

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
JANUARY 16, 2019**

SPECIAL MEETING: 7:31 P.M.

Roll Call **Members Present** – Dr. Kloby, Mr. Hawley, Mr. Caccamo, Dr. Cetron, Mr. Neff, Mr. Pepe, Mrs. Murray, Mr. Colangelo, Mr. Dougherty, Mr. McGoldrick, Mr. Illiano

Members Absent – Councilman Fligor, Mr. Ilarraza

Michael Steib was present as Board Attorney. Douglas Rohmeyer was present as Board Engineer. Chairman Colangelo called the meeting to order and stated that the meeting is being held in compliance with the Open Public Meetings Act. Chairman Colangelo called for a moment of silent prayer followed by the Pledge of Allegiance.

Mr. Colangelo stated that they have hired a sound professional to address some of the comments received after the last hearings however there may be some hiccups and he asked that everyone be patient.

PB18-06, Block 142, Lot 5, 17 Avenue D (Denholtz Custom Homes) – Application for Preliminary & Final Major Subdivision Approval with Variances – Mr. Steib advised this is a continuation of a previous hearing, at which the applicant concluded their presentation and the Board began taking questions from members of the public as to the witness' testimony. After the Board finishes hearing the questions, it will be followed by comments, a rebuttal from the applicant if they so wish and a summation before the Board deliberates.

John Giunco, attorney for the applicant, stated that the applicant has re-noticed and he would like it confirmed that it was acceptable. Mr. Steib stated that the notices were in order and the Board continues to have jurisdiction over this application.

Chairman Colangelo asked that members of the public state their name clearly, spelling their last name and state their address for the record.

Donna King was called but did not appear.

Kevin Milne, 36 South Ave, referred to the sewer lift station and asked if it is going to be pre-cast concrete. Susan Brasefield, previously sworn and accepted as a sewer design expert, indicated that it will be pre-cast concrete. Mr. Milne asked if the depth of the vault is directly ruled by the water table in the area. Ms. Brasefield stated that the depth of the structure is dependent upon the depth required to collect the sewage from the homes by gravity. The reference on the plans regarding the water table is in regard to the additional concrete that is poured to weigh it down so that it doesn't float if the water table were to rise. Mr. Milne asked if the alarm that was mentioned will be an audio or visual alarm. Ms. Brasefield indicated that it will be a red light with an alarm sent to the monitoring system so there would be no audio alarm on site. Mr. Milne questioned the materials to be used. Ms. Brasefield confirmed it will be a two inch stainless steel pipe. Mr. Milne asked questions relating to the installation of the chamber. Ms. Brasefield explained the brackets that would be used and how they will be installed. Mr. Milne asked questions relating to the variable pump drive. Ms. Brasefield explained there is not a need for variance drive frequency pumps because of the size. Mr. Milne indicated concern with the utility costs for maintaining the system.

Richard Busick was called but did not appear.

John Lollo, 10 Ocean Boulevard, offered comments regarding the development in town and the weather changes and asked if the applicant has considered the risk factor of Mother Nature. Jim Kennedy, previously sworn and accepted as an expert engineer, explained the project meets the

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zoning requirements, complies with DEP requirements and will be subject to building codes. Mr. Lollos asked if Mr. Kennedy feels in his heart that he has done what it takes to protect this property. Mr. Giunco objected that questions should be based on testimony given on the project and not the feelings of the experts.

Sarah Chiles, 59 Third Ave, referred to the stone revetment and asked if all alternatives have been assessed and if this is the best meet the environmental and weather concerns of the area. Mr. Kennedy explained that there is no criteria for strongest or weakest thresholds for environmental designs; you either meet the requirements or you don't. They are given the reasonable minimums for shore protection and the applicant is obligated to meet those reasonable minimums. Ms. Chiles stated that the applicant is only meeting the bare minimum. Mr. Giunco objected and asked that his witness be allowed to finish his answer. Mr. Kennedy continued that in the beginning of this application, the proposal was for a steel bulkhead with a concrete cap and a walkway but there were concerns with maintenance costs so they went back and talked to their DEP consultant. They also looked at the shore protection that occurs right along the same area and they saw that stone revetments are used along the Bay Shore currently in Atlantic Highlands and along the shore in other communities. They understand that the revetment itself still needs to be engineered and will have to meet the requirements of DEP. From an environmental standpoint, the DEP would rather see a structure such as stone rather than a hard structure like a bulkhead because of the wave reflection and the ability to form a habitat and provide vegetative growth. There is an alternative to not put anything there, but that is not an alternative this developer seeks to follow. Ms. Chiles asked if it is Mr. Kennedy's professional opinion that meeting the lowest standard would be some sort of impenetrable construction but the applicant kicked it up a notch with the stone revetment; what would be better than a stone revetment. Mr. Kennedy clarified that there is a DEP reasonable minimum standard; the applicant is not choosing to meet the minimum standard, they are meeting the standard. Environmental sensitivity and structural strength are two different things. Environmental sensitivity has to do with non-polluting materials and providing vegetative stabilization, flora, fauna, mussels and mollusks being able to attach to something, a habitat. A bulkhead does not really provide a habitat but stone revetments generally do. There is no scale of environmentally sensitive solutions because there is a book of regulations that tell them what to do. The applicant has committed to submit the required permits and they will meet the requirements of DEP that go along with developing the coastline. Ms. Chiles indicated that Residential Site Standards for contamination clean up are likely more submissive than those for boat storage, which is what exists on the site. She asked if the applicant will completely remediate the contamination in the ground before construction begins. Mr. Kennedy explained that there are other experts who will be addressing this however the DEP requires certain remediation requirements that have to be met prior to developing a residential development. There is no way to request a waiver from this requirement, the State DEP sets rules that they must follow. Ms. Chiles questioned the developer's record regarding DEP violations. Mr. Giunco objected, stating that it is not relevant to this application. Ms. Chiles stated that a lot of the answers they are being given is that the State standards will decide the answer and the public is to be confident that the applicant will meet all state and federal regulations. She would like to know if there is evidence that they can trust Denholtz to meet the regulations. Mr. Giunco suggested that Ms. Chiles should not be concerned whether Denholtz meets the requirements but whether the DEP properly enforces the standards. The applicant's representation is that they intend to meet the requirements however they can swear in the applicant, Mr. Denholtz.

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Steven Denholtz, 189 Monmouth Boulevard, Oceanport, NJ, was sworn in as the applicant. Mr. Denholtz explained that his company has a deep experience with cleaning up contaminated site. The present owner, Mr. McConnell, has obtained an RAO, which is the end of the process for the cleanup of the soils and there are monitoring wells on site. The wells will remain on-site until after the development process. At the time of the development, his company will take over the process of monitoring. The monitoring by the DEP is required in situations when the contamination is not down to zero but it so low that the process is to allow for natural attenuation. The wells will be periodically tested as well. The State has a Brownfields program which was instituted in 1997 and they were the first Brownfields applicant in the State to develop the Lily Tulip site in Holmdel over 20 years ago and they have been involved in cleaning up contaminated sites throughout the state and bringing that back to a productive use. Ms. Chiles questioned if Mr. Denholtz has a clean record of compliance with the State. Mr. Denholtz stated that there is always a back and forth of the State making requests that an applicant do certain things but he has never been fined and they are very well respected with the DEP.

Lisa Kmak was called but did not appear.

Michelle Moylan was called but did not appear.

Stacy Smith-Velez was called but did not appear.

Barbara Bateman was called but did not appear.

Bob Jopsom, 67 Rumson Road, Rumson, NJ, referred to the 20 foot wide beach with a revetment behind that and asked if there has been any provisions to ensure the sand does not wash away. Mr. Kennedy stated that would be wave reflection of a hardened structure, such as a bulk head. Mr. Kennedy explained the requirements for toe erosion control for a bulkhead however in this case there is a sloped revetment and the wave energy is transferred on an angle to reduce the erosion at the toe of the hardened structure. They have found that there would be less toe erosion with an armored revetment than if it were a bulkhead. Mr. Jopsom asked if there are any provisions for beach replenishment if it washes away. Mr. Kennedy replied that there is no plan for beach replenishment. Mr. Jopsom referred to the contamination on site and asked if they can rely on the operator to see a sheen and to stop if they see it. Also, is that a sufficient amount to know whether they have contaminated soil or not. Mr. Giunco objected that this has been asked and answered. The DEP has conducted a study, the property owner has reacted to that letter over the last few years and they have been issued a closure letter; he doesn't know that there is anything left to add. Mr. Jopsom stated that the DEP has not stated the soil is not contaminated.

Mr. Denholtz advised that Mr. McConnell hired an LSRP to oversee the cleanup. All of the soils were removed that were contaminated and based on the report sent by that professional to the DEP, there were no contaminated soils remaining. There is some ground water deep below that will not be disturbed during construction. If something comes up that is not in the study, they will have to rely on the good judgment of their professionals.

Elaine Egidio, 81 W. Washington Ave, asked if the homes would be constructed with environmentally sensitive building materials. Mr. Kennedy stated that conventionally constructed homes similar to other homes in the area. Ms. Egidio asked if any consideration has been given to environmentally sensitive material. Mr. Denholtz explained that the homes are being designed by an architect who is known for designing homes all along the Jersey Shore. The Denholtz Company builds strong foundations and wood framed homes and they are committed to the highest level of construction. Ms. Egidio asked if the landscaping proposed will be environmentally

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sensitive. Mr. Denholtz replied that the landscaping was specifically designed for waterfront design. Ms. Egidio asked questions related to parking and trip calculations. Mr. Kennedy explained that the RSIS provides a requirement for a certain number of parking spaces based on the bedrooms in the unit. John Rea, previously sworn and accepted as a traffic expert, clarified that the traffic counts testified to, were 16 trips for each of the two peak traffic hours.

Chairman Colangelo announced that if a member of the public has to try to make their comments into a question, it may be best to just save it for the “comments” portion of the hearing.

Regina Keelen was called but indicated that she would like to wait for the comment portion to make her statement.

Mark Fisher was called and indicated that he passes.

Dawn McCahon, 31 E. Lincoln Ave, referred to the public trust doctrine requires access to the water and asked if there is any access to the water proposed from the east or the west. Mr. Kennedy replied that in accordance with the Municipal Ordinance, it is proposed as open space for the development. Ms. McCahon asked for clarification that the applicant is not providing access to the public. Mr. Kennedy stated that is his understanding. Ms. McCahon asked if the original plan proposed public open space. Mr. Kennedy replied that is correct.

Abyna Bruno was called but declined to comment.

Andy Clurfield was called. Chairman Colangelo stated that since Ms. Clurfield had spoken at a previous hearing, she will be limited in her time to ask questions. Ms. Clurfield asked if there are any paid or outstanding violations against the Denholtz Corporation. Mr. Denholtz replied that he is not aware of any violations with the DEP. Ms. Clurfield asked for clarification and asked if there is an expert retained who would know. Mr. Denholtz indicated that if Ms. Clurfield knows otherwise he welcomes that information.

Donna King, 43 Fourth Ave, referred to the public trust and indicated that the shoreline should be used by everyone and not just people in certain developments. She asked why the applicant reduced the number of homes and why can't the public get access to that open space. Mr. Giunco stated that during the preliminary application there were comments made about the cost of maintenance to the Borough and it seemed as though that was a significant impact so the applicant reacted to try and satisfy the comments of the Board. Ms. King stated that she does not accept that, it is the inalienable rights... Chairman Colangelo indicated that statement would have to be made during the “comment” section. Mr. Kennedy explained that part of the public trust is the availability of public access and they have seen that the DEP will go through the Public Trust Doctrine, they will look at adjoining areas. When you adjoin a public park and a public right-of-way, there are certain instances where the DEP will recognize that as reasonable access to the shoreline. That is not to say that DEP wouldn't have to improve or ensure public access as part of the DEP permit, but it does not always have to be on the development parcel. Ms. King stated that usually a developer does provide public access and asked if it can be reconsidered. Mr. Kennedy stated that the applicant was being responsive to the comments that were received however if the DEP process requires access, he is not sure that door is closed. The ordinance requires 30% of the tract be set aside as open space with some sort of ownership, which is why the Homeowner's Association was created so not to burden the municipality. Ms. King asked if Open Space means that the homeowners in that development get access to that open space. Chairman Colangelo asked if the ordinance defines open space as public or private. Mr. Kennedy read the definition of Open Space directly from the Ordinance. He added that the Ordinance also requires that a multi-

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development have a 30% open space set aside and it also suggests that ownership should be approved by this Board and so as not to place any burden on the Borough, a Homeowner's Association would own the 30% Open Space for the use and enjoyment of the development.

Mr. Pepe stated that he understands the applicant responded directly to comments that were made regarding the ownership but who owns the land is a separate issue from who has access to that land. There is a scenario where the Homeowner's Association owns and maintains the land, but the public still has access, just like he can let someone walk through his property any day. Dr. Cetron stated that the Homeowner's Association may choose to do that in the future. Mr. Pepe asked if it is foreclosed that the homeowner's association will allow public access. Mr. Giunco replied that it is not foreclosed however it is difficult to distinguish a backyard from open space in a scenario like this. The applicant tried to react to maintenance cost issue that was raised and there is a provision in the ordinance that it can be achieved in the fashion proposed. There are conversations that can be had in the future but the terms of the application was to submit an application that meets every condition of the ordinance. Mr. Pepe indicated he understands the applicant is following the terms of the Ordinance but there is a lot of concern with this issue. Mr. Giunco stated that if a private entity, like a Homeowner's Association, is paying for the maintenance of their open space, and it becomes open to the public then it becomes the same as any other public park and other public parks are not paid for by individuals, they are paid for by the entire community's tax base. If the applicant were to do that it would be going against the guidance to not include maintenance and it would then fall under the Municipal Services Act, which would require municipal reimbursement for the maintenance costs to the Association. If this is something the Municipal Agency wants to do, his client would be entirely open to satisfying the issues but they are concerned about a few things. The first would be that the homeowner's have privacy that any homeowner would expect. The second would be with the revetment issue and they continued the existing across the street on Avenue D, it is a better solution than a bulkhead and it is no cost to the municipality.

Ms. King asked if the National Public Trust would supersede the town's right to say no public access to the citizens or does it protect the citizens to enjoy the reason they have fought and came to the area. Mr. Giunco objected and stated this has been asked and answered; Mr. Kennedy had identified the doctrine does not require every property to have access it just requires adequate access, which there is to the east and west of this site.

Peter Blair was called but passed.

Kathleen Wigginton, 62 Avenue D, asked if the 11:00 rule will be enforced. Chairman Colangelo stated that it is a Board decision that will be addressed at 11:00 however the Board is inclined to get through this. Ms. Wigginton asked how many testing wells are on the site and if they are visible. Mr. Giunco stated that was not part of the testimony however Mr. Denholtz will address it. Mr. Denholtz advised that he believes it is 7 or 11 and they are visible. He was unsure as to their depth but they go to the groundwater. For the first two years they are tested every six months and after two years, it is once every two years. Dr. Cetron stated that it is defined in the State letter and there are 18 monitoring wells.

Marie Jackson was called but a member of the public advised she had stepped out.

Chairman Colangelo called a name that was in script that appears to Elaine or Eddie Segaldo. He announced that if you are not called and your name is close to that, please let him know.

Brent Sonnick-Shmetlz was called but indicated he will wait for the "comment" portion.

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Chairman Colangelo stated that is the end of the “questions” list but he will call the people who did not appear when called at the last hearing. Casey Espinoza was called but did not appear. Donna MacDonald was called but did not appear. Dolores D’Achille was called but did not appear. Vicky Plumaker was called but did not appear. Chris Nolan was called but did not appear. Thomas Key, Fourth Avenue, was called but did not appear. Tucker Snedecker was called but did not appear. Michael Ferguson was called but did not appear. There will be a comment portion of the hearing. There is an objecting Attorney who will give his presentation first.

Kevin Asadi, objecting Attorney, advised that he has a few questions to be asked. He asked that Exhibit A-27, sheet 4 be placed on the easel, it is a sheet from the paper set of plans that were marked. Mr. Kennedy displayed sheet 4 of Exhibit A-27, as requested. Mr. Asadi stated that he has the plans opened to sheet 4, which shows the layout of the lots proposed and it shows the flood plain lines. He asked Mr. Kennedy to point out where the flood line lies in relation to the plan. Mr. Kennedy referred to the exhibit and pointed out the Z-zone line and the AE zone line, which is based on preliminary FEMA maps. Mr. Asadi asked if the preliminary FEMA maps have different lines than the currently adopted lines. Mr. Kennedy stated that it varies depending on where the line is. He further indicated that sheet 2 shows the land as it exists today with the V-zone and AE-zone. The word “preliminary” is shown in brackets but the other elevations do not have the word “preliminary” in brackets. Mr. Asadi asked how many of the lots lie within the A or E-zone. Mr. Kennedy stated that they the shoreline will be in the V-zone because it stands for wave velocity, there is also elevation or static flooding, which is the next layer up. The structures are placed, except in two instances, in the AE zone, which is based on existing contour. A portion of this site will be filled and it will removes the areas of the structure from the AE zone. Most of the northerly properties are in the V-zone or AE-zone and the southerly portion is in Zone X or out of areas of flooding, period. This is to be expected with waterfront development. Mr. Asadi clarified if that would be 9 lots out of the 17 lots, if you count the Open Space lot. Mr. Kennedy replied that half of the open space lot is in the V-zone and 8 of the homes on the waterfront would be in an AE or V-zone. Chairman Colangelo clarified that the lots could be in an AE or V-zone but the structures would be raised above those zones. Mr. Kennedy advised that is correct.

Mr. Asadi asked if Mr. Kennedy would be able to design a plan where all of the new lots would be outside of the A or V flood zone. Mr. Kennedy stated that even if there was just one home on this full property, a portion of the lot would be in the A or V zone so he would have to create a lot to cut off the A or V zone, so it would be impossible to subdivide the property such that some portion of the property wouldn’t be in the flood zone because the lot currently exists in the flood zone. Mr. Asadi asked if it would be possible to design the site so that all of the open space is in the AE or V zone. Mr. Kennedy replied yes, he could do that. Mr. Asadi referred to the testimony that there is an open space requirement of 30% for a multi-development and asked how the area of the open space was measured and what was and wasn’t included. Mr. Kennedy explained that the boundaries of the property were laid out on a certified land survey, prepared by a licensed land surveyor and using those boundary lines, they established an open space area of 1.885 acres, measured to the boundaries associated with the land survey. Mr. Asadi asked if it comes out to exactly 30%. Mr. Kennedy replied that it comes out to 30.00% of the lot. Mr. Asadi stated that the sewer pump station is included in the open space area and asked if it was included in the open space calculation. Mr. Kennedy replied yes. Mr. Asadi asked Mr. Kennedy to read the definition of open space again, which Mr. Kennedy did. Mr. Asadi asked if a sewer pump station is incidental to the natural state of the land. Mr. Kennedy replied it is below grade. Mr. Asadi asked if the generators are above ground. Mr. Kennedy replied yes.

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Mr. Asadi indicated he would like to question the applicant's Planner. Andrew Janiw was previously sworn and accepted as an expert planner. Mr. Asadi referred to language in the Master Plan that indicates the Borough is at a limit of capacity for population density. Mr. Asadi referred to page 35 of the Master Plan and assumption number two. Mr. Janiw read the assumption noting that it reads "little to no" population growth is expected however there are vacant parcels identified and there are a variety of mixed use development going on in town. There is land that is vacant or open for development and the density is protected established by Borough Ordinance. This property is in the R-1 district and it is being development at a density that is anticipated by the Master Plan. Mr. Asadi referred to page 37 and stated that he is interested in the first two bullet points and asked Mr. Janiw to read them aloud, which he did. Mr. Janiw stated that one of the things to remember when dealing with residential growth and character is that this property historically has been an industrial commercial operation. The property was deemed by the Municipality as appropriate for residential because of the character of the neighborhood, it was zoned R-1. The Borough sought to incorporate these comments by providing that should this lot be subdivided into multiple lots, there would be an open space requirement of 30%. With that said, it fits into the two bullet points he read from the Master Plan. The application is taking a commercial property that created hazardous situations and it is cleaning up the property and being developed pursuant to the land use plan. Mr. Asadi asked if 16 is the maximum number of lots that can fit without creating a need for a variance. Mr. Janiw replied that there are a variety of configurations that haven't been anticipated so he cannot say that 16 is the definitive number but this plan happens to work at 16 while still providing open space. Mr. Asadi asked if there are no waivers required for this application. Mr. Janiw replied that is correct, there are no waivers required. Mr. Asadi advised he has concluded his questions.

The Board took a break at 9:01 pm and reconvened at 9:09 pm.

Upon reconvening, Chairman Colangelo advised that a member of the public has indicated he was not called during the question portion.

Vic Simon, 73 Arymont Lane, Aberdeen and Commodore of the Catamaran Club located adjacent to this site. He asked what will separate the end of the cul-de-sac from the catamaran club; will there be a wall? Mr. Kennedy advised there is no wall proposed however there is a slope proposed from the end of the cul-de-sac down to the open space portion of the lot. Mr. Simon asked if there will be something between the houses and the Cataman Club. Mr. Kennedy replied that there is landscaping proposed between lot 5.09 and the open space lot. They also propose street trees at the end of the cul-de-sac but other than that, it would be a grassed slope down to existing grade. Mr. Kennedy referred to the colored rendering and pointed out lot 5.09 which has buffering from the open space lot. Mr. Simon stated that he is mostly concerned with the northern portion of the open space lot. Mr. Kennedy replied that the applicant is not proposing anything in the open space; it would up to the homeowner to landscape that lot. They do not show any landscaping on any residential lot, because that it is a personal thing. They do show buffer plantings in the open space area along lot 5.09. Mr. Simon stated that they lease the property from the town for a great deal of money and they would like to know what will separate the homeowner's from the activities that occur at the Catamaran Club. Mr. Kennedy reiterated that they are not proposing any landscaping at this time however the Homeowner's Association may choose to develop that open space lot in the future. Mr. Simon indicated concern with addressing potential neighbor conflicts. Mr. Kennedy stated that these homeowners may have an interest in boating, but either way it is left up to the Association. Mr. Simon asked questions relating to drainage, indicating concern with the sandy area being washed away. Mr. Kennedy stated that they are proposing a conventional

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stormwater system to direct the water towards the bay. Mr. Simon asked if the existing pipe from previous uses of the site in the water will be removed. Mr. Kennedy replied that subject to DEP regulations, they would remove that pipe. Mr. Simon asked if the homes will be raised or if the grade is being raised. Mr. Kennedy replied that the grade is being raised, the home will not be raised on pilings.

Dawn McCahon, 31 E. Lincoln Ave, referred to testimony of the applicant's attorney that "administration" caused the change to private open space and asked the court reporter to read that back. She would like to know who in Administration that caused the change. Mr. Giunco replied that it was based on feedback from the Board members. Ms. McCahon insisted that Mr. Giunco stated it was "administration."

Chairman Colangelo clarified that during a previous meeting, the Board had several questions about who would be controlling the Association and the cost of the land. It is his understanding that, based on those questions, the applicant went back and changed the plan to meet the Ordinance based on the questions from the Board. Mr. Giunco clarified that was the case, there was no other conversation. Ms. McCahon asked when that was. Mr. Colangelo advised it was here, at a previous hearing. He knows for a fact that he was one of the Board members who asked how the common area would be handled. Ms. McCahon asked if the applicant spoke with administration about who would be fiscally responsible to maintain the beachfront and stated that she thought it was the bulkhead they were talking about not the open space. Ms. McCahon then stated that Mr. Giunco indicated that he spoke with administration and that's what changed the idea about how the application is being presented, whether it be open space for the public or for an association. Mr. Giunco advised that if he did say it that way, then he will correct himself. At the public hearing, the Board and the public were concerned about maintenance costs. Ms. McCahon indicated that the concern was with the bulkhead. Mr. Giunco stated that it did not appear specific but perhaps it was and he misunderstood. Dr. Cetron stated that there was concern with the cost of maintaining the bulkhead and a lot of other things in that configuration. The testimony is that they took the input from everyone and this is the way the applicant chose to address those concerns. Mr. Giunco advised that all of those facilities were in the open space so it all ties together. Ms. McCahon asked Mr. Giunco if he talked to anyone in administration about this application. Mr. Giunco advised he spoke to Administration in during pre-application meetings. Ms. McCahon asked who he spoke to. Mr. Giunco stated that he believes the Board Engineer was there in addition to a few others. Ms. McCahon asked who else. Mr. Colangelo stated that who Mr. Giunco spoke to does not matter in terms of the application being presented. Ms. McCahon indicated she was dissatisfied with Mr. Giunco's answer. Mr. Colangelo called Mr. Asadi to begin his presentation.

Mr. Asadi called his witness, Paul Griegyl, who was then sworn in and was accepted as a professional planner. Mr. Griegyl advised that reviewed the application documents as well as the Master Plan and the Borough's Ordinance. With regard to his findings as a planner, he has found that the applicant submitting an application that has been revised along the way. What is currently proposed is put forth as a variance free plan that complies with all regards to the zoning ordinance, but it is still debatable that all the requirements have been met in terms of zoning and/or design standards and there may be certain waivers required with regard to the layout of the subdivision. There are residential lots proposed throughout the property with an open space lot. On the open space lot, there is a sewer pump station along with other improvements, which are a public utility use; that is the first issue that is up for debate. At the last hearing there was some discussion that there is an exemption through section 150-55 of the Ordinance for underground essential services

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from all zoning standards. First of all, there is a common sense argument to be made; unless a building that is above ground is under 40 feet, you could have a structure that is exempt from all zoning standards so you could have a 39.5 foot silo structure right up against the property line and he doesn't not think that is the intention of the ordinance but that is how it reads. Under section 150-36 it talks about above ground utility. The applicant has inferred that because an above ground utility has underground parts it becomes exempt from the standards but he would look at it the other way. It is a reasonable reading of the ordinance to say it would apply. He also noted that the Board engineer never mentioned the exemption that was cited at the last hearing. He is looking at the October 25, 2018 review letter that talks about conditional use standards for a public utility but there is no exemption cited so unless this came to light at the last minute somehow or it was decided that it could apply here.

Mr. Pepe asked if the pump station fits within the text of 150-55. Mr. Grygiel replied that it would be more appropriate for him to present his testimony without being interrupted. Mr. Pepe stated that he is a member of the Board but if Mr. Grygiel does not want to answer, he doesn't have to. Mr. Grygiel stated that his experience is that he is allowed to proceed but the ordinance has conflicting sections but if Mr. Pepe would like an answer... Mr. Pepe stated that his question was does it fit within section 150-55 or not. Mr. Grygiel replied that in that section, no, it is an underground structure with regard to that, it is not up to 40 feet above ground. The flipside is that the pump station is not entirely buried so it is an above ground appurtenance. If you look at one section first, that is one way to look at it; if you look at the conditional use standard in section 36 it's above ground. It is not his call, he is offering his opinion and if the Board can choose to disregard his testimony. As a professional planner, it is not clear to him which standard applies.

Dr. Cetron stated that he thinks it is very clear but Mr. Grygiel has not explained why section 36, which requires "must be provided above ground." This doesn't fit in to section 36 because it is doesn't have to be provided above ground, therefore section 55 would apply. It was determined at the last meeting that section 36 doesn't account for something that "may" be above or below ground. It is very clear that in section 36 applies to things that "must" be above ground. This does not fit that definition so section 55 applies and this planner has not offered any testimony as to why he feels section 36 applies.

Mr. Grygiel stated that if you read the ordinance it says an above ground appurtenance, then it would apply. Dr. Cetron stated that they are talking about the utility, not the generator; only the generator is above ground. Mr. Grygiel stated that there is more than just a generator but the hour is late and he doesn't want to belabor the point. He disagrees that the Board made a determination about that section and that is not how he heard it.

Mr. Pepe asked if Mr. Grygiel agrees that textually it fits within the exclusion, but he is saying the exclusion conflicts. Mr. Grygiel replied that he doesn't think the intention was to say you can have a 40 foot structure anywhere on a lot just because it is part of an underground utility. There is a logical disconnect between the two sections and that is the basis of his testimony. He thinks it is important for the record to reflect that it was not mentioned in the Board Engineer's letter. The next aspect is with regard to the open space lot, lot 5.17 which includes the sanitary sewer pump station with above ground appurtenances and a fence around it. The definition of open space includes above ground appurtenances that are incidental to the openness of the land. He feels that this utility use should be its own separate lot and should be excluded from the calculations of the open space lot. The intent is to leave it open, not to say they can go and put something else in next. The ordinance is not completely clear but something that is not incidental to the openness

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of the land, such as a pump station shouldn't be included in open space. Again the open space can be public or private but clearly this is to be privately utilized. The intent of the ordinance is that it is a big open area that is being chopped down by putting in other improvements. With regard to affordable housing, it is a big issue, there is not set aside on this lot. He is not suggesting that this should be affordable housing property, but it seems odd there is no consideration above the 1.5% required development fee. In 2006 it was considered a scarce resource and he asked what's changed that now it up for development and there is nothing beyond the 1.5% development fee to contribute to the Borough's Affordable housing obligation. In regard to the potential waiver that is required from the general site design standards; section 150-84c mentions that plans in the flood zones V or A on the advisory base flood map should be preserved as undeveloped open space or maintained within the development. Basically, you cannot scrub those features. The testimony from Mr. Kennedy indicated that they will be changing grade and that section talks about changing the grade or otherwise modifying the property as being an issue. For that matter, the testimony also indicated that they cannot develop the property without making changes to that portion of the property so he would like the Board to consider whether a waiver is required from that section of the Ordinance.

Mr. Asadi stated that with respect to that Ordinance section, the following areas should be preserved as open space include lands in the floodway identified as the A and V zones. He asked if the Ordinance also defines development and if he could read that aloud. Mr. Grygiel read the definition of "development" as requested. Mr. Asadi referred to Mr. Kennedy's testimony that you could not develop this lot without violating that part of the ordinance, so wouldn't a waiver be required to develop any portion of this lot? Mr. Grygiel replied that is a reasonable interpretation. Mr. Asadi asked if the applicant could do better than to subdivide the actual flood area into portions of 9 separate lots. Mr. Grygiel stated that he doesn't want to go too far into the merits of the application but he feels there could be a better alternative. Mr. Asadi asked if subdividing this flood area into 9 separate lots stays true to the planning actions set forth in the Master Plan. Mr. Grygiel replied that particular action would be contrary to that section of the Master Plan. Mr. Asadi referred to testimony that the subdivision could be subdividing in its own way without splitting up the A and V zones and asked if that would be a better alternative. Mr. Grygeil replied that with regard to that section of the Master Plan and trying to minimize waivers, yes. Mr. Asadi indicated he has no further questions.

Mr. Giunco indicated he has no question for the witness. Chairman Colangelo asked if there are any questions from the public for this witness, none were received.

Chairman Colangelo stated that the school staff has to leave in about 8 minutes so unfortunately they have to end it for this evening. He thanked the public for their input and hoped that the sounds system was better this evening.

Mr. Steib advised that this hearing is being carried to the February 14, 2019 meeting at 7:30 pm at Borough Hall, 100 First Avenue, Atlantic Highlands, where they will be announcing the new date for the larger venue. If you are interested in this hearing you must come to the meeting on February 14th or call the Board Secretary the next day to find out the new hearing date for this location.

Mr. Asadi stated that his planner will not be attending the next meeting so he would like to confirm this portion is closed out. Mr. Steib advised that the public and the applicant were given the opportunity to present questions. Mr. Giunco stated that he would like to reserve his right to present rebuttal testimony.

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MR. NEFF MOVED TO ADJOURN THE SPECIAL MEETING, SECONDED BY DR. KLOBY.
ALL PRESENT MEMBERS VOTED IN FAVOR BY VOICE VOTE.

There being no further business to come before the Board, the Special Meeting was adjourned at
9:51 P.M.

Erin Uriarte
Planning Board Secretary