

**MERCER COUNTY PLANNING BOARD  
REGULAR MEETING MINUTES  
JUNE 10, 2020**

**PRESENT:** Michael E. Shine, Chairman  
William S. Agress, Vice-Chair  
Samuel Frisby, Freeholder  
Paul A. Penna  
Samuel M. Rubino  
Tai Wilson  
George Fallat, County Engineer  
Leslie R. Floyd for Brian Hughes, County Executive

**ALSO PRESENT:** Robert Ridolfi, Board Counsel  
Richard Smith, Planning Board Secretary  
Andrew Lloyd, Staff

Mr. Shine called the meeting of the Mercer County Planning Board to order at 9:14 a.m.

**I. STATEMENT OF ADEQUATE NOTICE**

Pursuant to the Sunshine Law, notice of this meeting was published in the Trenton Times on May 25, 2020, posted on the Mercer County Planning Web Page on May 20, 2020 and posted in the County Administration Building on June 4, 2020.

**II. APPROVAL OF MINUTES**

Mr. Agress made a motion to approve the minutes of the May 13, 2020 Planning Board meeting and Mr. Rubino seconded the motion.

The minutes were approved with the following vote:

Y	Michael E. Shine	Y	Samuel M. Rubino
Y	William S. Agress	Y	Tai Wilson
Y	Samuel Frisby	Y	George Fallat
Y	Paul Penna	Y	Leslie R. Floyd

**III. PUBLIC COMMENT**

There was no public comment.

**IV. OLD BUSINESS**

Statement of Adequate Notice

Public Notice of this appeal was published in the Times of Trenton on May 29, 2020, posted on the Mercer County Planning Web Page on May 20, 2020 and posted in the County Administration Building on June 4, 2020. Ms. Floyd also noted that the appeal is being recorded.

- a. Appeal by OTR East Windsor Investors, LLC (the "Developer") with Mercer County Planning Board's Site Plan decision requiring, Inter alla, the Developer to provide a cross access easement for vehicular traffic from its proposed residential development to a neighboring/adjacent residential development.

Mr. Ridolfi gave to the Board a verbal history of the December 11, 2019 Land Development Committee application hearing of the Windsor Pointe site plan application which required the applicant to create and show on the plan a cross access and maintenance easement between the project site Block 3, Lots 3 & 3.02 (East Windsor Township) and the adjacent property on Block 28, Lot 15 (West Windsor Township).

Mr. Fallat provided to the Board the reasons for the requirement of the cross access easement which included traffic safety and good planning.

Mr. Ridolfi stated that the issue is that of safety and that the County has the authority to impose the cross access condition.

The applicant's attorney Mr. Carroll stated that the East Windsor does not want to see the cross access and that the developer sees it as a safety problem to their site and that the County Planning Act does not allow it.

**A copy of the verbatim minutes of this hearing are attached and made a part of these minutes.**

Mr. Shine asked for a motion to affirm the condition for the cross access easement and Mr. Frisby made the motion. Mr. Agress seconded the motion.

The motion was approved with the following vote:

Y	Michael E. Shine	Y	Samuel M. Rubino
Y	William S. Agress	Y	Tai Wilson
Y	Samuel Frisby	Y	George Fallat
Y	Paul Penna	Y	Leslie R. Floyd

V. New Business

There was no new business.

VI. Correspondence

There was no correspondence.

VII. Adjournment

Mr. Frisby made the motion to adjourn the meeting and Ms. Wilson seconded the motion. The meeting was adjourned at 9:36 a.m. with the following vote:

Y	Michael E. Shine	Y	Samuel M. Rubino
Y	William S. Agress	Y	Tai Wilson
Y	Samuel Frisby	Y	George Fallat
Y	Paul Penna	Y	Leslie R. Floyd

Respectfully Submitted,



Richard J. Smith, Planning Board Secretary

**COPY**

**MERCER COUNTY PLANNING BOARD**

***PUBLIC HEARING - OTR EAST  
WINDSOR INVESTORS, LLC***

***6/10/2020***

**Condensed Transcript**

**Prepared by:**

Edwin Silver, CCR  
SILVER REPORTING SERVICES, INC.

Wednesday, June 17, 2020

Page 1

1 MERCER COUNTY PLANNING BOARD  
 2  
 3  
 4 REPORTED VIA ZOOM  
 5 Wednesday, June 10, 2020  
 6 9:15 a.m.  
 7  
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 9  
 10 PUBLIC HEARING IN RE:  
 11 Appeal by OTR East Windsor Investors, LLC with  
 12 Mercer County Planning Board's Site Plan decision  
 13 requiring, inter alia, the Developer to provide a  
 14 cross access easement for vehicular traffic from  
 15 its proposed residential development to a  
 16 neighboring/adjacent residential development.  
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 18  
 19  
 20  
 21 SILVER REPORTING SERVICES, INC.  
 22 634 ARENA DRIVE, SUITE 206  
 23 TRENTON, NJ 08610  
 24 (609) 888-0111  
 25 Email: SRS@silverreporting.com

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1 A P P E A R A N C E S:  
 2  
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 4 ROBERT N. RIDOLFI, ESQ.,  
 5 640 South Broad Street  
 6 Trenton, NJ 08650  
 7 For the Mercer County Planning Board.  
 8  
 9  
 10 HILL WALLACK, LLP,  
 11 BY: THOMAS F. CARROLL, III, ESQ.,  
 12 21 Roszel Road  
 13 Princeton NJ 08540  
 14 For the Applicant OTR, East Windsor  
 15 Investors, LLC.  
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Page 2

1 BOARD MEMBERS PRESENT:  
 2 MICHAEL E. SHINE, CHAIRMAN  
 3 WILLIAM S. AGRESS, VICE CHAIRMAN  
 4 SAMUEL M. RUBINO  
 5 SAMUEL FRISBY  
 6 PAUL A. PENNA  
 7 TAIWANDA WILSON  
 8  
 9 ALSO PRESENT:  
 10 RICHARD J. SMITH, Planning Board Secretary,  
 11 (Via phone)  
 12 LESLIE R. FLOYD, Planning Director  
 13 ANDREW LLOYD, Assistant Planner  
 14 GEORGE FALLAT, County Engineer  
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1 I N D E X  
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 3 PRESENTATION PAGE  
 4 MR. RIDOLFI 7  
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1 CHAIRMAN SHINE: Well, thanks  
 2 everybody for coming. Today is the June 10th  
 3 Mercer County Planning Board meeting. And I will  
 4 ask Mr. Smith to tell us if we are adequately  
 5 noticed.  
 6 MR. SMITH: Can you hear me?  
 7 CHAIRMAN SHINE: Yes, sir.  
 8 MR. SMITH: Pursuant to the Sunshine  
 9 Law, notice of this meeting was published in the  
 10 Times of Trenton on May 25th, 2020, posted on the  
 11 Mercer County Planning web page on May 20th, 2020,  
 12 and posted in the County Administration Building  
 13 on June 4th, 2020.  
 14 CHAIRMAN SHINE: Thank you.  
 15 MS. FLOYD: Mr. Chairman, I need to  
 16 point out that this meeting is being recorded.  
 17 CHAIRMAN SHINE: Thank you.  
 18 Board members, you've all received a  
 19 copy of the May 13, 2020, meeting minutes.  
 20 Could I hear a motion of a comment on  
 21 the meeting minutes.  
 22 VICE CHAIR AGRESS: I will make a  
 23 motion to approve the May minutes.  
 24 MR. RUBINO: Second.  
 25 MR. SMITH: I'm sorry, Mr. Chairman.

1 I can't hear who is making the motion.  
 2 CHAIRMAN SHINE: Bill made the  
 3 motion, and I believe Sam, was that you who  
 4 seconded it?  
 5 MR. RUBINO: Correct.  
 6 MR. SMITH: Thank you.  
 7 CHAIRMAN SHINE: All in favor.  
 8 (The Board members vote unanimously  
 9 in favor of the motion.)  
 10 CHAIRMAN SHINE: Motion carried.  
 11 Is there any public comment to the  
 12 Planning Board meeting?  
 13 (No response.)  
 14 CHAIRMAN SHINE: Okay. Sensing none,  
 15 we'll move to Old Business.  
 16 And, Rick, could you help us with our  
 17 adequate notice.  
 18 MR. SMITH: Public notice of the  
 19 appeal was published in the Times of Trenton on  
 20 May 29th, 2020, posted on the Mercer County  
 21 Planning web page on May 20th, 2020, and posted in  
 22 the County Administration Building on June 4th,  
 23 2020.  
 24 Leslie, is this being recorded?  
 25 MS. FLOYD: It is being recorded and

1 will be transcribed by a court reporter at a later  
 2 date.  
 3 CHAIRMAN SHINE: Moving to the appeal  
 4 by OTR East Windsor Investors, LLC.  
 5 Mr. Ridolfi, would you care to kick  
 6 us off on this?  
 7 MR. RIDOLFI: Sure.  
 8 I just want to give you a brief  
 9 resume of where this started and where we are as  
 10 of today.  
 11 This application by OTR was  
 12 originally heard by the Land Development Committee  
 13 at our December 18, 2019, meeting, and then on the  
 14 same day there was a letter sent out from the  
 15 Board, from the committee confirming our  
 16 conditional approval, and that letter listed four  
 17 conditions, the second condition of which requires  
 18 a cross access and maintenance easement between  
 19 OTR's project, which is located in East Windsor,  
 20 and the neighboring adjoining, adjacent  
 21 development known as I think it's Heritage, which  
 22 is located in West Windsor.  
 23 As you can see, the magical wand is  
 24 going across that pristine area where we are  
 25 requiring the cross access easement to ease the

1 flow of traffic.  
 2 Tom Carroll, who is I believe on the  
 3 call with us this morning, an attorney with Hill  
 4 Wallack, represents OTR, and he submitted on April  
 5 28th his legal memorandum outlining his reasons  
 6 purported to justify his position that the county  
 7 has no legal right to impose the conditions of the  
 8 cross access easement on a road that is not a  
 9 county roadway. He contends that this condition  
 10 exceeds the scope of the county's authority by  
 11 requiring the easement.  
 12 I have reviewed the reported cases  
 13 submitted by Mr. Carroll. I have reviewed the  
 14 County Planning Act, that's N.J.S.A. 27-6.6, and I  
 15 have reviewed once again our County Master Plan.  
 16 I have also consulted with the counsel for the  
 17 county as well as counsel for the Mercer County  
 18 Freeholder Board for these issues.  
 19 Would it be helpful if George chimed  
 20 in at this point to just remind the Board?  
 21 I'd like to focus on the--because I  
 22 think the purpose of the appeal really focuses on  
 23 the issue of our imposition of the cross access  
 24 and maintenance agreement.  
 25 George, do you just want to take a

1 minute to just remind the Board of your reasons  
2 for imposing that condition?

3 MR. FALLAT: Sure.

4 So, the cross access easement that  
5 we're asking for would connect the adjacent site  
6 in West Windsor to this site, and it will provide  
7 a means for folks from the adjacent site in West  
8 Windsor to make a left turn from--either a left  
9 turn or a through movement from directly across  
10 from Windsor Center Drive, which will be  
11 signalized by this applicant.

12 In my opinion, that's a much safer  
13 option. It minimizes the conflict, the traffic  
14 turning left potentially directly out of the West  
15 Windsor site in the direction to a signalized  
16 intersection, a traffic signal, which the county  
17 will maintain, and also provides a direct access  
18 to Windsor Center Drive.

19 So, really in terms of traffic safety  
20 and just common sense, we really believe that this  
21 is the right thing to do. We're not asking for a  
22 cross access from East Windsor into West Windsor.  
23 We're only asking that the access be one way. I  
24 don't think that's unreasonable. I think it makes  
25 sense from a regional planning perspective, and I

1 think it makes sense from a traffic safety  
2 perspective.

3 MR. RIDOLFI: Have you had the  
4 opportunity, George, to review the preliminary  
5 plans submitted by the Heritage development, which  
6 is located immediately adjoining and adjacent to  
7 OTR's project?

8 MR. FALLAT: Yes.

9 MR. RIDOLFI: And could you tell the  
10 Board how that applicant, I believe it's Heritage,  
11 deals with the extension of that cross access  
12 easement roadway on this project?

13 MR. FALLAT: So, the concept plan  
14 actually shows a connection into this property.  
15 It shows a small road segment, which can be  
16 accommodated on the West Windsor property. So, it  
17 does show that.

18 MR. RIDOLFI: And have you also heard  
19 from West Windsor, and specifically West Windsor's  
20 traffic consultant, Jim Kochenour, with his  
21 opinion on this issue and his recommendation?

22 MR. FALLAT: Yes.

23 Their opinion is that the West  
24 Windsor property has a proposed access on Old  
25 Trenton Road not far, I don't recall how many

1 feet, not far from this access, and they are also  
2 recommending that the left turn be accommodated  
3 through the East Windsor site and through the  
4 traffic signal, the proposed traffic signal at  
5 Windsor Center Drive.

6 MR. RIDOLFI: In your professional  
7 opinion, does that represent good planning  
8 technique?

9 MR. FALLAT: Yes.

10 MR. RIDOLFI: Is everybody up to  
11 speed now on the layout and the issue of the  
12 location of the proposed cross access easement?

13 CHAIRMAN SHINE: Yes.

14 MR. LLOYD: Yes.

15 MR. RIDOLFI: So, as I said  
16 previously, I've taken a look at the cases  
17 submitted by Mr. Carroll, and my opinion is that  
18 each of those cases can be distinguished from the  
19 facts involved in OTR's application, as those  
20 cases dealt with a taking, a dedication of land.

21 This is not a taking. This is a  
22 simple request for an easement, which is founded  
23 and based in traffic concerns to ensure the  
24 traveling public that our county roads will  
25 operate at safe levels.

1 Several of the cases cited by Mr.  
2 Carroll confirm that the conditions imposed must  
3 be reasonably designed to address the specific  
4 concerns generated by the proposed development and  
5 must advance a legitimate land use purpose.

6 You just heard from George, and I'm  
7 sure that Leslie will confirm this, that there is  
8 certainly and clearly and obviously a legitimate  
9 land use purpose to obliterate and control the  
10 traffic on our county roadway system.

11 I have also taken a look at our  
12 County Master Plan, specifically the mobility  
13 element, and it states, in part, "and developer  
14 may be required to install access and site  
15 circulation facilities that anticipate shared or  
16 cross access by neighboring properties when they  
17 developed."

18 So, the County Master Plan envisions  
19 this exact situation. It provides for the ability  
20 to impose cross access easement, which is exactly  
21 what we want to do here.

22 I have also taken a look at the  
23 County Planning Act, which, as you know, is the  
24 basis for our authority as a County Planning  
25 Board, and the County Planning Act states, in

1 part, the following: "The requirement of physical  
2 improvement is subject to recommendations of the  
3 county engineer relating to the safety and  
4 convenience of the traveling public, including  
5 drainage facilities, other highway and traffic  
6 design features as may be deemed necessary on such  
7 county road or roads in accordance with the  
8 engineering and planning standards established."

9 I interpret that language, that  
10 statutory language, to include not only county  
11 roads, but it says "or roads." This is another  
12 road.

13 I don't think we are restricted to  
14 imposing these traffic calming devices to county  
15 roads. I think if the scrivener had written after  
16 the word county road parentheses s parentheses,  
17 that would be a different subject. But it's a  
18 completely separate and independent reference to  
19 roads. And that's exactly what we're doing here.

20 I think under the County Planning  
21 Act, this Board does have the authority to impose  
22 the condition that we imposed upon this  
23 applicant.

24 I guess to get down to the real  
25 issue, the real issue, folks, here is--I believe

1 it's not a legal one. I think we understand that  
2 this applicant has been advised by East Windsor  
3 Township that the township would not approve its  
4 subdivision application if it included the cross  
5 access easements with the adjoining West Windsor  
6 development.

7 The abutting project in West Windsor  
8 is under review by you, as well as West Windsor,  
9 and you have heard from George that the traffic  
10 consultant from West Windsor is recommending the  
11 imposition of a cross access easement on the West  
12 Windsor site to connect with the cross access  
13 easement on the proposed roadway on OTR's project  
14 as well.

15 This is common sense, folks. It's  
16 clear to me that you have the authority to impose  
17 a condition.

18 I disagree, or I differ with Mr.  
19 Carroll's legal opinion based on the cases that he  
20 has cited for our consideration, and I firmly  
21 believe we're doing the right thing to ensure  
22 safety of the traveling public on a county road by  
23 recommending and imposing this condition of the  
24 cross access easement.

25 Furthermore, I think the reasons

1 promoted by the applicant's engineer about their  
2 concern, their objection was basically based on  
3 concerns about the traffic issues related to the  
4 folks using the community center.

5 I think we all are familiar with  
6 community centers and, frankly, how infrequently  
7 they are used.

8 I specifically asked the engineer if  
9 she had gone through the exercise of perhaps  
10 redesigning the layout of the community center and  
11 flipping the design so that the community center  
12 is closer to the roadway and the parking is in the  
13 back so cars would not interfere with the cross  
14 access easement roadway, and she said, No, we  
15 didn't do that.

16 I think they should have. I think  
17 there's a way to design around the problem. But  
18 the bottom line is it's not an engineering  
19 problem, it's not a design issue. It's a  
20 political, with a small p, issue that,  
21 unfortunately, is the applicant's real issue  
22 here.

23 So, that's my opinion.

24 CHAIRMAN SHINE: I appreciate that,  
25 Bob, and thank you, George, for the summary of

1 your findings and what led us to our decision.

2 I'd like to ask if Mr. Carroll would  
3 like to take just a few minutes, not very long, to  
4 offer a rebuttal, or we can proceed to a vote.

5 MR. RIDOLFI: Can I interrupt just  
6 for a second?

7 CHAIRMAN SHINE: Sure.

8 MR. RIDOLFI: Leslie, is there  
9 anything that you want to add to my remarks before  
10 we hear from Mr. Carroll?

11 MS. FLOYD: The only thing I would  
12 have added, Bob, was the reference in the mobility  
13 element, which you covered in your summary.

14 So, no. I think you've covered the  
15 various ways in which the County has the authority  
16 to require a cross access easement.

17 Mr. Carroll, I believe you should be  
18 able to speak at this point.

19 MR. CARROLL: Yes.

20 Can you hear me?

21 MS. FLOYD: Yes.

22 CHAIRMAN SHINE: Yes.

23 MR. RIDOLFI: Yes, I can hear you,  
24 Tom.

25 MR. CARROLL: For the record, Thomas

1 Carroll on behalf of the applicant, OTR.  
 2 I will be brief.  
 3 You know, we've put our position on  
 4 the record at the live meeting that we had before  
 5 the Board, we put on the testimony of the  
 6 engineers and also Mr. Garfinkel on behalf of  
 7 OTR. And the upshot is clear, from our  
 8 perspective. You know, as Mr. Ridolfi mentioned  
 9 and as we said at the last meeting we had with  
 10 you, East Windsor does not want to see this road  
 11 interconnection.

12 The County Planning Board is telling  
 13 us that you do want to see this interior road  
 14 interconnection. And the problem that presents to  
 15 OTR is obvious in that regard. And as we said and  
 16 as our engineers testified when we were before  
 17 you, the issue is far deeper than that.

18 It's a safety issue internally in the  
 19 OTR project to have the traffic channelled through  
 20 their development, with children walking, and the  
 21 like. It's an obvious safety problem. And at the  
 22 same time, the West Windsor property has access to  
 23 two different county roads, Old Trenton Road and  
 24 Princeton-Hightstown Road.

25 OTR is basically being asked to

1 jurisdiction to do that.  
 2 To the Supreme Court cases, Mr.  
 3 Ridolfi said, Look, this is only an easement, it's  
 4 not a conveyance of land. I don't know how it  
 5 would be done mechanically. But assuming it is  
 6 only an easement, that's precisely what the Nolan  
 7 U.S. Supreme Court case was about. It was about  
 8 asking one property owner to provide an easement  
 9 that would benefit others, not that property  
 10 owner. And in that context, the U.S. Supreme  
 11 Court said it's unconstitutional. And this is a  
 12 very analogous fact pattern.

13 So I guess lastly what I would say  
 14 is, of course, this is a Mount laurel development,  
 15 it's designed to assist East Windsor in meeting  
 16 its Mount Laurel obligations, and we're stuck in  
 17 this quandary where we have two different  
 18 government agencies telling us two different  
 19 things. We can't do two different things. But  
 20 even if we could, it's not something that OTR  
 21 would want to do because it creates a problem with  
 22 respect to developing its own property.

23 So I understand that the County  
 24 Planning Board, your only concern is traffic on  
 25 county roads. As I said, the West Windsor

1 prejudice itself and create a problem on its own  
 2 property to assist different development as to  
 3 needs that we don't see since they do have access  
 4 to two different county roads.

5 But even if they did, under the law,  
 6 you can't require one developer to fix the  
 7 problems essentially that another developer has.  
 8 That's not the way the law operates when it comes  
 9 to development exactions that are imposed by  
 10 county planning boards.

11 Again, we don't create the need for  
 12 this, and we don't benefit by it. OTR is  
 13 prejudiced by it.

14 So, given the law, that's just not  
 15 what the County Planning Board is permitted to do,  
 16 even if the Board had jurisdiction, which, as I  
 17 said in my April 28 letter to Mr. Ridolfi, the  
 18 County Planning Board has very limited  
 19 jurisdiction. I'm sure you're all familiar with  
 20 that. And with respect to county roads,  
 21 jurisdiction relates to improvements on and along  
 22 county roads, not interior road connections that  
 23 somebody may think is a good idea. We disagree  
 24 with that. The County Planning Act just doesn't  
 25 give you that flexibility, the authority, the

1 property has access to two different county  
 2 roads. There's no need to channel this traffic  
 3 through the OTR property to address that. Even if  
 4 you did, you don't have the jurisdiction or the  
 5 legal ability to do it. But the bottom line is on  
 6 this Mount Laurel property, the OTR property,  
 7 you're putting the applicant in an impossible  
 8 position.

9 So, for the legal reasons set forth  
 10 in the April 28 letter I sent in, along with the  
 11 engineering testimony we provided, we just don't  
 12 think the Board has the legal authority to do it.

13 So, unless you all have any  
 14 questions, I think I'm concluded.

15 CHAIRMAN SHINE: Well, thank you for  
 16 that. I appreciate your input.

17 And, Bob, thank you again.

18 Do you have anything further to add?

19 MR. RIDOLFI: No. I think I've said  
 20 all that's necessary at this point.

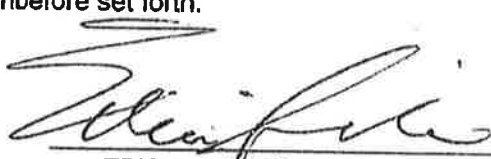
21 CHAIRMAN SHINE: Okay. Thank you.

22 Well, to the Board, I would like to  
 23 ask for a motion to affirm our December 2019 Land  
 24 Development Committee conditional approval.

25 MR. FRISBY: Move it, please.



1 CHAIRMAN SHINE: Who was that?  
 2 I'm sorry.  
 3 MR. FRISBY: Freeholder Frisby.  
 4 CHAIRMAN SHINE: Thank you, Sam.  
 5 VICE CHAIR AGRESS: I'll second it.  
 6 CHAIRMAN SHINE: Thank you, Bill.  
 7 All in favor.  
 8 (The Board members vote unanimously  
 9 in favor of the motion.)  
 10 CHAIRMAN SHINE: Any opposed?  
 11 (No response.)  
 12 CHAIRMAN SHINE: Hearing none, thank  
 13 you for helping us work through this issue.  
 14 (The hearing concluded at 9:35 a.m.)  
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1  
 2 CERTIFICATE  
 3  
 4 I, EDWIN SILVER (Certificate No. XI00379),  
 5 Certified Court Reporter and Notary Public of the  
 6 State of New Jersey, do hereby certify the  
 7 foregoing to be a true and accurate computer-aided  
 8 stenographic transcript taken via ZOOM in the  
 9 above-entitled matter on the date and time  
 10 hereinbefore set forth.  
 11  
 12   
 13  
 14 EDWIN SILVER, CCR  
 15  
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 17 Dated: June 17, 2020  
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