

**PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS
MARCH 25, 2019**

SPECIAL MEETING: 7:31 P.M.

Roll Call **Members Present** – Dr. Kloby, Councilman Fligor, Mr. Hawley, Mr. Caccamo, Mr. Neff, Mrs. Murray, Mr. Colangelo, Mr. Dougherty, Mr. McGoldrick

Members Absent – Dr. Cetron, Mr. Pepe, Ms. Drew

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.

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. The applicant has done a notice, which was not required but is in order and the Board continues to have jurisdiction.

Mr. Colangelo stated that he is going to go in order, from the “Comments” sign-up sheet from way back on August 29, 2018.

Shelley Kennedy was called but did not appear.

Mark Fisher, 91 Third Avenue, was sworn in. Mr. Fisher advised that he has been in attendance at all the hearings going back to the initial presentation before Council. He read from various newspaper articles, noting that the public would like to see open space and it seems as if the public is not welcome. The principals of the company have been quoted as building boxes that can be sold. Mr. Fisher mentioned a Council meeting where a member of a public asked the Borough Council if they are in favor of preserving open space and they all answered yes, except the Mayor who abstained. He asked if the Planning Board if they are in favor of preserving Open Space and was advised by the Chairman that this is the period for comments only. Mr. Fisher noted that the applicant conveniently omits information and he would like to have Ms. McMahon’s question answered regarding who the applicant has spoken to in administration. Mr. Fisher added that he had submitted an OPRA request for Environmental Documents for this site. He has a 14 page letter dated August 14, 2017 and one from Brownfield Science and Technology dated August 9, 2018, referencing soil contaminations on the site. The LSRP signed off on a Remedial Action Outcome for areas of concern. Even though the LSRP signed off, the DEP can negate the RAO at any time additional contamination is found on the property. Mr. Fisher summarized the RAO for the Board. The third document he has is a 683 page document is dated October 18, 2018. He asked if the Board has read this document. Mr. Colangelo advised they read the summary, not the entire 683 pages. Biennial Groundwater Sampling Results were marked as Fisher Exhibit-1. Mr. Fisher reviewed the hazardous findings and noted that he feels that they were conveniently omitted from the applicant’s presentation. He read a list of the contaminants that were found in the sampling results, noting that several are not soluble in water. There is also a mobile phone application to find out what contaminants are carcinogenic. Mr. Fisher indicated concern with liability in granting approval if health issues arise in the future from these known contaminants. He would like the see continuous air sampling be done during construction until such time that all work is completed. He would also like to see a disclosure given to anyone buying a home as this site be made a condition of approval. If the project is approved, this project will not enhance the public good, it will take open space from the Borough residents. This outcome of this application will define this Board’s legacy.

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Eliz Pomeroy was called but did not appear.

Beth Chandler was called but did not appear.

Taylor McFarland was called but did not appear.

Kate Wigginton, 62 Avenue D, was sworn in and stated that she witnessed the on-site conditions dating back to the 1950's where she would see dead ducks floating in the puddles. While she is not a DEP expert, she has seen it with her own eyes and Mr. Fisher's report justifies everything she has experienced.

Marilyn Scherfen, 55 Avenue D, was sworn in and stated that the property in question is a treasure for this town and she is concerned with the children of the future having access to the water. The property has historical significance being its waterfront proximity, the Lenape Indians inhabited this property. There was a promenade envisioned for this property in the Master Plan. An article in the Two River Times also refers to the Navy's desire to conserve undeveloped waterfront property.

Brent Sonnek-Schmelz, 51 Ocean Boulevard, was sworn in and thanked the Board for listening to their comments. He referred to the general design standards and noted that Ordinance 07-2013 was adopted after Superstorm Sandy. He thanked Councilman Fligor for helping to pass that Ordinance and read a portion of it, noting that property in the flood zone should be retained as Open Space. Even the DOD foresees sea level rising over the next several years. He would like to know why this was left out of the Engineer's review letter and he feels the public deserves an answer as to why this Ordinance was not applied. Mr. Schmelz added that the pump station was not addressed correctly as it should be considered a conditional use. The above ground pump station is not an incidental use to the open space. He read from previous transcripts as to the design of the pump station. He feels the pump station required a conditional use variance or a "d" variance and should have been presented before the Zoning Board.

Suzanne Santry was called but did not appear.

James Krauss, 77 Bayside Drive and Chairman of the Environmental Commission, was sworn in. Mr. Krauss stated, on behalf of the Atlantic Highlands Environmental Commission, the Commission had adopted a Resolution in 2018 recommending the Borough acquire this property in order to create a public park. Resolution referred to excerpts of the Master Plan, which Mr. Krauss read for the record. The applicant's planner left out portions of the Master Plan that were overarching. He read from the currently proposed Master Plan, noting that it encourages bay front open space and recreational activities, beaches, hiking and boating. It recommends establishing and upgrading Municipal recreation facilities, including ballfields, hiking, beaches and Lenape Woods. The Environmental Commission feels that residential development is not consistent with either Master Plan. Mr. Krauss offered his personal comments to the Board, noting that there are several inconsistencies between this plan and the current or draft Master Plan. From reading the Master Plan, it is clear the Board believes in Open Space. Nowhere in the Master Plan does it say the Borough needs more Single Family Homes. The Environmental Commission Resolution 2018-01 was marked as AHEC-1.

Douglas Leite was called but did not appear.

Luke Kane was called but did not appear.

Judy Kane was called but did not appear.

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Benson Chiles, 59 Third Avenue, was sworn in and noted that he is here on his own behalf. He thanked the Board for the patience and added that he was on the Board back when Hovnanian applied to develop this property. He thanked Mr. Denholtz for participating in a dialogue on how to provide a development that will be welcomed in the town. There is no way he could have known how deeply the community feels about this parcel of land. As a developer, he understands the challenges Mr. Denholtz faces. The plan proposed is a step back from what was originally proposed. The community appreciated the original plan because of its dedication of open space and public access. The current plan has construction in the flood zone and an awkwardly shaped open space lot. He added that this is the least dense project proposal for this site, as it should be. He indicated that open space and public access is important. The community has changed drastically since Standard Oil utilized this site. Past Boards have also approved projects that would not make sense now. Because of Superstorm Sandy, the Borough adopted an Ordinance that clarifies that all land in a flood zone be preserved as open space. The proposal to build homes and a paved roadway is a violation of the ordinance and is insensitive to the recent history of the town. He reflected on his time on the Board and added that he never regretted voting “no” on an application, it was only when he voted “yes” that he felt regret.

Laurie Zydel was called but asked to be passed.

Andrea Clurfeld, 41 Third Avenue, was sworn in and offered comments regarding waterfront preservation, which is the responsibility of every resident of Atlantic Highlands. Privatizing the waterfront will violate the character of the community. The residents are stewards of a natural resource and this parcel should be retained in as natural a state as possible. She feels that members of the Board have shut down women who wished to voice their opinions and pointed them to other officials. It is a privilege to be on the Board and if they feel they are “only” volunteers then their commitment is lacking.

Paul Hancock was called but did not appear.

Jon Smyth was called but did not appear.

Emily Rathburn was called but did not appear.

Carolyn Northrup was called but did not appear.

John & Ginger Lollos were called but did not appear.

Lauren McCahon was called, however her mother indicated she is not in attendance and she may have signed her daughter’s name by mistake.

Elaine Egidio, 81 West Highland Avenue, was sworn in and stated that she is a third generation resident of Atlantic Highlands. She would love to see this jewel preserved for future generations. She feels the construction will disturb contaminants and cause pollution of our waters. The beauty of the town will not be enhanced by approving this project.

Cory Wingerter was called but did not appear.

Don Adler was called but did not appear.

Casey Espinna was called but did not appear.

Donna MacDonald was called but did not appear.

Mary MacDonald was called but did not appear.

Stephanie Ladiana was called but did not appear.

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Eric Valentine was called but did not appear.

Chris Nolan was called but did not appear.

Paul Barbato was called but did not appear.

Tony Hannon, 1 Brandt Way, Middletown Township, was sworn in and stated that he is a member of the Catamaran Club. He read from the Master Plan, noting several sections that refer to preservation of Open Space and stated that approving this plan would be a contradiction the Master Plan. He indicated concerns with future sea levels rising over the next 50 – 150 years. He feels the town should but Fireman's Field and allow houses there and use this space to relocate the ball fields and expand the Borough Park and allow beach access.

At this time, the Board took a recess and reconvened at 9:10 pm.

Elisabeth Eittrien, 123A East highland Avenue, was sworn in and offered comments regarding support for preserving open space at the waterfront. The historic aspects of this property are very important and she is concerned with contaminants and climate change affecting the community. She recommends improving existing signage to make the Catamaran Club area more accessible. She would like to see the beach access preserved. She is also concerned with affordable housing.

Michelle Moylan, 85 Bay Avenue, was sworn in and thanked the Board and her neighbors for their time. She echoed her neighbors' comments, noting all the research that the community has done. This is the Board's chance to preserve the character of the town.

Lynette Ruffo was called but did not appear.

Jim Kehoe, 72 Burlington Avenue, Leonardo [section of Middletown Township], was sworn in and presented a photo exhibit, which were marked as Kehoe Exhibit-1. He stated that they are aerial photographs of the property in question from 1960, 2013, 2019 and an Open Space Plan. He added that he would like to see the previous uses disclosed to future purchasers.

Jean Kaeli was called but did not appear.

Jon Crowley, 2 Keystone Drive, was sworn in and stated that he would like to see this parcel remain open space. He informed the Planning Board that they can say no for any reason they see fit, they don't even need to offer an explanation. He also asked that the developer reconsider the private open space and allow public access.

Peter Shearer was called but did not appear.

Ben Bugbee was called but did not appear.

Regina Keelen was called but did not appear.

Donna King, 43 Fourth Avenue, was sworn in and read from the 1964 Master Plan, noting that the ultimate goal is to preserve the heritage and protect the special qualities of town for future generations. This is the most densely populated state and we all know that open space is so important to everyone's well-being. She asked the Board to please listen to the public and not approve this application.

Kevin Milne, 36 South Avenue, was sworn in and stated that the improvements proposed for the pump station should be considered a structure. This Board has a chance to create a legacy and he would like to see this application rejected.

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Sarah Chiles, 59 Third Avenue, was sworn in and thanked the Board for their service. Her heart is full with the research and efforts put forth by the residents of this town. She would like to make it clear that the community loves the town, they love one another and they like to get together to fundraise for things that they care about. They will continue to fundraise to oppose this effort for as long as it takes. The Board may make decisions based on fear of litigation to follow, but it could be seen from either side based on the commitment of this community who is willing to step up and continue Mr. Asadi's work.

Arthur Sorensen, 98 First Avenue, was sworn in and stated that Harborside Drive is a horrid example of what happened in the past. The houses took away the view of the water. He listened to the testimony regarding the contaminants and wondered about the town's liability 30 years from now. The testimony presented before this Board is enough to say no.

Richard Busick was called but did not appear.

Allan Field was called but did not appear.

Dan Sutton was called but did not appear.

Dawn McCahon, 31 East Lincoln Avenue, was sworn in and thanked everyone for their time. The residents of this town want to preserve that land and she hopes that Mr. Denholtz will be the one to help them rather than to be the one who takes the legacy away. She asked that the Board deny the application.

Alyssa Bruno was called but did not appear.

Ben Grooters, 112 Center Avenue, was sworn in and stated that he agrees with the previous comments made about why this proposal should be rejected. This is the Board's opportunity to negotiate future proposals and he asked that the Board preserve as much public open space as possible and to maintain the small town feeling that gives Atlantic Highlands its charm. He indicated concern with the Catamaran Club having access to the water and noted that many community events that are held on this parcel.

Janice Ewertsen, 72 Burlington Avenue, Leonardo [section of Middletown Township] was sworn in and thanked the Board for their time. She echoed the comments that came before her and indicated concern with the contaminants on the site. She suggests that Atlantic Highlands to consider the rising sea level. The town does not need another 1970's cul-de-sac. The Green Acres area is no longer posted as Green Acres and is surrounded by creeks and disrupting this contaminated site will not benefit the cleanliness of those areas. She indicated that she would like to see public open space along the waterfront. She added that the money put towards these meetings should have been put towards acquiring the land.

Vic Simon, 73 Airmont Lane, Aberdeen and Commodore of the Catamaran Club, was sworn in and stated that the Club has had a great relationship with the Borough and Bud McConnell. The club has been a positive thing for the community, they have allowed the town's people to come in and use the property and he would like to see the McConnell tract remain as open space. The section that is now a soccer field used to be a parking area, when the town asked the Catamaran Club if the soccer field would be a problem and at the time it wasn't because they had space on this parcel to park. If this is approved, they will need to use that soccer field area for parking again. He would like to see this application be denied.

Peter Blair was called but did not appear.

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Bob Jopsen was called and indicated his comments have all been made by others.

Marie Jackson was called but did not appear.

Lou Melillo was called but did not appear.

Carol Nolte was called but did not appear.

Clay Halvorsen, 796 Park Avenue, Middletown Township, was sworn in and offered comments relating to the operation of the Catamaran Club. He is concerned with the stone revetment causing harm to distressed sailors. That area can be a catcher's mitt for people in distress and he is worried about everyone's safety.

Carol Nolte was called but did not appear. A member of the audience indicated that she had left.

Paul Barbato, 22 Lawrie Road, was sworn in and stated that he has been here for about 20 years. This property has been in question for many years and he thinks that everyone needs to consider both sides of the story. As a taxpayer, he wonders how it would be paid for if the town decides to take it over as open space.

Mr. Colangelo asked if there is anyone else who has not been called that would like to make a comment. None were received.

Kevin Asadi, Attorney for the Neighbors for Waterfront Preservation, stated that the key Land Use Plan recommendation from the Master Plan is to limit residential growth. He thanked the Board for their patience, service and attention. He is a Board member in his home town and he knows the sacrifices they make. He thanked the Chairmen of the Board for the way they ran a meeting; he has never seen an application where members of the public were given such a robust opportunity to be heard and voice their opinions. The applicant's whole team came with their best game and he would like to compliment that. Mr. Asadi stated that the application looks great but when you drill deeper, there are a lot of reasons why the Board should second guess their initial impression. The Board may be asking if they are legally able to deny the application and Mr. Asadi feels not only that they can, but they must. The Board can deny the application for a number of reasons. Mr. Asadi stated that the conditional use conditions should have been applied and were not met. There are several design waivers that were not met, nor were they addressed by the Engineer's review letter or during testimony. One of the issues is the development of a property within a flood zone. The applicant's engineer admitted a subdivision in the flood zone is considered development of a property in a flood zone because a portion of the property is in a flood zone. The Ordinance prohibits development of land in a flood zone and the ordinance defines development as the division of one parcel into two or more. Not only are they seeking to subdivide the flood zone parcel, but they are dividing the flood area itself into 9 different lots to attempt to maximize out at 17 lots overall. There is no reason to granting that waiver. The applicant admitted that they could design a subdivision without having to further subdivide or disturb the flood area. There is also a requirement that every subdivided lot be suitable and have at least 5,000 square feet of developable area or 80% of the minimum lot standard, whichever is greater. In this case, that would be 6,000 square feet of minimum developable area per lot. The northern lots on that plan are all undevelopable because they are in a flood zone lot and that was never addressed by the applicant. There is a 30% open space requirement and the applicant has provided the absolute minimum. If any of the open space in question is excluded from the calculations, then they would not comply. Mr. Asadi read from the ordinance and stated that a fenced in pump station is not incidental to the open space of the land. He would picture a park bench or walking trails as being incidental to the natural state of the land, not a fenced in pump station. The applicant might argue

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that any waivers required are justified, but this is only true if you believe that unnecessarily dividing a flood area into 9 separate parcels and offering open space consisting of a fenced in sewer pump station is within the general purpose and intent of the ordinance. It is not impractical to ask the developer to design a project that meets the open space requirement and leaves the flood area alone. The applicant's engineer acknowledged it can be done. The Master Plan charges to limit residential construction, do you find the project to honor that? The Board can deny the application. The 2010 Ordinance didn't contain the prohibition against developing parcels in the flood zone; only in 2013 was that prohibition added. That change was explicit that it was a direct response to Hurricane Sandy. Imagine this application coming in in 2013; he wonders if the Board would be open to maximum development and unjustified waivers in light of the Master Plan, Sandy and the Ordinance changes that took place as a direct response. The applicant's engineer acknowledged it could have been subdivided to eliminate development in the flood area but in an effort to maximize houses, minimize open space and cut the public off from the water, they have elected to design it this way. The applicant cannot explain how this is justified; they think they have the Board over a barrel and that they think they are entitled to an approval. The applicant has given no testimony as to why they cannot leave the flood zone undisturbed; is it that the underlying price of the land is too high. This was an industrial site for close to 100 years, emanated from which is a nuisance and pollution for profits for the owner. For decade after decade the land was being polluted in order to serve big business interests. Now is the time that the property owner recognizes this and reduces the prices so the developer can come back with a scaled back plan that honors the Master Plan and Ordinance. These are important issues and there is not enough evidence to approve this non-conforming subdivision. The Master Plan and Subdivision should be your guide and the Board can deny. Mr. Asadi stated that he appreciates the Board giving him their attention.

Mr. Giunco asked for the hearing to be adjourned so that he has an opportunity to prepare a proper rebuttal. Mrs. Murray indicated concern with dragging this on to another meeting. Chairman Colangelo indicated that there is no time limit this evening however this venue is available tomorrow evening. He asked if Mr. Giunco can consult his client this evening. Mr. Giunco stated that he would like to adjourn to tomorrow evening so that he can address all of the comments made.

Mr. Asadi asked if there will be professional testimony. Mr. Giunco replied most likely. Mr. Asadi reminded the Board that any professional testimony will be subject to further public questioning and comments again. Mr. Colangelo advised that is correct.

Mr. Steib advised that this hearing is being carried to the March 26, 2019 meeting at 7:30 pm in this room at the Atlantic Highlands Elementary School, 140 First Avenue, Atlantic Highlands, where they will be announcing the new date for the larger venue.

COUNCILMAN FLIGOR MOVED TO ADJOURN THE SPECIAL MEETING, SECONDED BY MRS. MURRAY. 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 10:05 P.M.

Erin Uriarte
Planning Board Secretary