1989, and I was elected and took
(COMMUNITY CHARACTER ISSUE)

4101

1 office on January 1st of 1990.

2 MR. YOUNG: What was the town?

3 MR. ROSA: Town of Middletown.

4 MR. YOUNG: Is your family from this
5 area?

6 MR. ROSA: I'm a fifth generation from
7 this area. The property that I live on has
8 been in the family for over 200 years. So I
9 guess we've been around for a long time.

10 MR. YOUNG: How would you describe
11 this community when you were growing up? What
12 community did you actually grow up in?

13 MR. ROSA: A variety of the
14 communities. I kind of split my time between
15 Margaretville and Fleischmanns. I was born
16 here in Margaretville at the old hospital,
17 just down the street where it used to be.

18 They were vibrant communities. I can
19 remember coming to town on a Friday night and

20 vol. 16 (8-24-04crossroads)
the streets were packed. We talk about
21 grocery stores -- there was actually four
22 grocery stores here in Margaretville alone.
23 Not to mention car dealerships. We had all
24 three car dealerships. We had Oldsmobile,
25 Chrysler, Ford. We had a lumber yard -- not
(COMMUNITY CHARACTER ISSUE)

1 just one lumber yard but two lumber yards. ⁴¹⁰² We
2 actually had three hardware stores. It was
3 just a very vibrant community, both
4 Margaretville and Fleischmanns.

5 MR. YOUNG: Has it changed? By the
6 time you became Supervisor, had it changed?

7 MR. ROSA: Really the change started
8 happening probably in the early '60s, for a
9 lot of reasons. Farming started to die off
10 because I guess the trend was bigger farms
11 were better. It's very hard to have a large
12 farm here in the Catskills because of the
13 mountain terrain. So as the farming industry
14 started to die out -- I also lived in the Dry
15 Brook valley, also remember the 44 farms, also
16 worked on some of those farms.

17 As the farming industry died out,
18 business seemed to die out. Just here in
19 Margaretville, we had two major large farm
20 equipment stores. We had Kelly's and we had
21 Crosby's. And just up the road there was also
22 what we called Hubbell Brothers. But as the
23 farming industry died out, those businesses
24 were the first to go. And then things just
25 kept going downhill.

1 There seemed to be, in the early '60s,
2 there seemed to be this move towards selling
3 off the farm, subdividing the property and a
4 second home industry moved into the area; and
5 to me, personally, the second home industry
6 has really made the community go downhill even
7 greater. And the reason for that is -- today
8 is Tuesday. There's more people sitting at
9 those two tables than there is on Main Street
10 in Margaretville.

11 The second home industry is good for a
12 few people, the people who can hammer nails,
13 but it also tears our mountains all to pieces,
14 putting up these 250, \$300,000 homes.

15 These people come here on Friday
16 night -- yeah, Friday at 3 o'clock our town is
17 busy. Saturday is real busy. Come Sunday,
18 it's a ghost town. I bet if you walk down the
19 street right now, you'll find most of the
20 businesses closed. They're closed Monday,
21 Tuesday, Wednesday and Thursday. So there has
22 been a dramatic change.

23 MR. YOUNG: When you became
24 Supervisor, did you try to change that?

25 MR. ROSA: Yes. When I became
(COMMUNITY CHARACTER ISSUE)

1 Supervisor, I was very good friends with Neil
2 Grant, who was the Supervisor of Town of
3 Shandaken, although some people would think
4 that we were enemies. That's only because

5 they didn't understand our ways of the local
6 people.

7 Neil was a very interesting fellow.
8 we had the same problems. We felt that the
9 City of Kingston, which was the county seat
10 for Ulster County, really didn't care too much
11 what happened in Shandaken.

12 I, being from Middletown, felt the
13 same way. I felt that the county seat of
14 Delhi didn't really care too much what
15 happened over here in Margaretville.

16 So we decided that we needed to do
17 something. So we kind of joined forces to see
18 if there was something that we could do about
19 the economic development trend in two
20 communities because we felt we both had the
21 same problems. So we actually got together,
22 and that's how the Route 28 Corridor Study was
23 put together.

24 There was a question before, I don't
25 know if I should comment on this, but I think
(COMMUNITY CHARACTER ISSUE)

1 you people might have made a mistake. Dean ⁴¹⁰⁵
2 Gitter was chair of that corridor committee;
3 he did not have anything to do with the
4 Alliance. I think you had it reversed. So I
5 just want to throw that out for clarity.

6 MR. YOUNG: Can you describe what the
7 Route 28 Corridor Study concluded.

8 MR. ROSA: Well, it actually concluded
9 several things, but the main thing was that
10 destination resorts was something that could

11 be positive. The report itself kind of
12 contradicts itself in two places.

13 One place it talks is about that we
14 shouldn't built a mega resort; it should be
15 four or five 100-room resort throughout the
16 area, throughout Middletown, Shandaken, but
17 then it was looked at later on, and I think it
18 mentions in the report, as I recall, that a
19 larger resort would fit very well in with
20 Belleayre Mountain Ski Slope, because one of
21 the problems that we saw was that people who
22 came up to ski would come out of Belleayre,
23 take a right and head back towards the New
24 York State Thruway.

25 The report also talked about making a
(COMMUNITY CHARACTER ISSUE)

4106

1 destination resort that was a four-season
2 resort. We need to get people here for all
3 four seasons for the economy to have any
4 chance. That was our feeling.

5 MR. YOUNG: Did you look at other
6 industries coming into Middletown or Shandaken
7 in addition to tourism?

8 MR. ROSA: Yes, we looked at
9 manufacturing. In fact, when I took office,
10 it was a standing joke. We have what we call
11 the crossroads, which is a county route over
12 here between Route 28 and 30, where there's an
13 industrial park. They constructed a building
14 in hopes that -- actually they had a
15 manufacturing firm that was thinking about

Vol. 16 (8-24-04crossroads)
16 coming in. That never materialized.

17 One of our problems for becoming a
18 manufacturing center, even small
19 manufacturing, is transportation. So we
20 figured, if we could get some small
21 manufacturing to come in, so be it, but
22 everyone under their brother is out there
23 beating the bush, trying to bring that to
24 their community, so we didn't see that we
25 stood much of a chance.

(COMMUNITY CHARACTER ISSUE)

4107

1 MR. YOUNG: Back to the Route 28
2 Corridor Study, did that make any
3 recommendations for the continuation of the
4 economic development effort?

5 MR. ROSA: The recommendation came out
6 that there should be an alliance formed, a
7 committee formed to look at land use planning
8 and how to develop this area into a
9 four-season destination.

10 MR. YOUNG: Was that alliance ever
11 formed?

12 MR. ROSA: Yes, it was.

13 MR. YOUNG: What was it called?

14 MR. ROSA: Catskill Alliance, I
15 believe.

16 MR. YOUNG: Did that Alliance ever
17 issue any kind of report?

18 MR. ROSA: Yes, it did.

19 MR. YOUNG: I show you Applicant's
20 Exhibit 8; ask you if that is the report?

21 MR. ROSA: Yes, that's the report.
Page 160

22 MR. YOUNG: That report was submitted
23 to who?

24 MR. ROSA: It was actually submitted
25 to both towns.
(COMMUNITY CHARACTER ISSUE)

1 MR. YOUNG: Town of Shandaken and Town ⁴¹⁰⁸
2 of Middletown?

3 MR. ROSA: And Town of Middletown,
4 correct.

5 MR. YOUNG: Is that the report that
6 you indicated that Dean Gitter was not a party
7 to?

8 MR. ROSA: He was not a party to.

9 MR. YOUNG: Who was the committee or
10 the alliance?

11 MR. ROSA: Well, they're listed there.
12 Eric, he was a hotel owner.

13 MR. RUZOW: That's Eric Greiser? [sic]

14
15 MR. ROSA: Yes. Jennifer Gould, she
16 was the head of what we call the MARK Project,
17 which was a housing and development
18 organization for the Town of Middletown. Beth
19 Waterman, I believe she worked for the DEC at
20 the time. Sandy Becker, she was a resident of
21 Fleischmanns, very active in trying to promote
22 the area.

23 Al Frisenda, he was, I believe at the
24 time, on the Town Board for the Town of
25 Shandaken. And Getty Sureski [sic], he was
(COMMUNITY CHARACTER ISSUE)

1 an editor, I believe, of the Woodstock Times;
2 and Dave Barnett who was from New York City
3 DEP.

4 MR. YOUNG: Have you reviewed that
5 report?

6 MR. ROSA: Not lately, but I have --
7 pretty much know what's in it.

8 MR. YOUNG: Can you just summarize
9 what's in it?

10 MR. ROSA: well, they agree that there
11 should be a very strong emphasis on a
12 destination resort. Also, there has to be
13 some other activities that needed to take
14 place within the towns and -- for a
15 destination resort and promotion of the area
16 for a tourist attraction.

17 There also has to be stronger zoning
18 implications to be tied into that to prevent
19 secondary homes and sprawl.

20 MR. YOUNG: Now, much has been said in
21 this proceeding about the opportunity of doing
22 smaller hotels or individual restaurants. Is
23 it possible outside of a hamlet to actually do
24 a restaurant or a small hotel in the New York
25 City Watershed -- or in this portion of the
(COMMUNITY CHARACTER ISSUE)

4110

1 New York City Watershed?

2 MR. ROSA: You have to meet the
3 regulations. For a small John Doe to build a
4 hotel, unless he has the infrastructure in
5 place, to meet the regulations, build
6 something -- you need people. You have to pay

7 the bills. A small hotel just isn't going to
8 happen outside of the infrastructure where
9 there's already existing infrastructure, no.

10 ALJ WISSLER: When you say meet the
11 regulations, what do you mean?

12 MR. ROSA: Well, we have strong
13 regulations. For instance, in the
14 regulations, if you build a wastewater
15 treatment plant, you have to have the
16 equivalent of microfiltration. That's a very
17 expensive plant.

18 ALJ WISSLER: You're speaking like the
19 City's regs?

20 MR. ROSA: Yes.

21 MR. YOUNG: What would microfiltration
22 cost for like a restaurant; do you have any
23 idea?

24 MR. ROSA: Well, to give you a little
25 indication of what I know, and this kind of
(COMMUNITY CHARACTER ISSUE)

□

1 burns me a little, but the Ron De Voo
2 Restaurant up in Gilboa, the cost to bring
3 that up into compliance with the DEP
4 regulations was probably four to five-fold of
5 what the entire business was worth.

4111

6 In fact, the scuttlebutt right now is
7 that the City bought the SPEDES permit out for
8 \$650,000, the assessed valuation, and the
9 appraised valuation was somewhere around 175,
10 150.

11 MR. YOUNG: So the cost for a small

Vol. 16 (8-24-04crossroads)
12 restaurant like the Ron De Voo, which is on
13 Route 30, to comply with the City
14 regulations --

15 MR. ROSA: It was over a million
16 dollars.

17 MR. YOUNG: And way more than that
18 restaurant would be worth on the market?

19 MR. ROSA: Absolutely.

20 MR. YOUNG: So how could anyone do a
21 new restaurant along the Route 28 corridor
22 unless they were tied into some existing
23 septic or some existing sewer system?

24 MR. ROSA: They would have to have a
25 deep pocketbook.

(COMMUNITY CHARACTER ISSUE)

1 MR. YOUNG: I know the prior witness⁴¹¹²
2 talked about how we were missing out on
3 opportunities, given we had so much open land;
4 in particular, the City Land Acquisition
5 Program was going to create the opportunity
6 for recreational uses.

7 Do you see the City's land acquisition
8 program as creating opportunities for tourists
9 for recreational uses?

10 MR. ROSA: No.

11 MR. YOUNG: Can you explain.

12 MR. ROSA: If you're coming here for
13 the weekend, first of all, you have to apply
14 for a access permit. Access permit takes
15 anywhere from two -- I've heard people -- as
16 long as 60 days. So if you're coming to the
17 Catskills to go fishing in the Pepacton

18 Reservoir, you better make sure you apply for
19 that permit two months in advance.

20 MR. YOUNG: What about if I just
21 wanted to go hiking?

22 MR. ROSA: You can't. You have to get
23 an access permit.

24 MR. YOUNG: Where do I get an access
25 permit?

(COMMUNITY CHARACTER ISSUE)

1 MR. ROSA: You contact the DEP office,⁴¹¹³
2 the New York City DEP office in Kingston or
3 Shokan or one of the other ones in the area.

4 MR. YOUNG: You're saying I can't even
5 go onto City property to hike, to fish without
6 first going --

7 MR. ROSA: And getting a permit,
8 that's correct.

9 MR. YOUNG: Your resume indicates you
10 were involved in the formation of the
11 Coalition and the MOA process. Can you
12 describe what your involvement was in both the
13 formation of the Coalition and the MOA.

14 MR. ROSA: I helped organize the
15 Coalition of Watershed Towns. All the
16 meetings took place here in Margaretville.
17 The executive committee was formed out of the
18 Coalition of Towns. All those meetings also
19 took place in Margaretville, actually at my
20 office when I was the Town Supervisor.

21 I was also the Delaware County
22 go-between person between the City of New York

23 Vol. 16 (8-24-04crossroads)
24 in the negotiations and the Delaware County
25 Board of Supervisors -- I was also a member of
the Delaware County Board of Supervisors, the
(COMMUNITY CHARACTER ISSUE)

4114

1 legislative body of Delaware County.

2 MR. YOUNG: When the MOA --
3 negotiations were complete, what position did
4 you take as a Town Board member and as a
5 County Board of Supervisor member?

6 MR. ROSA: Well, I was out in front,
7 trying to convince the other towns that there
8 is a good agreement, the agreement of economic
9 development and environmental issues and water
10 quality go hand in hand. I actually went town
11 to town to encourage the other towns to sign
12 the agreement.

13 MR. YOUNG: You were here this morning
14 when you heard some testimony regarding
15 potential economic impacts of this project; is
16 that correct?

17 MR. ROSA: Yes.

18 MR. YOUNG: It was sort of insinuated
19 that those economic impacts were negative.
20 Was that your understanding of what the theme
21 of the MOA was, that further development was
22 negative?

23 MR. ROSA: No, not at all. The fact
24 is, if you look in the whereas clauses in the
25 agreement, it tells you right straight out
(COMMUNITY CHARACTER ISSUE)

4115

1 that water quality and economic development go
2 hand in hand.

3 MR. YOUNG: So when you had signed the
4 MOA, what was your understanding regarding
5 projects such as a new destination resort in
6 the Route 28 corridor?

7 MR. ROSA: I don't know so much about
8 the destination resort, it was any project,
9 whether a large project or small project; if
10 you met regulations, you would be allowed to
11 do it.

12 MR. YOUNG: We would be able to have
13 development provided we --

14 MR. ROSA: That's correct.

15 MR. YOUNG: Is that how you sold --

16 MR. ROSA: That's how we sold it to
17 our constituents, yes.

18 MR. YOUNG: In the MOA or in the
19 regulations that the City was allowed to adopt
20 pursuant to the MOA, did we delegate to them
21 land use decisions?

22 MR. ROSA: No, that's something that
23 always bothered some of the local officials,
24 including myself. So often you read in the
25 newspapers that -- saying we took money and
(COMMUNITY CHARACTER ISSUE)

1 gave up local land use to the City of New
2 York.

4116

3 That's absolutely false. We never
4 gave up local land use issues. The only thing
5 that we ever gave up was stricter stormwater
6 regulations from the City of New York. That's
7 all we gave up. We did not give up land use.

8 And our local government tries to project our
9 home rule issues, and it's just a false
10 statement that the newspapers are making.

11 MR. YOUNG: I'm going to show you CPC
12 Exhibit 96, and ask you to read on page 2 of
13 that exhibit, the first full photograph,
14 second sentence, which talks about the amount
15 of roads in Middletown. Can you read the
16 first few sentences.

17 MR. ROSA: "According to the U.S.
18 Census, roads built between 1995 and 2003
19 suggest substantial development activity in
20 the areas, remote from villages and hamlets.
21 In 1995, there were 69 miles of roads in
22 Middletown. In 2003, there were 79 miles of
23 roads, 14 percent increase."

24 MR. YOUNG: When you were Supervisor,
25 how many miles of road were there in
(COMMUNITY CHARACTER ISSUE)

4117

1 Middletown?

2 MR. ROSA: When I took office January
3 1st, 1990, there was 134 miles of town road,
4 18 miles of state and county road in the Town
5 of Middletown.

6 when I left office to assume the
7 position I'm in now, which was in March --
8 actually April 1st of 1999, there was still
9 134 miles of town road and 18 miles of state
10 and county road.

11 MR. YOUNG: To your knowledge, are
12 there any more roads today than in the past?

13 MR. ROSA: No, there is not. That's
Page 168

14 an easy number to get because the Town Highway
15 Superintendent who is responsible for all the
16 highways in the township has to file with the
17 Delaware County Highway Department the mileage
18 of roads.

19 MR. YOUNG: I also show you Exhibit 95
20 which happens to be -- Exhibit 95 from CPC --
21 which is a map of the Town of Middletown and
22 it shows in red what are considered to be new
23 2003 roads. Can you identify on that map
24 where your house is located.

25 MR. ROSA: It's right where they have
(COMMUNITY CHARACTER ISSUE)

1 a new road, and that road has been there -- ⁴¹¹⁸
2 I'm 52 years old, my father is 86 years old --
3 that's our old homestead. There's no new road
4 there.

5 MR. YOUNG: This particular exhibit,
6 Exhibit 95, together with Exhibit 96,
7 indicates that since the issuance of the
8 program in 1997, I guess in the seven years
9 since 1997, that there were 68 new homes
10 built-in Middletown, which I take it, if you
11 divide 7 into 68, about nine to ten homes a
12 year? Does that sound right to you?

13 MR. ROSA: Yeah, between eight and ten
14 homes a year is probably about what we do.

15 MR. YOUNG: It makes an issue
16 regarding whether those homes are in the
17 hamlets or outside the hamlets. If you were
18 going to construct a home in a hamlet today in

19 Middletown, could I get a permit to construct
20 a home on a septic system in any of those
21 hamlets?

22 MR. ROSA: Well, the ones without
23 infrastructure, I believe it would be
24 difficult, because most of that is all postage
25 stamp lots. It would be next to impossible to
(COMMUNITY CHARACTER ISSUE)

4119

1 get a 75A compliance, septic system
2 compliance.

3 ALJ WISSLER: What does that mean?

4 MR. ROSA: 75A, Department of Health
5 has regulations that you have to meet for the
6 number of bedrooms, a system that you are
7 required to build for your septic. It's the
8 size of your field for proper --

9 MR. YOUNG: In addition to the size of
10 the field, in these communities do you have
11 the separation that 75A requires between
12 groundwater and the separation above bedrock?

13 MR. ROSA: Some do, some don't. I
14 would say the majority of them don't.

15 MR. YOUNG: Who enforces Article 75A
16 in the Town of Middletown?

17 MR. ROSA: City of New York.

18 MR. YOUNG: So in Middletown --
19 there's a lot of talk about development in the
20 hamlets. How do you develop in the hamlets if
21 you can't get a septic permit?

22 MR. ROSA: You can't.

23 MR. YOUNG: You have to connect up to
24 an existing wastewater treatment plant?

25

MR. ROSA: In the Town of Middletown,
(COMMUNITY CHARACTER ISSUE)

1

the Margaretville plant is owned by the City ⁴¹²⁰

2

of New York.

3

MR. YOUNG: What about the

4

Fleischmanns plant?

5

MR. ROSA: There is no plant in

6

Fleischmanns.

7

MR. YOUNG: What about Shandaken?

8

MR. ROSA: There is no plant.

9

MR. YOUNG: What's the other one?

10

MR. ROSA: Pine Hill has one.

11

MR. YOUNG: Who owns that?

12

MR. ROSA: City of New York.

13

MR. YOUNG: As a resident of the Town

14

of Middletown, do I have any right to connect

15

to that plant; do you know? Do you know what

16

the City's position is on that?

17

MR. ROSA: You have to apply for an

18

application. Here in the Town of Middletown,

19

the City can say yea or nay.

20

MR. YOUNG: So it's the City's plant?

21

They can tell you whether you can connect up

22

or not?

23

MR. ROSA: Yes, we have had a

24

problem -- with a couple of instances, we have

25

had that problem. Usually the City is pretty

(COMMUNITY CHARACTER ISSUE)

1

good about it. They want you to connect. ⁴¹²¹

2

MR. YOUNG: Now, for a new

3

development?

4 MR. ROSA: Well, we have never had a
5 new development in the Margaretville/Arkville
6 area where the sewer plant is. I couldn't
7 tell you. I do know that there was a proposal
8 for a new motel, Margaretville Motel, he was
9 given a letter to deny that. Since then, I
10 understand that that letter has been
11 withdrawn, telling him he could apply for an
12 application to hook up. It doesn't really say
13 he's going to get it or not.

14 MR. YOUNG: Anything else you want to
15 add to the record?

16 MR. ROSA: The only thing I would like
17 to add to the record is that I believe in this
18 process. I hope that we can all sift through
19 the rhetoric -- I feel sorry for you -- but I
20 believe in this process.

21 I think the SEQRA process has to
22 address two things -- it's a two-way tract.
23 It not only has to address the sensitivity of
24 the environment here, but it also has to
25 address the economic problems that we have
(COMMUNITY CHARACTER ISSUE)

1 here, and I hope what this whole process comes⁴¹²²
2 through a balance of that.

3 MR. YOUNG: I would like to reserve on
4 this issue, your Honor. There has been a lot
5 of talk about sort of the induced growth and
6 the potential for all these development, but
7 we have to look at that potential vis-a-vis
8 the set of regulations that apply.

9 And the reality is that outside of
Page 172

10 connecting to an existing sewage treatment
11 plant, you can't have significant development.
12 I couldn't put a restaurant in on a septic
13 system in this watershed, for the most part.
14 I have to go to a wastewater treatment plant,
15 and if I go to a wastewater treatment plant, I
16 have to pay for it myself, and it's literally
17 millions of dollars.

18 So we're not going to have these small
19 hotels with these small restaurants. That's
20 one thing we did give up when we signed the
21 MOA. Where we can do development is where
22 there's an existing sewer system, but the only
23 two existing sewer systems in this particular
24 area are both owned by the City of New York.

25 I represent the Town of Middletown and
(COMMUNITY CHARACTER ISSUE)

1 we were trying -- and we have been trying --⁴¹²³
2 to get some control over who can connect up,
3 and the City absolutely refuses to give us any
4 control, and the City makes it absolutely
5 clear that they will never, ever expand that
6 plan.

7 Our ability to develop within the
8 hamlets -- we can develop within Pine Hill, we
9 can develop within Middletown -- provided the
10 City consents based on using their system.

11 Outside of that, we really don't have
12 that much opportunity for development, unless
13 you do something of a large enough scale that
14 you can overcome the costs of putting up a

15 vol. 16 (8-24-04crossroads)
wastewater treatment system with
16 microfiltration.

17 when they talk about all this induced
18 growth and they talk about all these things
19 happening, it's not the reality of our
20 watershed. We'll supplement this in writing
21 showing you the regulations and showing you
22 what these systems cost.

23 ALJ WISSLER: Show me in the MOA too.
24 I think you gave me some paragraphs already.

25 MR. YOUNG: Yes. For existing
(COMMUNITY CHARACTER ISSUE)

1 facilities, the City of New York has to pay ⁴¹²⁴
2 for the upgrade. For the existing private
3 facilities, they pay for the upgrade. That's
4 why when we got to the Ron De Voo Restaurant,
5 it was going to cost so much to upgrade it,
6 the guy just took the money and ran.

7 But for new facilities, the City
8 claims they have no obligation to pay for the
9 upgrade. You're on your own is what the
10 position is.

11 So for this particular project, it is
12 up to the developer to pay for whatever this
13 wastewater treatment plant is going to cost.
14 Under law, the City acknowledges that if it's
15 a public facility, the City has the obligation
16 to pay the incremental costs -- but only for
17 public facilities.

18 We're done.

19 MR. RUZOW: We would like to respond
20 to a number of the comments that we heard

21 today, if I can.

22 (RESUME OF EDWARD L. ARACE RECEIVED
23 AND MARKED AS APPLICANT'S EXHIBIT NO. 130,
24 THIS DATE.)

25 (3:39 - 3:59 P.M. - BRIEF RECESS
(COMMUNITY CHARACTER ISSUE)

4125

1 TAKEN.)

2 MS. BAKNER: This will be 131, and it
3 is a letter dated August 20th, 2004 to Alex
4 Ciesluk from Graham Trelstead at AKRF and it
5 addresses forest issues.

6 (LETTER FROM AKRF ENVIRONMENTAL AND
7 PLANNING CONSULTANTS FROM GRAHAM L. TRELSTEAD
8 DATED 8-20-04 RECEIVED AND MARKED AS
9 APPLICANT'S EXHIBIT NO. 131, THIS DATE.)

10 MS. BAKNER: 132 is Adirondack Golf
11 Courses... Past and Present.

12 (BOOK, "ADIRONDACK GOLF COURSES...
13 PAST AND PRESENT" RECEIVED AND MARKED AS
14 APPLICANT'S EXHIBIT NO. 132, THIS DATE.)

15 MS. BAKNER: This is 133, New York
16 State Digital Imagery from 1997, and it shows
17 the clearing limits and the property boundary,
18 as well as the surrounding countryside.

19 (NEW YORK STATE DIGITAL IMAGERY FROM
20 1997, DATED 8/11/04 RECEIVED AND MARKED AS
21 APPLICANT'S EXHIBIT NO. 133, THIS DATE.)

22 MR. RUZOW: Your Honor, I would like
23 to introduce Mr. Edward Arace.

24 Mr. Arace, would you share with us
25 your current employment.

(COMMUNITY CHARACTER ISSUE)

1 MR. ARACE: Currently I'm a consultant ⁴¹²⁶
2 with a consulting firm of our own. We do
3 government affairs and economic development
4 consulting.

5 MR. RUZOW: You previously were
6 employed by New York State?

7 MR. ARACE: Yep. I retired in 2002
8 from my job -- take it the other way; I have
9 14 years with the State Senate, and in that
10 position, I did -- I was Director of the
11 Corporations Committee. I had six years with
12 the Senate Environmental Conservation
13 Committee. I was Director of Legislative
14 Programming for the Senate Vice President.

15 And then in 1995, I left the
16 legislature and joined the executive branch,
17 and I was appointed Regional Director for
18 Economic Development, the Department of
19 Economic Development for the Hudson Valley
20 Region. That takes in the seven counties
21 north of New York City; Westchester, Putnam,
22 Dutchess, Rockland, Orange, Sullivan and
23 Ulster County.

24 So I was in charge of the overall
25 economic development for this entire region.
(COMMUNITY CHARACTER ISSUE)

1 Later it was merged, and became what's total ⁴¹²⁷
2 called Empire State Development Corporation,
3 which is three State agencies together, and I
4 was the vice president of that agency for the
5 State.

6 Prior to that, my family business was
7 in Kingston, New York. We were in the
8 electronics business. And actually back in
9 the '60s, used to come up to this area here.
10 I spent the first 50 years of my life, born
11 and raised in Kingston, Ulster County. So I'm
12 an Ulster County boy.

13 MS. ROBERTS: Could I ask a question.
14 What year were you on the Empire Development
15 Corporation?

16 MR. ARACE: '95 to 2002.

17 MR. RUZOW: One of your functions in
18 working for ESDC was to promote the economic
19 health of this area, Ulster County, as well as
20 the Hudson Valley region?

21 MR. ARACE: Absolutely.

22 MR. RUZOW: In that capacity, did you
23 serve as a ex officio member of any boards in
24 the Hudson Valley?

25 MR. ARACE: I had Charlie Gargana, who
(COMMUNITY CHARACTER ISSUE)

1 is the chairman of Empire State Development ⁴¹²⁸
2 Corporation, I had his seat on the Hudson
3 Valley Greenway. So I was involved in that
4 effort.

5 MR. RUZOW: In the course of
6 performing your functions for the State, did
7 you have occasion to look at the opportunities
8 for attracting businesses to the Hudson
9 valley, including Ulster County?

10 MR. ARACE: Yes. Attraction is your

11 hardest part of it. Economic development is
12 broken down into three things: attraction,
13 retention and expansion of existing
14 businesses.

15 In the economic development world, the
16 glory is to attract a large company to your
17 region, bring in a lot of jobs, create jobs.
18 Then, depending on the type of business that
19 is, you look at the multipliers that it would
20 bring to an area, and you always try to create
21 wealth. The key is to create wealth for an
22 area or region.

23 And you look to build on what would be
24 an existing cluster or emerging cluster of
25 businesses, something to help you determine
(COMMUNITY CHARACTER ISSUE)

□

1 what goes best in an area and of course also ⁴¹²⁹
2 work with the local government and community
3 people to determine what they would like to
4 see in their area.

5 MR. RUZOW: When you talk about
6 clusters of development, in Ulster County and
7 the western side of Ulster County, can you
8 describe the types of clusters of economic
9 activity that exist?

10 MR. ARACE: That's pretty easy. You
11 only have one. It's tourism. We looked at
12 this area for a couple of things. Nothing
13 works but tourism. You have a tourism
14 cluster, so to speak, right now.

15 The State of New York, as you know,
16 owns and operates Belleayre Ski Center, and

17 over the course of time that I was there, more
18 money was actually put into that -- not at my
19 request but through other people. That is
20 really -- once you come up out of Kingston,
21 that's all you really have to build on.

22 This particular project, and I -- I am
23 only familiar with it from reading some stuff
24 over the weekend and have known Dean Gitter
25 back in the days when we were looking at the
(COMMUNITY CHARACTER ISSUE)

1 Catskill Interpretive Center when I was with⁴¹³⁰
2 the State Senate for here for this area. I
3 met him at that point in time there. This is
4 actually a huge win for this area, this
5 region.

6 MR. RUZOW: When you say "this" being?

7 MR. ARACE: The project of having two
8 hotels, 400 rooms, two golf courses and to
9 make a marriage with that with Belleayre is
10 just, you know -- something that would almost
11 be impossible to attract here if you didn't
12 have somebody from the area who had faith in
13 this project and the region to make it happen.

14 For my old job, for us to go out and
15 attract somebody to put a quarter of a billion
16 dollar investment up here -- never happen.

17 MR. RUZOW: Why is that? What are the
18 circumstances -- you've been here all day and
19 you have heard a number of people speak about
20 a precedent that if this project were to be
21 approved, that the precedent for another

Vol. 16 (8-24-04crossroads)
22 project -- that, for example, as they were
23 quoting from the EPA letter -- because of
24 concerns of this project being able to
25 overcome issues of slope by location in the
(COMMUNITY CHARACTER ISSUE)

1 New York City Watershed regs, et cetera, that ⁴¹³¹
2 oh, my God, something else might follow it.
3 You don't share that view?

4 MR. ARACE: I don't share that view.

5 MR. RUZOW: why is that?

6 MR. ARACE: The risk would be too
7 great. The competition for the same
8 investment dollars is too great, to come here
9 to the Catskills when you can put a resort
10 someplace else.

11 we're a long way from people. This
12 area, you get off of Route 28 -- come around
13 the Thruway, get on Route 28, you hit
14 45-mile-an-hour section, it slows you down,
15 there's no other industry but tourism that's
16 going to happen. But this is a long way to
17 go.

18 It's beautiful up here. Catskill Park
19 has been preserved, and it's doing a great
20 job, but you're not going to find hotel chains
21 willing to come up here or entrepreneurs
22 willing to get into it. It's just not that
23 great a investment.

24 All you have to do is look at Sullivan
25 County. None of the hotels are really being
(COMMUNITY CHARACTER ISSUE)

1 developed down there without one thing, ⁴¹³²

2 gaming. They can't make those hotels work
3 without having that.

4 This project -- actually in my time
5 with Empire State Development, we saw a lot of
6 ideas, not only here in this county, but all
7 the counties, for spas, museums, aquariums,
8 hotels. 99 percent of those never got even
9 close to off the ground.

10 This project -- the money that's been
11 spent just on the permitting of this project
12 goes beyond anything that those projects ever
13 got near.

14 MR. RUZOW: I think Kingdon Gould's
15 suggestion that because of somebody's
16 sensitivity or interest in an area willing to
17 invest the capital. Dean Gitter,
18 Mr. Pasternack, the Fishers, that's an
19 anomaly, you don't normally see that in the
20 investment world in terms of risk-taking?

21 MR. ARACE: Look around the region.
22 The only thing you have comparable to this is
23 Alan Gerry's investment in Sullivan County.
24 why? Because he lives there. Born and raised
25 there.

(COMMUNITY CHARACTER ISSUE)

4133

1 ALJ WISSLER: What is that?

2 MR. ARACE: He owns the former
3 Woodstock site.

4 MR. RUZOW: Bethel.

5 MR. ARACE: Very wealthy, private
6 individual. There's a large trust that he put

7 up to develop and do something good for the
8 community, and he's trying to do something
9 there, and the State is also helping him.

10 MR. RUZOW: Can you explain -- from
11 your perspective and your background, you
12 mentioned that tourism is the cluster, the
13 economic center for this region. What is its
14 importance to the region in terms of creation
15 of wealth? What do you mean by creation of
16 wealth?

17 MR. ARACE: Creation of wealth is the
18 dollars come in and stay in your community.
19 In this case, you're doing something that is
20 going to attract a lot of people into the
21 area, not only to work in the hotel -- 500
22 jobs here and a quarter of a billion
23 dollars -- that's an amazing feat to have.
24 And because of its size, it is going to be a
25 draw and a year-round facility with the golf
(COMMUNITY CHARACTER ISSUE)

4134

1 and the skiing.

2 So that money comes in. People
3 service that. Local businesses, local
4 people -- we talk about job creation and there
5 was a number of people who talked about job
6 creation here. We're also going to create
7 entrepreneurs. You're going to have people
8 that are going to have businesses that are
9 going to feed off that resort. That's a
10 positive, just servicing the resort itself.

11 There was also talk here today, which
12 in my world, you're always looking to attract
Page 182

13 jobs. Some people were saying there may not
14 be enough people here to work. You know,
15 that's a great thing. Having people commute
16 from someplace else to here is a good thing.

17 MR. RUZOW: Our experience has been
18 that -- as we drive here in the early
19 morning -- almost all the other traffic other
20 than us is on the other side of the road
21 heading to Kingston. The reverse of that is a
22 possibility?

23 MR. ARACE: Reverse commute. Instead
24 of outsourcing jobs, you're bringing jobs back
25 into the area.

(COMMUNITY CHARACTER ISSUE)

4135

1 MR. RUZOW: Earlier proffer of
2 testimony -- we don't quite call it
3 testimony -- has been that the Greene
4 County/Ulster County and Delaware County
5 areas, not just the two towns, are an
6 appropriate and likely source of the labor
7 pool for much of the hotels' jobs.

8 MR. ARACE: Actually, it's not only
9 that. If you look throughout the Hudson
10 valley, the whole area, we're a regional
11 economy. Where jobs are created, people live
12 where they want to live, and they will commute
13 to their jobs, and there are all kinds of jobs
14 that people commute for.

15 MR. RUZOW: So a 30- or 40-minute
16 commute, based on your experience, is that an
17 unusual thing? Do you have to be a

18 professional to want to commute those kind of
19 distances?

20 MR. ARACE: Absolutely not. You'll
21 find bartenders that will commute that.
22 That's no distance at all.

23 MR. RUZOW: Why do you pick
24 bartenders?

25 MR. ARACE: It just happens to be a
(COMMUNITY CHARACTER ISSUE)

4136

1 service-type industry. Bartenders,
2 waitresses, chefs -- doesn't have to be that
3 I'm a professional, I'm a lawyer, doctor,
4 accountant and I'm going someplace. Any jobs.
5 People travel throughout this valley for
6 manufacturing jobs.

7 MR. RUZOW: For a whole variety of
8 things?

9 MR. ARACE: Everything.

10 MR. RUZOW: The importance of a
11 destination resort as opposed to simply a
12 hotel, there have been suggestions, and you
13 heard some of that today, that in an earlier
14 study, the suggestion that there would be four
15 or five 100-room hotels along the corridor;
16 and later in a later report, the suggestion is
17 that perhaps a destination resort could be
18 built.

19 what is the practicality of simply
20 building a hotel without some sort of
21 attraction to make it a year-round -- or of
22 interest as a destination, rather than simply
23 a place to stay if you stop along the road?

24 MR. ARACE: Impossible. Where are you
25 going to raise the capital? Who is going to
(COMMUNITY CHARACTER ISSUE)

1 finance this? Nobody. They're going to do an ⁴¹³⁷
2 economic model. You get a model that comes
3 out this thick; everything in the area, how
4 many stays there are in the area, how many
5 businesses there are in the area -- you
6 wouldn't be able to finance it.

7 It's ridiculous that five hotels
8 coming up here -- you wouldn't build one. You
9 couldn't finance the first one. It takes a
10 mass to make this happen.

11 MR. RUZOW: You heard with reference
12 in the Village of Margaretville, or outside
13 the Village of Margaretville, there's a hotel
14 that's being proposed to be converted from a
15 small hotel, 18 rooms, 20 rooms, to a Best
16 Western with 67 rooms; but in order to do
17 that, they have to tie into the New York
18 City's Margaretville sewage treatment plant.

19 That business, according to the owner,
20 is viable -- he's done his market studies and
21 with ski business in the wintertime and at \$97
22 a night, he feels that he can make it. Does
23 that make sense to you?

24 MR. ARACE: Yes. He's a local person,
25 he's here, he already has an existing piece of
(COMMUNITY CHARACTER ISSUE)

1 property. You build these things -- they're ⁴¹³⁸
2 built on per key price for the land. He's a

3 local, it's a small hotel, 60-some rooms -- I
4 take it it's going to be flagged.

5 MR. RUZOW: Best Western is what we
6 were told.

7 MR. ARACE: If you leave Kingston
8 right now, there's not a flag hotel all the
9 way up here. I didn't pass a flag hotel,
10 meaning a major chain, where there's a
11 reservation system, which you rely on a lot in
12 that business.

13 MR. RUZOW: We heard more about the
14 flag hotel in the context of trying to attract
15 a major -- like a Westin or something -- scale
16 of the hotel, we had heard a proffer on that
17 as well. Are you familiar with any efforts,
18 prior efforts by the State, to attract
19 destination resorts in the Hudson Valley? We
20 also heard -- reference to the Mohonk was
21 made.

22 MR. ARACE: Yes. Actually -- in my
23 years with the Greenway, not only this -- when
24 I was with the Empire State Development
25 Corporation, but when I was with the Senate
(COMMUNITY CHARACTER ISSUE)

1 EnCon Committee, served on that for six years⁴¹³⁹
2 also, having the chair seat, we were always
3 being asked -- we need a destination hotel.
4 You need a destination hotel. Hudson Valley
5 needs a destination hotel.

6 We don't have it, and this, I think,
7 is going to be a tremendous, tremendous thing
8 for the area as far as the economy goes,

9 because there's nothing else you can bring
10 here that would create the type of jobs and
11 bring the type of investments and pay the type
12 of property taxes that would sit on this land
13 and kind of match up with it. This is a
14 natural match with Belleayre.

15 Any other industry -- a headquarters,
16 you're never going to get here. You're not
17 going to get a modern distribution center, too
18 far away from the major highways -- and
19 they're too long, too big.

20 When we're trying to build things
21 today in the cities of the Hudson Valley,
22 almost impossible to build in the cities of
23 the Hudson Valley.

24 We always talk about rebuilding those
25 things as the engines of our economy, but
(COMMUNITY CHARACTER ISSUE)

1 they're too small. You go in and say you need ⁴¹⁴⁰
2 50, 100, 200 acres, which the companies are
3 looking for, doesn't happen. That's why so
4 many things are built on green field.

5 You happen to be lucky that you have
6 something that's right at the foot of
7 Belleayre where there were resorts, and it's a
8 natural.

9 MR. RUZOW: There's been a concern --
10 you heard it voiced by Kingdon Gould and Alan
11 Rosa -- that the economy of Margaretville --
12 we're picking on Margaretville because we're
13 here today, that in terms of its businesses

14 during the week, they they're shut or limited
15 services available to them.

16 And there are other hamlets. There's
17 Phoenicia, which we experienced the same thing
18 with -- same thing in a different way, a
19 little more depressed in Fleischmanns and Pine
20 Hill.

21 But the hotel, the spinoff, we've
22 heard talk about induced growth and the
23 spinoff effects, do you see, based on your
24 experience with hotel, resort-type hotels,
25 that -- those communities benefiting from the
(COMMUNITY CHARACTER ISSUE)

4141

1 economic effects?

2 MR. ARACE: Absolutely. The
3 resort-type hotel is going to bring people in
4 on a weekly basis.

5 Just to go back a second, we talked
6 about building those 100-room hotels. Those
7 hotels need to survive on business travelers
8 that can use your hotel Monday through Friday.
9 The weekends are a plus. You can't have a
10 hotel that is not doing business during the
11 week and only doing business on the weekends.
12 You're going to go broke.

13 MR. RUZOW: We heard about a small
14 inn, the Alpine Inn, where that's what they
15 do, and they do reasonably well during the
16 wintertime, weekends they're full in ski
17 season -- but that's a small, family-run
18 business.

19 MR. ARACE: By having something of
Page 188

20 this size, the magnitude, you're bringing in
21 conventions, business groups to come into the
22 area, you're bringing in golfers. They're
23 here all day. They're here for two, three
24 days. There's a tremendous amount of spinoff.
25 That's your multiplier that you look for.
(COMMUNITY CHARACTER ISSUE)

4142

1 MR. RUZOW: There was a comment about
2 the hotel with workers that might spur wage
3 inflation, and that might be bad for certain
4 businesses that are wavering or limited in
5 terms of their current economic status. What
6 is your perspective on that?

7 MR. ARACE: I can tell you the
8 perspective of the State of New York, wage
9 inflation is good. We're supposed to be
10 looking for higher -- you look to pick the
11 higher fruit on the tree. You want people to
12 make more money. You want to increase
13 somebody's chance of having a better life.

14 If a business is marginal, it's
15 marginal for a lot of reasons, and if a dollar
16 or two an hour for its help -- we're going to
17 change its chances of success, it may need
18 another business plan.

19 And there are many programs that both
20 the State and local governments have. Chester
21 Straub has a good retention program and they
22 help businesses, but the fact that it would be
23 bad -- to say something that would be bad to
24 increase the wages of people in this area,

Vol. 16 (8-24-04crossroads)
which have not kept pace with the rest of the
(COMMUNITY CHARACTER ISSUE)

25

4143

1 region, would be false.

2 MR. RUZOW: Not a good thing?

3 MR. ARACE: Not a very good thing at
4 all.

5 MR. RUZOW: Your Honor, any questions?

6 ALJ WISSLER: No.

7 MR. RUZOW: We have a few responses we
8 would like to share with respect to some of
9 the other comments we heard today.

10 First, with respect to the
11 presentation by RPA, we reserve the
12 opportunity to respond further in writing
13 after we have a chance to look at what is
14 there and any supplementations of corrections
15 of data, and we will vet some of that data
16 ourselves.

17 with respect to Ms. Roberts' comments
18 about Mr. Gitter and his involvement in the
19 activities of either the Route 28 Corridor
20 study, or the Central Catskill Planning
21 Alliance work, I believe Mr. Young
22 correctly -- with Mr. Rosa -- correctly
23 described that he was actively involved with
24 the Route 28 Corridor Committee, he chaired
25 that. It says so right on the report.
(COMMUNITY CHARACTER ISSUE)

4144

1 It was long before any accumulation of
2 any property or any interest that would
3 support this resort -- many years before.
4 Indeed, part of his response was the absence

5 of someone else coming forward to take
6 advantage of the information in those studies
7 to suggest that there be a resort development.
8 The record speaks for itself.

9 It is inappropriate to suggest that
10 those reports, with the people who served on
11 those committees, somehow in any way were
12 biased towards the eventual proposal of this
13 project, and I say that for the record.

14 I would like John Feingold from AKRF
15 to address some of the comments that we heard
16 earlier from a number of the speakers. But I
17 would first note that with respect to
18 Mr. Darrow, he indicated that he wasn't a
19 scientist in terms of testing the fishing, but
20 he was also not an economist either, and the
21 notion that the decline of the fly fishing --
22 as much as it declined in the Esopus after the
23 1996 floods and the effects of the Shandaken
24 Tunnel on the lower Esopus in particular --
25 the decline of this region was occurring a
(COMMUNITY CHARACTER ISSUE)

4145

1 long time before that.

2 Fly fishing is an important economic
3 and social activity in this region. There's
4 nothing that we're doing or want to do that
5 would impinge that in any way, but it is not
6 the cause of the region's economic decline.

7 Mr. Feingold, would you share with
8 us -- you had spoken before, June 9th, was it?

9 MR. FEINGOLD: June 9th, and again on

Vol. 16 (8-24-04crossroads)
July 12th, I think.

MR. RUZOW: Would you share with us some additional background that you have with respect to this region that I'm not sure you touched on.

MR. FEINGOLD: Sure. I think it's in my resume, which has been submitted, but for the purpose of the conversation today, I wanted to mention that from the period of 1991 through 1995, I was the New York Director of the Regional Plan Association, the same organization that Tom Dallessio is the New Jersey Director of; and during that period, Regional Plan, and specifically I managed a consulting contract with the New York City Department of Environmental Protection looking
(COMMUNITY CHARACTER ISSUE)

at ways that the towns, villages and hamlets⁴¹⁴⁶ of the Catskill Delaware watershed could develop and grow within the context of preserving and protecting New York City's water quality.

At the time -- this was in the early '90s -- this was in somewhat in response to the watershed regulations coming out and unpleasantly surprising Alan Rosa and a number of other supervisors and other people up here, and on behalf of DEP, we were looking at ways that municipalities through their home rule powers could grow both in the hamlets and the villages and in the road corridors in a way that met local employment, job growth and

16 economic development objectives, while at the
17 same time meeting the City's water quality
18 objectives.

19 And this was an effort that had me
20 literally commuting from the City, and later
21 Westchester County, to the Catskill Delaware
22 watershed; Shandaken, Middletown, Arkville,
23 Hunter, Town of Hunter, Tannersville, all the
24 communities I worked with -- on a two- or
25 three-time-a-week basis spread out over three
(COMMUNITY CHARACTER ISSUE)

1 or four years, getting to know intimately the⁴¹⁴⁷
2 planning processes, as well as the business
3 development constraints, goals and objectives.

4 Certainly within the past several
5 years, I wanted to stress that AKRF, in
6 preparing the economic analysis and induced
7 growth studies that we're talking so much
8 about over these days, we have spent two and a
9 half to three years on these studies with a
10 number of staff.

11 On July 12th, we had four people,
12 including myself, up here presenting, coming
13 up here on a regular basis, meeting with local
14 officials, meeting with business owners,
15 getting to understand what effect a resort
16 like Belleayre would have on the
17 municipalities, on the local business
18 environment.

19 So it's really in that context that we
20 prepared our studies and conclusions.

21 MR. RUZOW: We heard from Professor
22 Daniels today, and he was making certain
23 assumptions. It was certainly clear to us
24 that he may not have had a long opportunity to
25 review the DEIS or perhaps in entirety the
(COMMUNITY CHARACTER ISSUE)

1 DEIS, but he was making certain assumptions
2 about where this community -- the community
3 that the project is situated in, I mean that
4 broadly, sits in terms of its economic status,
5 boom versus bust in the course of things.
6 Would you comment on that.

4148

7 MR. FEINGOLD: Sure. Dr. Daniels is a
8 well-respected and known person in this field,
9 particularly in the western United States,
10 although he does teach at Penn. A lot of his
11 discussion and conclusions were based on the
12 work that he has published, particularly the
13 book that he cited, Rural Planning and
14 Development in the U.S., which does come up
15 with this typology of development in rural
16 areas based largely, as he quite honestly
17 said, on 1960s and 1970s resort developments
18 in rural areas.

19 A footnote to that, of course, is that
20 in those cases, he's looking primarily at
21 western examples. He mentioned Keystone.
22 This is the Telluride, Keystone -- places in
23 Colorado -- Beaver Creek, places that
24 developed in the '60s and the '70s at a time
25 which was pre-National Environmental Policy
(COMMUNITY CHARACTER ISSUE)

1 Act, pre- many of the state and local growth
2 controls and environmental controls that we
3 now have in place.

4 So he looked at -- this development,
5 at the Catskills, through the lens of that era
6 and of those case studies, and cited, as we
7 remember, he talked about pre-boom stage,
8 secondary boom stage, and a post-boom stage.

9 what his analysis ignores is the fact
10 that the Catskills has been a region -- it has
11 been discovered. The pre-boom stage is when a
12 place gets discovered. Catskills has been
13 used extensively recreationally as a resort
14 place for well over 100 years. And we've
15 heard a lot of testimony to that effect.

16 what we see in the current economy and
17 the decline in the hotel industry and the
18 recreational industry in the Catskills is that
19 the Catskills are now in a post-boom stage,
20 well past being discovered, and perhaps now in
21 the stage of regrowing and rebirthing.

22 MR. RUZOW: He mentioned -- and I
23 believe Mr. Dallessio mentioned, and perhaps
24 Ms. Kopaskie also mentioned -- the principles
25 of smart growth as sort of applied to a
(COMMUNITY CHARACTER ISSUE)

1 destination resort. I would like to say that,
2 based on what I heard today, there can be no
3 smart growth -- you can't have destination
4 resorts in New York -- unless you're building
5 in New York City -- anymore based on what I

6 vol. 16 (8-24-04crossroads)
heard today.

7 I don't believe that that is the case
8 of the principles of smart growth, and the
9 notion that -- and we have not proposed --
10 placing this project in a hamlet area,
11 adjacent to a hamlet where it clearly would
12 not be the same as where it is today, adjacent
13 to Belleayre, but could you comment further on
14 the smart growth issue that is being bantered
15 about?

16 MR. FEINGOLD: Sure. I think we went
17 into some detail on this on July 12th, but the
18 main point is you cannot have smart growth
19 succeed unless you have customer base. You
20 can not have hamlets or villages really
21 succeed unless you have people coming to them
22 to engage in commerce.

23 And what the resort that's being
24 proposed brings to this region is the
25 opportunity for the hamlets, the Phoenicias
(COMMUNITY CHARACTER ISSUE)

1 and the Arkvilles and Fleischmanns and the 4151
2 Pine Hills, to succeed more because a new
3 customer base will be arriving.

4 MR. RUZOW: So they will provide --
5 the notion that either second homeowners as a
6 source of economic activity, which we have
7 heard is not a source of economic activity --
8 limited economic activity, I'll be fair --
9 does not supply the mid-week, the stability of
10 the mid-week period?

11 MR. FEINGOLD: That's correct.
Page 196

12 MR. RUZOW: So if your business relies
13 on anything other than three days a week for
14 some portions of the year, how does that aid
15 you? How are you aided by the absence of
16 that? What is the alternative?

17 MR. FEINGOLD: The alternative is
18 limping along, operating three days a week.
19 With an increased customer base, you expand
20 your hours, you begin to expand.

21 MR. RUZOW: With what you know about
22 smart growth principles, how are they advanced
23 by a three-day-a-week economy for a portion of
24 a year?

25 MR. FEINGOLD: Not.
(COMMUNITY CHARACTER ISSUE)

1 MR. RUZOW: So the application of the ⁴¹⁵²
2 smart growth principles for this resort, do
3 you see a fit for those principles to take off
4 on a -- without evaluation, individual
5 evaluation of it, to take a list of principles
6 and supply it to a destination resort? Do you
7 see its application to a destination resort?

8 MR. FEINGOLD: I think, very simply,
9 smart growth requires a certain amount of
10 growth, which requires a certain amount of
11 activity. As we have heard in the discussions
12 by business leaders and economic leaders here,
13 the region currently lacks that to really
14 achieve the engine of starting the smart
15 growth to return.

16 MR. RUZOW: If you accept for a moment

Vol. 16 (8-24-04crossroads)
17 that in the two areas that currently have
18 sewage treatment, municipal infrastructure for
19 sewage treatment -- New York City's -- the
20 area of Pine Hill and the Village of
21 Margaretville, and the Village of Fleischmanns
22 and the Hamlet of Phoenicia destined to have a
23 New York City-funded sewage treatment plant --
24 but limited in its growth potential to
25 10 percent, and I defer to Kevin, if he's
(COMMUNITY CHARACTER ISSUE)

4153

1 aware, of 10 percent of what, existing
2 population?

3 MR. YOUNG: Existing use.

4 MR. RUZOW: Existing use. If that
5 were the limit, what -- how reasonable is the
6 opportunity for growth within those hamlet
7 areas over the long-term?

8 MR. FEINGOLD: That limit gets
9 achieved and growth gets capped. As my former
10 boss, and Tom Dallessio's current boss, Bob
11 Yarro, used to describe it -- if you take a
12 toothpaste tube and squeeze it, it's going to
13 squirt out all over the place. And that was a
14 metaphor used specifically in talking about
15 growth being capped in the Catskill hamlets;
16 that if the growth does get capped here and is
17 capped here, and if it achieves that, growth
18 will try to occur elsewhere.

19 MR. RUZOW: So the mechanism that's
20 already been adopted pursuant to the MOA in
21 its agreements with regard to growth
22 opportunity, in one sense has been

23 artificially limited by that decision to cap
24 growth in that fashion.

25 What about what you know about the
(COMMUNITY CHARACTER ISSUE)

1 topographical conditions of the hamlet areas;⁴¹⁵⁴
2 isn't that also a limiting factor in terms of
3 the hamlet?

4 MR. FEINGOLD: It certainly is. The
5 limitations on impervious surface within
6 distance of the streams, the traditional
7 development pattern of the Catskills, of
8 course, is putting development along the
9 streamside with road access, or with stream
10 access along a road.

11 So we do have severe wetland and
12 stream-related constraints, as well as if you
13 take a look at the hamlets, behind most of the
14 currently developed area, you have steep
15 slopes, not to mention regulatory constraints.

16 MR. RUZOW: So if you add to that New
17 York City's Land Acquisition Program in terms
18 of its acquisition of developable land or even
19 non-developable lands throughout the
20 watershed, up to 53,000 acres at the moment
21 and climbing, in terms of future growth
22 opportunity, is that another limiting factor?

23 MR. FEINGOLD: Indeed it is. It is
24 taking land off the table.

25 MR. RUZOW: I didn't hear in
(COMMUNITY CHARACTER ISSUE)

1 Mr. Dallessio's comments in the RPA evaluation⁴¹⁵⁵

2 their taking into account the effect of New
3 York City's Land Acquisition in terms of
4 growth inducement and secondary growth
5 opportunities. I'm sure we will in terms of
6 supplemental comment; but is the absence of
7 that an important factor?

8 MR. FEINGOLD: I think it is. I think
9 ignoring the potential and the current
10 acquisition program of the City's ignores the
11 limitations, an important limitation of future
12 growth in the region.

13 MR. RUZOW: Going back to smart growth
14 for a minute. The location of the Belleayre
15 Resort, particularly Big Indian, but within a
16 very short distance from a oversized or
17 underutilized sewage treatment plant with
18 capacity almost double what the report itself
19 could provide, would smart growth principles
20 suggest that that infrastructure be available
21 to the resort?

22 MR. FEINGOLD: Smart growth principles
23 suggest two things; number one, that the
24 infrastructure should be made available to the
25 resort; and number two, locating a resort of
(COMMUNITY CHARACTER ISSUE)

1 this sort near infrastructure like that is in⁴¹⁵⁶
2 direct compliance with smart growth
3 principles.

4 MR. RUZOW: Would the location of the
5 resort adjacent to -- on either side,
6 physically as close as one can get to state
7 forest preserve but intensive use area, ski

8 center, also be consistent with smart growth
9 principles?

10 MR. FEINGOLD: I would say it would
11 be, for the reasons you cited, that we do have
12 existing intense recreation happening in that
13 area with associated traffic, and that it is
14 already zoned, so to speak, through the park
15 plan and intensive use area.

16 MR. RUZOW: I want to note that in
17 Professor Daniel's comments about the visual
18 impact and the use of another model to do
19 that, it doesn't appear that he looked at
20 Volume 7 of the DEIS, Appendix 2, which had
21 the visual impact study with
22 computer-generated simulated views of the
23 project.

24 Admittedly, we provided today some
25 additional views based on when things were
(COMMUNITY CHARACTER ISSUE)

1 brought to our attention, and we are 4157
2 continuing to do that. But that aspect of his
3 proffer is lacking in the sense of his
4 awareness of the document.

5 Let's turn for a moment to
6 Mr. Donohoe's comments regarding the critique
7 of your critique of his critique of your
8 critique for a moment. He talked, again,
9 about commercial growth opportunity along the
10 Route 28 corridor. What is your -- what's
11 your response to that; it's something you have
12 ignored in your analysis?

13 MR. FEINGOLD: Sure. Number one, I
14 believe the City, as well as RPA and CPC's
15 comments, ignore the fact that the DEIS does
16 very specifically address -- and disclose the
17 potential induced growth along the Route 28
18 corridor. Nowhere is it specifically said
19 that anything that is built or any growth that
20 occurs is going to be happening only in the
21 hamlets.

22 And I would suggest that they should
23 go back and look at Appendix 26, chapter 7,
24 pages 7-4, 7-7, because we do talk about it
25 and do disclose that a certain amount of
(COMMUNITY CHARACTER ISSUE)

4158

1 development is potentially likely to occur
2 along Route 28.

3 A couple things worth noting is that
4 the amount of growth that is being talked
5 about, whether it's 76,000 square feet,
6 whether it's 80,000 square feet, those are
7 only expressions of demand, and demand can be
8 met in many, many ways.

9 The assumption that is being made by
10 those who are reading our report is that this
11 demand can only be met by new growth and
12 investment when, in fact, as we've been
13 talking about, existing businesses can do more
14 business, that is a way of meeting the demand.

15 The Americana Cafe and Margo's, big
16 signs out on Route 28, open Friday through
17 Sunday. They could expand the days that they
18 are open. That is a way of meeting and

19 whittling away the demand that is being
20 created or that would be created.

21 Reoccupancy of existing structures.
22 My windshield survey, literally this morning
23 up here, businesses for sale on Route 28,
24 Mount Tremper Pine Cottages, there's tackle
25 shop, AP Muffler Express, Rudy's Big Indian,
(COMMUNITY CHARACTER ISSUE)

1 the Arkville Country Store. ⁴¹⁵⁹ Phoenicia Plaza,
2 Crystal Bridge Plaza all have vacancies.

3 These I think meet the objectives that
4 we've heard from the City's consultant that
5 they're visible, they are on Route 28, they
6 have parking, they have access. They may or
7 may not have wastewater treatment
8 infrastructure already in place by way of
9 septic, but those are the kinds of places that
10 I could see being reoccupied relatively
11 quickly if demand happens, and that would
12 whittle away the demand, filling the
13 vacancies, and as we acknowledge, maybe
14 building new.

15 But again, insofar as there is
16 infrastructure and space available in the
17 hamlets and the vitality and vibrancy as well
18 as public policy for growth in the hamlets,
19 those are places where we can imagine growth
20 occurring.

21 MR. RUZOW: We have spoken about
22 Route 28 in terms of the sewage availability.
23 It appears Mr. Donohoe, speaking in support of

24 vol. 16 (8-24-04crossroads)
the City's position but not on behalf of the
25 City, is suggesting that sewage treatment
 (COMMUNITY CHARACTER ISSUE)

1 ought to be welcomed -- access to the City's⁴¹⁶⁰
2 sewage treatment plant ought to be welcomed in
3 terms of concentrating the development in and
4 around those areas served by that
5 infrastructure, would meet both smart growth
6 principles, as well as give the City
7 additional control and assurance that sewage,
8 in fact, is being dealt with, but that is not
9 the policy of New York City at this point in
10 time. Perhaps that will change.

11 One of the advantages of the DEIS,
12 your Honor, is it can be used for multiple
13 purposes.

14 Let me turn for a second to another
15 multiple purpose. There seems to be a
16 suggestion that zoning doesn't count out here,
17 that it's not a restraint. Do you have a view
18 with respect to that?

19 MR. FEINGOLD: I would say that,
20 indeed, zoning is a constraint. And as we
21 presented on July 12th, I think, the zoning of
22 the Route 28 corridor is fairly restrictive as
23 far as the areas which are currently zoned
24 commercial.

25 MR. RUZOW: Do you assume when you do
 (COMMUNITY CHARACTER ISSUE)

1 EISS and project growth that zoning will be⁴¹⁶¹
2 ignored in the course of projecting future
3 development?

4 MR. FEINGOLD: No.

5 MR. RUZOW: Have you ever done that
6 for the EISS that AKRF has done for the City
7 of New York?

8 MR. FEINGOLD: That zoning would be
9 ignored?

10 MR. RUZOW: Yes.

11 MR. FEINGOLD: No, not at all.

12 MR. RUZOW: In terms of projecting
13 future growth and development?

14 MR. FEINGOLD: Not at all. We assume
15 the existing zoning is the existing policy.

16 And I could also say that AKRF
17 represents -- about half of our business -- is
18 representing private developers, and in many
19 cases the private developers are assuming that
20 zoning is flexible and they can get the zone
21 change. Many years and a lot of money is
22 often spent on fruitless efforts to change
23 zoning.

24 MR. RUZOW: With respect to zoning,
25 there have been a lot of comments regarding
(COMMUNITY CHARACTER ISSUE)

1 concerns, ecological concerns, environmental⁴¹⁶²
2 concerns, traffic concerns, et cetera, voiced
3 by folks commenting on the Draft EIS here.

4 We heard from Supervisor Leifeld this
5 morning from the Town of Olive in terms of
6 issues that his town might face. We heard
7 from former Supervisor Rosa today in terms of
8 Middletown. We heard from other town

Vol. 16 (8-24-04crossroads)
officials.

Are the kinds of issues that have surfaced in this proceeding and through this DEIS comment period things that municipal officials could or should take into account in reexamining their own zoning ordinances?

MR. FEINGOLD: The short answer is yes. And, in fact, it was interesting in listening to the Supervisor speak, both today and on other occasions, it reminds me very much of the conversations that were being held within the context of the Coalition of Watershed Towns and other forums ten years ago about the constraints on development in the towns and hamlets and villages here.

MR. RUZOW: In your experience, has it ever been an applicant's responsibility to, in
(COMMUNITY CHARACTER ISSUE)

effect, project out changes to zoning that might address environmental conditions that would satisfy an objection? 4163

MR. FEINGOLD: I have not seen that in the EIS and SEQRA process that our firm has been involved in.

MR. RUZOW: But there's nothing to prevent a municipality, planning boards, town boards from considering the information that is gleaned in this EIS regarding potential future impacts or suggested future impacts by one or more parties in reexamining their own zoning ordinances?

MR. FEINGOLD: Precisely. In
Page 206

15 Appendix 26, we specifically address some
16 suggestions to the municipalities meeting the
17 challenges of potential induced growth
18 associated with the resort.

19 MR. RUZOW: There were comments made
20 by Mr. Donohoe about the labor force,
21 workforce. You had some comments on that?

22 MR. FEINGOLD: Yes. I think a couple
23 things. Again, I just wanted to restate what
24 we presented a month or so ago, that -- we've
25 presented the data, we have updated the data,
(COMMUNITY CHARACTER ISSUE)

1 and we remain very convinced that there is an ⁴¹⁶⁴
2 adequate existing labor pool within a
3 commuting region to service the needs of the
4 resort.

5 Again, as Mr. Straub mentioned
6 earlier, the Shandaken average commute, the
7 average commute of a Shandaken resident is
8 about 32 minutes. You see that in all the
9 towns.

10 When you look at the county level
11 data, you're always looking at about a
12 half-hour commute for people in Ulster and
13 Delaware County. Same in Sullivan County as
14 well. People in these communities drive long
15 distances to their jobs, and it's not a
16 stretch of imagination that people would like
17 to reduce their commutes if they possibly
18 could.

19 CPC testimony earlier today suggested

20 that most of the local people commuting to
21 Oneonta or Kingston, approximately a half-hour
22 for their jobs, are professionals and would
23 not change jobs to work at the resort.

24 Looking at the Town of Shandaken alone
25 as an example, Shandaken, according to 2000
(COMMUNITY CHARACTER ISSUE)

1 census data, has just under 1,600 workers, of⁴¹⁶⁵
2 which approximately one-quarter of them are
3 listed as professional and managerial, leaving
4 another 1,100 people as non-professional,
5 non-managerial positions. Yet the average
6 commute of people living in Shandaken is still
7 a half-hour.

8 So to me, that analysis suggests that
9 a lot of people who are not professionals are
10 driving long distances to their jobs.

11 MR. RUZOW: Do you want to touch on
12 the comment with regard to sales per square
13 footage?

14 MR. FEINGOLD: Yes. We just had a few
15 minutes to look at the Regional Plan
16 Association memo that was handed out as an
17 exhibit earlier.

18 One of the things that caught my eye
19 on that, as mentioned by Tom Dallessio, was
20 criticism that our analysis of the retail
21 generation for the Route 28 corridor did not
22 take into consideration the fact that there
23 are many different retail types and that we
24 only used one standard, which was \$250 per
25 square foot, to cover all the different retail

1 types.

2 And they made the suggestion in the
3 memo that we use a particular source, Urban
4 Land Institute documentation, to fine-tune
5 that, when in fact we did; and that is amply
6 footnoted in chapter 7 of Appendix 26, that we
7 used the exact source that they suggested we
8 use, and the figure that we used, \$250 per
9 square foot, is an average figure based on the
10 specific retail sectors that are projected to
11 grow as a result of this project.

12 MR. RUZOW: I believe it was July 12,
13 there was also reference to the comments from
14 the Attorney General's Office, comments on the
15 DEIS, as well as RKG's comments, that the
16 dollars -- square footage calculations of
17 somewhere between 75 or 80,000 square feet
18 were remarkably consistent among all of the
19 economic projections. Do you recall that?

20 MR. FEINGOLD: I do. Again, as I
21 mentioned in my testimony on July 12th, it's a
22 rare and actually a pleasant opportunity in
23 the context of this hearing setting to have
24 our work be reviewed by other good and smart
25 people using different analysis techniques
(COMMUNITY CHARACTER ISSUE)

1 coming up with very similar results.

2 MR. RUZOW: So three different models
3 were employed, and they came to within
4 5 percent of each other?

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10

MR. FEINGOLD: Yes.

MR. RUZOW: With respect to the comments of the criticisms of the case studies, do you have any further comments on those?

MR. FEINGOLD: The case studies that we did conduct, as Peter Liebowitz enumerated on July 12th, were case studies gleaned from a long list of potential places that we could look at for case studies that were hashed out in the scoping meetings with DEC, with DEP at the table; and these were the three case studies that we selected or that were selected jointly, and were the ones that we focused on.

As we pointed out last time, we believe that they are relevant and appropriate.

windham, probably the most appropriate because it is the most proximate to the project site, I think you have all seen the similarities and the kind of development that
(COMMUNITY CHARACTER ISSUE)

4168

might be spinning off here from there.

MR. RUZOW: Is there a requirement that you recall under the SEQRA regulations for case studies to be undertaken?

MR. FEINGOLD: No. AKRF often offers case studies as a way of not only testing statistical data analysis and -- in their professional judgment and experience, but this is something that we will commonly offer to include in a DEIS analysis.

11 MR. RUZOW: So the fact that a
12 particular case study couldn't be found that
13 was so perfect fit to predict a future thing;
14 is that an unusual event?

15 MR. FEINGOLD: No, not at all. Every
16 place is different, and the circumstances and
17 history and demographics and economics of all
18 places, to find a perfect fit is virtually
19 impossible.

20 MR. RUZOW: We will leave to legal
21 argument, your Honor, as to the necessity for
22 amplifying that based on the regulatory
23 requirements.

24 Is there anything else that you wanted
25 to add from your notes for today?
(COMMUNITY CHARACTER ISSUE)

1 MR. FEINGOLD: I think the main thing,⁴¹⁶⁹
2 just again, wanting to stress, is that coming
3 out of economic analysis, whatever tool or
4 technique is used, are estimations of demand,
5 and there's no one way to meet that demand,
6 whether it's demand for housing, whether it's
7 demand for employees, whether it's demand for
8 commercial place, and I think we've amply
9 discussed and demonstrated that as the resort
10 creates demand for labor, for housing, for new
11 commercial activity, that these demands can be
12 made in many different ways and that there's
13 adequate supply within reasonable distance and
14 within reasonable price range to satisfy the
15 demands that will be created.

16 MR. RUZOW: Is there any model that
17 you are aware of or methodology available to
18 predict with any precision how that demand
19 would be met in an area of 390 square miles,
20 or 4,000 square miles, the primary and
21 secondary areas that RKG described and you
22 used similar geographically bound areas in
23 your studies?

24 MR. FEINGOLD: To a certain extent,
25 there's no absolutely precise way of locating
(COMMUNITY CHARACTER ISSUE)

1 and predicting exactly what will happen and ⁴¹⁷⁰
2 where things will occur on a landscape. We
3 try to do it as closely as we possibly can,
4 using both the best model and the best data
5 that are available, and coupling it with as
6 much personal and professional experience on
7 the ground in the affected communities as can
8 be afforded in this particular case.

9 MR. RUZOW: If you wanted to rely on a
10 determination, if you wanted to make a
11 determination that a particular area would be
12 affected in a particular fashion, and make a
13 decision regarding whether or not something
14 else could be approved in light of that future
15 secondary condition, are you aware of a way
16 you could rely on that information?

17 MR. FEINGOLD: I think the most
18 reliable information that you could rely on is
19 information that is based both on analysis,
20 using tested models like GLEAMS, and using
21 on-the-ground personal experience,

22 inventorying, interviewing the people in the
23 communities and the businesses and the
24 officials who will be affected.

25 MR. RUZOW: But at the end of the day,
(COMMUNITY CHARACTER ISSUE)

4171

1 you would get a range of potential
2 possibilities?

3 MR. FEINGOLD: That's right, you will
4 not get a single number that you can sort of
5 take to court, so to speak.

6 MR. RUZOW: With respect to one
7 further comment made by Mr. Donohoe about the
8 data and reference specifically to the tables
9 that he distributed, the 1990 information,
10 would you comment on that?

11 MR. FEINGOLD: Sure. The 1990
12 information that he pointed out on two slides,
13 I believe they were slides 59 and 60, where it
14 appeared as though it was 1990 information
15 that should not change from one table to the
16 next, when, in fact, the source of that data
17 made a change. That data was derived from
18 Claritas, a private vendor of census-based
19 information.

20 Between the time that the EIS was
21 prepared and that data was originally
22 gathered, and the time it was updated for
23 presentation on July 12th, Claritas made
24 certain changes within the way that the data
25 was aggregated.

(COMMUNITY CHARACTER ISSUE)

4172

1 And this is a perfect example of
2 updating and refining data between a Draft
3 Environmental Impact Statement and a Final
4 Environmental Impact Statement.

5 But I think it's important to point
6 out that we have updated and refined data, and
7 it has been presented by and large on the 12th
8 of July, and the new and refined data really
9 do not affect the conclusions that we have
10 drawn regarding the socioeconomic and
11 induced-growth effects.

12 MR. RUZOW: And in the normal process
13 of a Draft EIS and accepting and examining the
14 comment in a Draft EIS, leading to a final
15 EIS, is it your experience that you would find
16 such changes?

17 MR. FEINGOLD: Absolutely.

18 MR. RUZOW: And a reevaluation of
19 whether or not they made a substantive
20 difference?

21 MR. FEINGOLD: That's right, and if
22 they do make a substantive difference, that is
23 reflected in the final EIS.

24 That's really the beauty of the DEIS
25 review process under SEQRA, in that data and
(COMMUNITY CHARACTER ISSUE)

1 conclusions are presented, they are discussed,⁴¹⁷³
2 new information comes in and we all get
3 smarter about the process, and the project
4 gets better.

5 MR. RUZOW: Your Honor, that's all I
6 have here. We have a couple of documents that
Page 214

7 we want to explain on the record what they are
8 as a supplement.

9 As I indicated, we had another witness
10 that we had planned to present. He was not
11 able to be here today. I thought we were
12 actually going to be here tomorrow. I didn't
13 think we would get to this today; I thought it
14 would be tomorrow morning based on the
15 schedule we talked about, but I will try to
16 nail that down and it will be first thing in
17 the morning and it will be relatively short.

18 Teresa, you want to clarify for the
19 record the exhibits that we distributed
20 earlier.

21 MS. BAKNER: Sure. AKRF letter dated
22 August 20th, 2004. John, this was prepared by
23 your colleague, Graham Trelstead, but I was
24 wondering if you could describe for us what
25 the purpose of the letter is and what it
(COMMUNITY CHARACTER ISSUE)

1 responded to; and specifically during the day⁴¹⁷⁴
2 that Dr. Hall presented, she referenced a
3 number of articles that were not then
4 available for our review, specifically the
5 Flathead County Montana, which is CPC Exhibit
6 69/85.

7 So John, if you could just walk us
8 through it, that would be great.

9 MR. FEINGOLD: Sure, very quickly.
10 we're responding to a presentation by Dr. Hall
11 who was trying to establish a relationship

Vol. 16 (8-24-04crossroads)
12 between parcelization of forest land resulting
13 from the resort and additional pressures on
14 the timber industry, particularly the
15 operators of small timber parcels in the
16 Catskills here.

17 Our conclusion, after reviewing her
18 work, is that we really question the direct
19 relevance of her presentation and her
20 conclusions to the Catskill/Delaware watershed
21 for a couple of reasons. One being, and this
22 is quoting one of her articles, that it's
23 determined that the forest industry data
24 available for the region, this region, were
25 not of a spatial or temporal resolution that
(COMMUNITY CHARACTER ISSUE)

1 would allow comparisons between recent history⁴¹⁷⁵
2 and the timber industry in the region, and
3 that there is really not sufficient data to
4 make the conclusions that she was drawing.

5 Specifically, the timber industry,
6 such as it exists in the Catskill/Delaware
7 watershed is virtually minute. The timber
8 industry and lumber industry and related
9 industries did not even appear in the 1997
10 census of business, the federal census of
11 business. There was not even a category for
12 Delaware or Ulster Counties.

13 More recent data, based on the 2000
14 census, indicates that there are ten
15 timber-related businesses or industries in
16 Ulster County and 16 in Delaware County,
17 virtually all of which are from one to four

18 employees, indicating that these are probably
19 all individual timber lot owners.

20 So her drawing a relationship between
21 the resort's parcelization and individual
22 timber lot owners is a little bit of a
23 stretch.

24 We further contend that the resort, by
25 virtue of being a large parcel and single
(COMMUNITY CHARACTER ISSUE)

1 ownership that results in the preservation of ⁴¹⁷⁶
2 approximately 1,400 acres, does not represent
3 in any way parcelization, and most of the
4 preserved land associated with the resort
5 would be adjacent to Forever Wild Forest
6 Preserve land.

7 In her presentation and her
8 conclusions, relies on a study that was handed
9 out today as an exhibit, "Gateway to Glacier."
10 That was a study that was prepared by the
11 National Parks and Conservation Foundation for
12 Flathead County, Montana.

13 We believe that that study, and the
14 applicability of that study to this region and
15 this project is completely inappropriate.

16 We've seen a decrease in the number of
17 forested acres in Flathead County by
18 approximately 90 percent since 1969, mainly as
19 a result of federal forest policy, the
20 designation of three wilderness areas within
21 the federally held land there. A good portion
22 of Flathead County, Montana is composed of

23 Vol. 16 (8-24-04crossroads)
24 Glacier National Park and the Flathead
25 National Forest.

25 Approximately 94 percent of Flathead
(COMMUNITY CHARACTER ISSUE)

1 County is in federal, state or institutional ⁴¹⁷⁷
2 forestry ownership. And approximately
3 6 percent is in private ownership, and
4 according to the Flathead County Department of
5 Planning, it's on that 6 percent of private
6 land where virtually all the development over
7 the last decade has occurred.

8 And from a development perspective,
9 Flathead County is one of the largest counties
10 in Montana with a population approaching
11 76,000, and indeed has been one of the
12 fastest-growing counties in Montana.

13 The timber industry in Flathead County
14 is the fourth-largest non-governmental
15 employer in terms of numbers of employees and
16 wages paid.

17 So drawing a comparison between
18 Flathead County and the relationship of land
19 use and the timber industry in Flathead County
20 to the Belleayre Resort and the
21 Catskill/Delaware watershed, we think is a
22 little bit of a stretch.

23 MS. BAKNER: We're just going to
24 describe briefly the other exhibits.

25 Kevin, if you could just go over
(COMMUNITY CHARACTER ISSUE)

1 Applicant's Exhibit 132. ⁴¹⁷⁸

2 MR. FRANKE: Applicant's 132,
Page 218

3 Adirondack Golf Courses - Past and Present was
4 submitted simply to illustrate the history of
5 community character associated with golf and
6 mountainous regions in New York State.

7 The back cover of Exhibit 132 shows
8 the location of the golf courses that are
9 described, and a cluster of them in the high
10 peaks area of the Adirondacks. Also in here,
11 many examples of how these mountain golf
12 courses were often associated with large
13 hotels, and many are still in operation today.

14 MR. RUZOW: Also Exhibit 133.

15 MR. FRANKE: Exhibit 133, as mentioned
16 by Mr. Ruzow, is a plotting of the project
17 site boundaries in yellow, the project
18 proposed clearing limits illustrated in black,
19 and it's all illustrated in the context of an
20 orthophoto from, I believe it was 1997, that
21 extends roughly from Big Indian on the
22 right-hand side all the way to Margaretville
23 towards the left-hand side.

24 MS. BAKNER: Kevin, the pinkish areas
25 there, what do they show?
(COMMUNITY CHARACTER ISSUE)

1 MR. FRANKE: The pink ones are open 4179
2 lands. You will notice above Margaretville to
3 the north, there's some pink there. That is
4 the Hanna Golf Course. Directly to the north
5 of the wildacres' portion of the site are many
6 of the former or present farm fields that
7 exist. And open non-forested areas.

8 vol. 16 (8-24-04crossroads)
(Indicating)

9 MR. RUZOW: Kevin, the houses that one
10 sees looking from Belleayre -- or the cleared
11 areas one sees looking to the north from the
12 Belleayre Ski Center of the greenfields that
13 we saw to the north, those are shown as little
14 squares of red opposite -- was it Woods Road?

15 MR. FRANKE: Wood Road, Brush Ridge
16 Road, Brush Ridge Retreat.

17 MR. RUZOW: Those red areas that
18 appear are the ones we had seen on the various
19 site visits around. We don't show Rose
20 Mountain on this?

21 MR. FRANKE: Rose Mountain, no, you
22 would have to extend this more to the
23 northeast to capture Rose Mountain.

24 MR. RUZOW: Your Honor, that concludes
25 our response to that.

(COMMUNITY CHARACTER ISSUE)

4180

1 ALJ WISSLER: Okay. Anything?

2 MS. ROBERTS: We would like to respond
3 to some of the comments.

4 MR. GERSTMAN: There are several
5 issues where we would like to reserve the
6 right to respond in connection with RPA and
7 Professor Hall. If we could have a couple
8 minutes, just to sort it out.

9 ALJ WISSLER: Sure.

10 (5:11 - 5:20 P.M. - BRIEF RECESS
11 TAKEN.)

12 (PHOTOCOPY OF "THE PHOENICIA
13 TIMES" DATED 5/22/03 RECEIVED AND
Page 220

14 MARKED AS CPC EXHIBIT NO. 97, THIS
15 DATE.)

16 MS. ROBERTS: Your Honor, this has
17 been a fairly remarkable process, it seems to
18 me, on community character throughout this
19 Issues Conference. We've gone from the DEIS
20 saying that there were no off-site impacts
21 because the resort was fairly self-contained,
22 to a couple of dozen witnesses now talking
23 about all the off-site impacts, including the
24 benefits, we've heard mostly from the
25 Applicant, about this resort.

(COMMUNITY CHARACTER ISSUE)

1 And curiously on the one hand talking ⁴¹⁸¹
2 about most of the development being in the
3 hamlets or infilling or expanding existing
4 businesses, to then talking also about the
5 restrictions that the MOA places on the
6 hamlets, therefore the making it impossible to
7 develop. So there's been a lot of
8 contradiction here.

9 On the other hand, I think we've put
10 forward many substantive witnesses who have
11 had legitimate and serious disagreements with
12 both the analysis and the conclusions that
13 have been included in the DEIS.

14 With respect to Mr. Gould, with all
15 due respect, unfortunately he wasn't here to
16 hear Helen Budrock, but the Catskill Center
17 for Conservation and Development is very aware
18 of its development roots. And as you saw in

19 the tour and the binder we handed out today of
20 the streetscapes takes very seriously its
21 mandate to encourage development.

22 It was interesting to note that their
23 roots really were, for 35 years, been with
24 development and they continue that today, and
25 it should cause us all a great pause that the
(COMMUNITY CHARACTER ISSUE)

1 center is taking a stand in opposition to this⁴¹⁸²
2 particular development, mostly as you heard
3 because of the scale of this mega big box
4 resort, and also where it's located.

5 The Catskill Preservation Coalition
6 and the Catskill Center are not opposed to
7 development or a destination resort, per se.
8 It's really a matter of scale and where it's
9 located. And we certainly have no
10 disagreement that tourism is the main industry
11 here.

12 On the comment about Mr. Gitter, I am
13 aware that he served as the chairman of the
14 Route 28 Corridor Study, however he also did
15 serve as the first executive director of the
16 Alliance Committee. I know that, because I
17 talked to, as I know the Applicant did, in an
18 attempt to get Dan Shuster [sic] here who was
19 a consultant on the Alliance report who told
20 me that Mr. Gitter served as the first
21 executive director, and was then -- later
22 resigned from that position, or at least
23 according to Mr. Shuster, for personality
24 conflict reasons.

25

I'd like to submit for the record an
(COMMUNITY CHARACTER ISSUE)

1
2
3
4

article dated May 22nd, 2003 as CPC 97 which⁴¹⁸³
documents that Mr. Gitter, in fact, was the
initial executive director of the Alliance,
and was then replaced by Mr. Greiser.

5
6
7
8
9
10
11
12
13
14

Furthermore, on the conflict that we
believe Mr. Gitter has -- and had with being a
part of all these different studies and being
the project sponsor, we refer you back to
Exhibit CPC 30 which outlines the land
holdings, the transfers and documents in
greater detail, what we believe to be a
serious conflict with his participation in the
Alliance report or committee in the beginning.
So we'll just refer you to that.

15
16
17
18
19
20
21
22
23

I want to also point out that the
SEQRA process requires full and fair
disclosure at the outset. What we have heard
today from Mr. Arace and several of the
Applicant's witnesses is a fair amount of
speculation that we feel is inappropriate and
not supported to rebut the serious and
substantive and significant issues that we
have raised.

24
25

It really goes back to the first point
I made about this process being fairly
(COMMUNITY CHARACTER ISSUE)

1
2
3

remarkable in that it -- the DEIS starts in⁴¹⁸⁴
one place and then we seem to find ourselves
in another place under the excuse or guise

4 that the DEIS process somehow allows us to go
5 through and fix things as we go along. And to
6 a certain extent that's true, but a whole
7 turnaround, as we've seen here, is I don't
8 think what's contemplated in SEQRA.

9 As I think Mr. Gerstman said, we want
10 to reserve on at least the issues of the RPA
11 rebuttal provided by the Applicant and the
12 forest fragmentation issues.

13 Ms. Kopaskie has a few more comments,
14 and I think Mr. Gerstman might as well.

15 MS. KOPASKIE: There were a couple of
16 witnesses today that spoke about taxes being
17 generated by this project and how it's going
18 to help the community.

19 In fact, the American Farmland Trust
20 has done a lot of studies that showed the
21 different types of revenues that's generated
22 from different land uses, and how expensive
23 those land uses are to service.

24 And when you look at the different
25 land uses, the most expensive land use service
(COMMUNITY CHARACTER ISSUE)

1 is residential because you have school, fire,⁴¹⁸⁵
2 police, the infrastructure, all of the
3 different services that a house would require.

4 The second highest is commercial and
5 industrial use. So for every dollar that
6 comes in in tax dollars, there's a certain
7 amount that goes out, and the second highest
8 that goes out is for commercial and industrial
9 uses.

10 The least expensive land to service
11 for a community is open space and agricultural
12 land. So while there may be taxes that are
13 generated, the amount of services that are
14 going to be required for these land uses will,
15 in effect, either negate or cause the
16 communities to have to pay more to service
17 these land uses.

18 The second point is there seems to be
19 an all-or-nothing approach that's being taken;
20 that in order to get smart growth in the
21 Catskill region, we have to take 500 acres of
22 pristine, environmentally sensitive lands,
23 wooded areas on a mountaintop and clear-cut it
24 in order to be able to get smart growth
25 development in the hamlet areas.

(COMMUNITY CHARACTER ISSUE)

4186

1 And there seems to be a disconnect
2 when you look at the smart growth principles
3 in saying that in order to get the smart
4 growth, we have to destroy something. So I'm
5 not quite sure there's a real connection there
6 in that all-or-nothing approach.

7 The last point that I just wanted to
8 make is the consultant from AKRF said that in
9 the DEIS, they didn't always assume that the
10 commercial development was going to occur in
11 the hamlets, but there are actually two quotes
12 on page 7-6 of the -- section 7, page 7-6.

13 The first is that -- it's in the last
14 paragraph: "Much of the new growth would

15 vol. 16 (8-24-04crossroads)
occur within existing commercial areas,
16 especially as reoccupancy of vacant structures
17 or infill development in hamlets and
18 villages." That clearly shows that they're
19 looking at much of this development occurring
20 in those areas, yet on the other hand, they're
21 saying there's no place for this development.

22 The second is that: "The predominant
23 response would be the expansion of existing
24 businesses or reoccupancy of existing
25 structures within hamlets or villages." And
(COMMUNITY CHARACTER ISSUE)

4187

1 that's in the third paragraph.

2 So they are looking at those areas
3 within the hamlets and villages being the
4 areas that would be developed as the
5 commercial space was being developed.

6 That's all I have.

7 MS. ROBERTS: Thank you.

8 MR. GERSTMAN: Your Honor, several
9 points of information to include in the
10 record.

11 First, is that in the Phoenicia Plaza,
12 Rudy's, and I think Jake Moon are both opening
13 contrary to the statement that we heard from
14 Mr. Feingold. Also the El Ray Restaurant,
15 Mexican restaurant in Pine Hill, is open --
16 and to put a plug in, I think it's an
17 excellent restaurant. I recommend you all go
18 there.

19 Just to summarize, and to pick up on a
20 theme that Ms. Kopaskie and Ms. Roberts have

21 talked about here. Again, I may be even
22 picking up on what Mr. Feingold said. There
23 have been varying degrees, varying estimates
24 in terms of the demands and impacts that this
25 resort will have. It is an overwhelming
(COMMUNITY CHARACTER ISSUE)

4188

1 resort. It will overwhelm this community.

2 what we are stating is that since
3 those impacts have not been disclosed in the
4 EIS and there's substantial and professional
5 disagreement about those results, that we have
6 met the threshold for these impacts to be
7 adjudicated.

8 we are not suggesting an
9 all-or-nothing approach. We are repeatedly
10 put in a position by both the CWT or Delaware
11 County, whoever is speaking through Mr. Young
12 at the time, or Mr. Ruzow, that we are opposed
13 to a destination resort and tourism, and that
14 of course is not the case, as you heard from
15 representatives of the Catskill Center and
16 other members of the Coalition and our
17 witnesses.

18 So I think it's very important that we
19 make it clear on the record that that be the
20 case.

21 Another point of information is to
22 allow the development to hook up to the Pine
23 Hill wastewater treatment plant would
24 essentially restrict development in the
25 hamlets for development like hotels on Main
(COMMUNITY CHARACTER ISSUE)

1 Street or Elm Street or Route 28.

2 Essentially the arrangements for the
3 capacity to be at the 1920s threshold was to
4 allow the development to occur within the
5 hamlets, to allow economic growth to occur
6 where it is supposed to take place. If that
7 capacity were shifted to this development,
8 that opportunity for development within the
9 hamlets would be lost.

10 We believe that we've established that
11 there is a substantive and significant issue
12 for adjudication concerning community
13 character.

14 We appreciate the opportunity to
15 supplement the record and respond with
16 information from RPA and Professor Hall. Also
17 in connection with the visual impact
18 evaluation, the photographs that were
19 submitted today as well.

20 ALJ WISSLER: Okay. City.

21 MR. BURGER: I'd like to begin by --
22 it's also in support of Ms. Roberts' comments
23 on the role of Dean Gitter as being the first
24 executive director. That's also the City's
25 understanding. Without having looked at this
(COMMUNITY CHARACTER ISSUE)

□

1 article, we have the same information.

2 In general, in response to the
3 watershed towns' testimony, I just want it to
4 be clear once again that the City's testimony
5 in regards to community character is strictly

6 limited in that we do not -- we believe that
7 the DEIS must analyze the impacts of induced
8 growth.

9 We have not raised as an issue for
10 adjudication the impact on community
11 character, per say, nor are we trying to exert
12 authority that has not been granted to the
13 City under the MOA, the State regulations, or
14 the City's regulations themselves.

15 Along those lines, we think that both
16 the Applicant and the watershed Towns have
17 grossly overstated the role that the City
18 plays in directing land use in the area.

19 In regards to impervious surfaces, in
20 regards to wastewater treatment and in regards
21 to the Land Acquisition Program, there seems
22 to be an evolving novel theory that the fact
23 that the City possesses authority over this
24 areas, that this project must therefore go
25 forward.

(COMMUNITY CHARACTER ISSUE)

1 Without going into further detail, we⁴¹⁹¹
2 would like to reserve the right to respond
3 with supplemental testimony in the future, but
4 just for the record, we think this matter has
5 been grossly overstated.

6 In response to some of the particular
7 comments that were made, in rebuttal the
8 Applicant stated that wage inflation was -- we
9 had somehow raised wage inflation as an issue,
10 and we're saying that wage inflation was bad

Vol. 16 (8-24-04crossroads)
for workers.

That is not our position. Our position is more that the wage inflation was not considered in the DEIS, and the impacts that it would have on the local businesses and other impacts that it might have was also not included in the DEIS; just for what that's worth.

In regards to commercial growth along Route 28, this is the first time I have heard from the Applicant that there is likely to be development along the Route 28 corridor. While the DEIS may have some highly qualified statement as to the potential for such development, there's clearly no analysis of
(COMMUNITY CHARACTER ISSUE)

the impacts that that development is going to have within the DEIS.

With that, I would just -- sort of in closing -- in regard to the testimony of Mr. Gould and the idea of talk of conciliation and mediation, one of the things that would be required for any such conversation to take place would be some sort of analysis of alternatives, which has not been provided, in order to know what we can work with.

In between the full scale development and something else, we would need to have some idea of what something else might be. And in the record at this time, there is no such information.

And with that, we think we have raised

17 issues that are substantive and significant.
18 None of the rebuttal testimony offered today
19 calls into question really the substance of
20 our particular arguments, and we think that
21 this issue is suitable for adjudication.

22 ALJ WISSLER: Anything else?

23 MS. BAKNER: Your Honor, we would just
24 like to point out that on page 7-6, we
25 clearly, in addition to the sentences read by
(COMMUNITY CHARACTER ISSUE)

1 Ms. Kopaskie, there's a discussion of one new⁴¹⁹³
2 shopping center totalling 21,500 square feet
3 being developed on New York State Route 28 in
4 the area between Margaretville and Arkville.

5 we talked about the amount of acreage
6 that would be required, the local zoning
7 ordinances, environmental regulation, and we
8 put in a footnote the maximum building
9 coverage of 30 percent. We discussed the
10 building area, required parking, landscaping,
11 stormwater and wastewater treatment. So we
12 just wanted to clarify the record in that
13 regard.

14 MR. RUZOW: None of which, your Honor,
15 I would argue is significant on any scale of a
16 potential Environmental Impact Statement or
17 otherwise. And we'll hear more about this
18 later, but SEQRA requires the consideration of
19 potential significant adverse impacts, and
20 doesn't require that you document every
21 potential impact along the way, but asks you

22 Vol. 16 (8-24-04crossroads)
to focus on that which is significant.

23 ALJ WISSLER: Mr. Young.

24 MR. YOUNG: Simply, your Honor, the
25 Town of Middletown and the Town of Shandaken
(COMMUNITY CHARACTER ISSUE)

1 have zoning and their planning boards want to⁴¹⁹⁴
2 make decisions on this project. The Town
3 Board has adopted zoning ordinances that
4 determine what is allowed and not allowed in
5 the Route 28 corridor.

6 And that's why we believe, your Honor,
7 that there's an adequate record at this point
8 in time for purposes of SEQRA for those town
9 boards to make the review, the Applicant
10 responds in the FEIS to any comments that have
11 been submitted, but the ultimate decision
12 regarding whether or not this is good for the
13 community character of the Town of Shandaken
14 and the Town of Middletown are those towns'
15 decisions, and there's nothing in the State
16 law which gives the State of New York, the
17 DEP, or the Applicant the right to make that
18 determination.

19 ALJ WISSLER: If there's nothing else,
20 then we will conclude now for the day and
21 reconvene tomorrow morning at 9 o'clock.

22 (5:41 P.M. - WHEREUPON, THE ISSUES
23 CONFERENCE PROCEEDINGS ADJOURNED FOR THE DAY.)

24
25 (COMMUNITY CHARACTER ISSUE)

4195

1

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, THERESA C. VINING, hereby certify
and say that I am a Shorthand Reporter and a Notary
Public within and for the State of New York; that I
acted as the reporter at the Issues Conference
proceedings herein, and that the transcript to which
this certification is annexed is a true, accurate
and complete record of the minutes of the
proceedings to the best of my knowledge and belief.

THERESA C. VINING

DATED: September 10, 2004

□