

Planning & Zoning Commission
Milton Library – 121 Union St
March 18, 2014 – 6:30 pm

Transcriptionist: Helene Rodgvile
[Minutes are not Verbatim]

1. Call to order – Don Mazzeo
2. Roll call of members

Virginia Weeks	Present
Mark Quigley	Present
Linda Edelen	Present
Tim Nicholson	Present
Lynn Ekelund	Present
Don Mazzeo	Present
Barry Goodinson	Absent

3. Additions/Corrections to agenda
Don Mazzeo: Do we have any additions or corrections to the agenda as it is published? Hearing none, I'll ask a motion to accept the agenda.

4. Approval of agenda
Linda Edelen: Motion to accept.
Tim Nicholson: Second.
Don Mazzeo: All in favor say aye. Opposed. Motion carried.

5. Approval of Minutes – December 17, 2013
Don Mazzeo: I know that's a long time ago for some of us. Do I have any comments, questions or concerns on the minutes of December 17, 2013? Hearing none, I'll accept a motion to accept the minutes.
Virginia Weeks: Mr. Chairman, I make a motion to accept the minutes.
Linda Edelen: Second.
Don Mazzeo: All in favor say aye. Opposed. Minutes are accepted.

6. Public Hearing
Don Mazzeo: This evening we have a large gathering of folks here. Welcome. Please, just for the purposes of continuity if you have a cell phone or other electronic device, so as not to disturb the meeting, could we just turn it off or put it to mute. I'd appreciate that. Thank you very much. Our first agenda item is a public hearing.
 - a) The applicant, Ocean Atlantic Management, LLC, is requesting a preliminary site plan review/approval for the construction of Phase 1 of the Community Center located at 301 Garden Street. The property is located in the Heritage Creek subdivision and further identified by Sussex County Tax Map and Parcel # 2-35-20.00-842.00. The application was submitted on behalf of Fernmoor Homes at Heritage Creek

Don Mazzeo: Do we have a representative of Ocean Atlantic Management here this evening?
Mike Kobin, George, Miles and Buhr, Project Engineer: Good evening. Ben Gordy is with me from Ocean Atlantic Management. If you remember back there was a lot of discussion about this, there were a number of comments from the Town Engineer. All the Town Engineer's comments have been satisfied at this point. All of Mr. Savage's subsequent comments have been satisfied. If it's okay, I'll just hit the highlights. There are now two phase drawings in your package and one showing just the little _____ building and the extra room; the fencing was shown, as discussed; gate locations have been shown; and then, Phase 2 shows the entire layout. As we discussed, there's a note on the plan, the construction of Phase 2 is to commence no later than the sale of the 200th home. There were a number of housekeeping items that were taken care of on the cover sheet and on the plan itself; a lot of dimensional items and there was a contour that was mislabeled on the original. Elevation views have now been provided to you and they have materials on them. I actually have those here. Landscaping. There was some discussion about screening from the homes, particularly on this side, so now there's a double row; actually on both sides, but this was the area of concern, if you recall to screen those homes from the cars in the parking lot here. Sidewalks, there was a sidewalk added here and to connect to the community sidewalk up there. Spot elevations on the pool deck. Fence details have been added to the plan and that is a 6' fence, as requested. Landscaping species and sizes are shown on the Landscaping Plan and we differentiate which of the plants are going in Phase 2 on the plan now, as well. Bollard lights have been added to the plan. A stop sign was added to the plan, as was discussed. Just in our response, it was noted that trash is intended to be handled with totes. We talked about the timing. So all of our outside agency approvals have been obtained. The Fire Marshall approval has been obtained and Sussex County Conservation District approved a revision for this area; it was actually included in Phase 2B. I know I kind of blasted through that. Do you have any questions?

Don Mazzeo: Members of the Commission, any question of our applicant?

Tim Nicholson: I do. If approved, when would you expect to break ground and how long would it take to complete the project?

Mike Kobin: The bank could probably answer that better than I, but I understand the intent is to start right away on the first phase.

Ben Gordy, Ocean Atlantic Management: The intent is to get all of our permits as soon as possible, with the intention of starting this spring and getting the pool completed at some point this summer; the pool and the Phase 1.

Tim Nicholson: Phase 1 is the smaller part.

Ben Gordy: Yes, the bathrooms in the Gathering Room, for now.

Tim Nicholson: The second part of my question is how long would it take to complete the project; I mean taking into account weather and all of that, what are you looking at, three months, two months, once you start?

Ben Gordy: I would estimate probably three months.

Tim Nicholson: Okay.

Mark Quigley: Is your company ready to give a specific date of start date? It seems, in the past with other developer's things have gone back and forth and delay, delay, delay after we do give the approvals. I guess one of my questions is, is there a specific hard date to start and then some type of timeframe to complete the project?

Ben Gordy: I guess it's dependent on getting the building permits. We really can't submit for building permits until we have your approval, so that's Step 1. Our intent is to submit for those permits as soon as possible and then I'm not sure what the timeframe is to get all those

approvals, but I can definitely look into that.

Mark Quigley: Thank you.

Virginia Weeks: I notice now and I wasn't aware of this when you were here before; with Phase 1 you're only doing 13 parking spots and with Phase 2 you're going to complete that parking lot on that side of the pool? Is that what I'm seeing there?

Ben Gordy: Yes, that's correct.

Virginia Weeks: I thought that last time you were here, that you were going to do that entire parking lot of 27 parking spots, with Phase 1 and if warranted, when Phase 2 was done, you were going to do the one on the other side.

Mike Kobin: No, parking's been phased from the very beginning.

Virginia Weeks: I'm not so happy with that. Why go through and build a parking lot and they have to have grass or gravel or whatever and not have enough parking and then have to come back and amplify that parking lot, when you could do it all at one shot and it would cost you less? It's just my thoughts.

Linda Edelen: Is that parking that Ginny's talking about Phase 2; is that going to be a staging area of some sort for the second building; I mean the completion? Is that why you're not doing that, or have you not thought about it?

Mike Kobin: It more than likely will be; we hadn't really thought that far ahead, but that would be the most likely spot for that to be.

Virginia Weeks: Why?

Mike Kobin: Because it's an area that's already going to have to be disturbed and you don't want to...

Virginia Weeks: I would imagine that you would stage your stuff where Phase 2 is going to go.

Mike Kobin: Well you have to build there, so the materials have to go somewhere nearby.

Virginia Weeks: I think 13 parking spots is very few, if anybody... for people. I don't see why you can't do all 27 at the same time. Just my comment.

Mike Kobin: The whole thing was scaled, my understanding, was so it would be manageable for the Homeowner's Association, among other things.

Virginia Weeks: Fourteen parking spots? How would 14 parking spots make it less manageable for the Homeowner's Association?

Mike Kobin: It's just less that they need to take care of until there are enough homeowner's to support the full development; that was the reasoning behind the entire phasing.

Virginia Weeks: I have no more questions.

Don Mazzeo: Any other questions?

Mark Quigley: No.

Don Mazzeo: Mr. Ellis, have you had the opportunity to review for the engineering side; have all of the applicant's responses been satisfactory for the engineering.

Michael Ellis, Pennoni Associates: Yes, they have been. We have reviewed them and found we have no more comments on the plans.

Don Mazzeo: Thank you. As this is a public hearing, I will now open this up to the public for any comments. I would ask that you come forward, give your name and address for the record and address your questions or comments to the Commission, please. Do we have anyone who would like to make comment on this application?

Pat Pompasili, 109 Heritage Boulevard: I happen to agree with you about the parking space. I think it's absolutely ridiculous to be building a parking lot for small spaces and then have to come back, rip everything up and do it over again. It's definitely going to cost more money

and it's going to cost us more money in the long run, for starters. The other thing is, is I think everybody came unprepared for what was going on tonight. It was asked if there was an estimated time, if there is a projected date and it's like well I have to check into it; I have to check into it. I, personally, think that really is an unacceptable answer. This has been going on for a very long time. All of this was discussed back in December, at the last meeting. We had two meetings that we missed so it would have been, I think, enough time to be able to prepare a little bit better and have the correct answers for this and I don't think we're asking for a lot. We're just asking for when is this, since we were all promised that we were going to have a pool and we were promised that we would have it by Memorial Day. I understand weather is an issue, but it's like everything just gets pushed onto somebody else's problem and we have to check on it and it just doesn't get anywhere. Thank you.

Virginia Weeks: Mr. Chairman, may I make a comment?

Don Mazzeo: Absolutely.

Virginia Weeks: The timing is not in the purview of the Planning and Zoning Commission.

Pat Pompasili: I understand that.

Virginia Weeks: I'm sorry for your problems, but there's really nothing we can do about that.

Pat Pompasili: I understand that, but from an engineering point of view... we're here to discuss this and we know already that these are the questions that we have.

Virginia Weeks: Thank you.

Dan Welbourne, 104 Heritage Boulevard in Heritage Creek: My question is, with the Zoning Committee, you say you're not in charge of the timetable; they say that they're not getting their building permits in time.

Don Mazzeo: Dan, let me respond to that very quickly. We, on the Commission, do not issue building permits. The gentleman that's sitting in the corner is the one who would, in fact, be giving the building permits. However, he cannot do anything until this particular application has been reviewed and has been approved. Once it gets approved, the process then goes back to the builder/developer to prepare the documentation to go back to Town. That is when the building permits will be issued.

Dan Welbourne: Why does it take six months to do this?

Don Mazzeo: From what period of time are you referencing?

Dan Welbourne: Well for the last six months, it hasn't happened.

Virginia Weeks: May I? In December, the builder came before us and the application was totally inadequate; absolutely missing many, many of what is in the Ordinance as requirements for preliminary approval.

Dan Welbourne: The things we just went through.

Virginia Weeks: Things that he has corrected, many more. He was aware of what was needed. It wasn't given to us. We were not able...

Dan Welbourne: The builder was aware of the things he needed to have in there and yet he didn't submit them in the plan.

Virginia Weeks: Got it.

Dan Welbourne: Gotcha. Thank you very much.

Seth Thompson: And this might be a good time for me to weigh in as Solicitor. The reason that we asked to come back for an additional preliminary hearing, because that's really when the legwork is done. The final approval process is really more of a checklist, that everything the Commission has required at the preliminary phase, has been accomplished and they have all their outside approvals. It was very important to have this second preliminary review, because we wouldn't want the Commission to approve that wasn't complete and then lo and

behold, something that's not going to be in the community's best interest or the Town's best interest, appear on the final plan when the Commission has less control; but we also understand that people do want this process to go forward. Unfortunately, the weather didn't cooperate, but that's why on tonight is both the preliminary application, a continuation of the initial review and then the final approval. But everybody's going to be given their opportunity, just as we've been doing, to weigh in on the preliminary. Then, if the Commission feels it's appropriate, we'll move onto a final approval tonight, too. At that point, then, the builder has what they need to go forward and pull their permits. Really, I understand you're probably frustrated with the delay. I can tell you the Commission was looking out for your and for the Town's interests when it didn't just give a rubber stamp approval to a preliminary site plan that didn't have everything that you or the Town would probably want to see on there.

Don Mazzeo: Thank you, Mr. Thompson. Do we have any other comments, questions from the public?

Elliot Wehren, 205 Heritage Boulevard: I don't know if it's in your purview, but in the total budget that these guys have to build this structure, are the chairs and umbrellas and so forth, part of it?

Don Mazzeo: That is outside the scope of Planning and Zoning. That's something that your Homeowner's Association and your developer/builder have to be concerned with.

Elliot Wehren: And the inside finishes and so forth in the building? That's beyond you, also.

Don Mazzeo: That is outside of the purview of this Commission.

Elliot Wehren: Okay, thank you.

Don Mazzeo: You're welcome. Anything else? Hearing none, seeing none. We have closed the public hearing portion of this particular application. One item's been brought up, parking and I, as a member of the Commission, also happen to feel that all 27 spaces probably would make sense to be put in during Phase 1, or simultaneous to Phase 1 where you're working into Phase 2; but minimally, I would like to see all 27 spaces right from the get go. Now is that going to put a crimp in your availability of space to put materials? Perhaps. But you have a lot of space on that property out there; it may not be exactly where you want it, but I think you can find the opportunity to put 27 parking places in; satisfy the desire, I believe, of this Commission and certainly of a lot of the folks that are sitting here this evening. I'll give you a few seconds to talk about that.

Mike Kobin: My only comment, is it's a little late in the process for this, but there would be no objection to doing that.

Don Mazzeo: Alright. I'll ask Seth at this point, as a condition of a final, should we get to that point, when we get to that point, can we attach a condition that says all 27 parking spaces will be built?

Mike Kobin: That's my only fear, is that I don't want this to...

Don Mazzeo: That's where I'm going right now.

Seth Thompson: Right and the condition would need to attach at the preliminary phase, which obviously that's where we are currently. The difficulty is then getting to the final phase, if it requires an additional note on the site plan, so in other words, changing the note on the site plan to reflect that those... well and changing the drawings on the site plan for Phase 1, it's going to have to show all of those spaces.

Mike Kobin: If you make that a condition, we'll be happy to submit as a Revision.

Don Mazzeo: But that's going to delay this process by X number of days, weeks.

Mike Kobin: Not if you could go ahead and grant final, then that frees the to apply for their permits and within a day or so, I can have a Revised Plan to Robin, for his records.

Don Mazzeo: Does that meet with the criteria, legally?

Seth Thompson: I just always worry whenever something needs to be done after you've already granted final. Generally, the process is intended to be that when you come back for final, there won't be anything else hanging out there and Robin can go forward on the building permits.

Don Mazzeo: Well, let me ask this then. The minutes of this particular meeting will be transcribed ultimately and they are going to be part of the record this evening, effective the moment we close this application. Can that not stand alone as part and parcel; that would then present the emphasis to be having 27 parking places, in place?

Seth Thompson: Let me double-check our Code here. Again, I always worry, logistically, that signing off on something that isn't quite as you intend it to read.

Don Mazzeo: Well I believe our intent, at this stage, is to have 27 parking spaces; unless I hear something otherwise.

Mike Kobin: Those items are in the Plan, at least. It's not like we're adding an element that wasn't there before.

Don Mazzeo: Absolutely. Your Phase 2 already had the additional whatever, 13 or 14 spaces; so all we're doing is incorporating parking into the first phase and get it going.

Mike Kobin: Basically moving it from 2 into 1.

Don Mazzeo: Exactly.

Seth Thompson: Mike, you can have that filed with the Town shortly?

Mike Kobin: Yes, before the end of the week.

Seth Thompson: Okay.

Don Mazzeo: Alright, so as part of the record then, Mike, you have just stated by Friday afternoon in Town, you will have records corrected?

Mike Kobin: Yes, Sir.

Virginia Weeks: Mr. Chairman, will you be available Friday afternoon to go in and review it and make sure it's there and would that help?

Don Mazzeo: It wouldn't hurt. No. I won't be here Friday, sorry. Actually I won't be. Is there any other member of the Commission available on Friday, as verification to sign off? No. Unfortunately, I won't be in town. Okay, well...

Seth Thompson: The exact wording, you'll find in the wording it discusses the fact that the applicant has to prepare it's final site plan and submit it to Planning and Zoning for review and approval. The final site plan approval shall include the same items as required for preliminary plan approval; so again, the wording of the Ordinance is not necessarily; it's just the logistics and the follow through that I know that I worry about. I'm sure other people in town worry about; obviously this is an applicant that appears in front of us a lot, so in that sense, if they weren't to follow through, I think your Clean Hands Ordinance would prevent receiving any further application from them. And I'm not questioning their integrity by any stretch. It's just sometimes once the stamp of approval is given, the follow through isn't as expeditiously done.

Linda Edelen: If we approve both 1 and 2, is there any reason why 1 has to be completed before 2 begins? In other words, could it actually happen at the same time without...

Seth Thompson: I think that's probably a different question than whether the Phase 1 can require all 27 spots.

Linda Edelen: It is. I'm trying to avoid that.

Seth Thompson: Right. Robin, logistically, in terms of building permits, do you know if they're eligible for a building permit if they haven't completed the site work that would be

part of Phase 1? I suppose it's a theoretical discussion, we don't need to discuss tonight; as long as it's abundantly clear if the Commission gives preliminary approval, that that includes the 27 spaces in Phase 1 and then if the Commission gives final approval; again the same applies.

Don Mazzeo: Are we all on the same page now?

Mark Quigley: Yes.

Don Mazzeo: Good. Okay, at this point, do we have any other further comments or questions of the applicant from anyone on the Commission?

Mark Quigley: I'm still on the start date. They do appear before us often. They seem to follow through, but again, I think for the public's best interest, at least if we have a hard start date, they'll know when it's going to start. Are we able to put a condition on start date?

Seth Thompson: We're really not. The way that actually works is their approval expires, I believe if substantial construction hasn't begun within a year; but I can tell you there are a lot of people here that wouldn't be very happy if they wait until the end of that year. But the Commission isn't able to attach that condition. That's how the Code has chosen to address that concern.

Don Mazzeo: However, if the applicant were to stand in front of this Commission this evening and state that no later than date he would begin starting; would that not be acceptable?

Robin Davis: If I may, Mr. Chairman. The applicant, during the building permit process, the applicant will have to go to the Fire Marshall to get approval for the building. You put a two week period on this application that the Fire Marshall takes six weeks to approve the plan; now the applicant is...

Mike Kobin: That's the one big variable that we don't have any control over. We have Fire Marshall site approval, but the building...

Mark Quigley: But then they would have paperwork that they're in the process... but they would have current paperwork that they're in the process waiting for it, so at least the people know that it's moving forward.

Robin Davis: But again, if you turn around and say three weeks and what if the Fire Marshall doesn't get it done in three weeks? It's out of the applicant's hand... it's out of this Commission's hands and it's out of the applicant's hands.

Virginia Weeks: Our purview is to make sure that this is the best design for the community and for the Town. We're not responsible for furnishings. We're not responsible for how the pool is built; we are responsible only for where it is located on the lot and the setbacks and that houses are protected from headlights at night; that it's not intrusive and that it is the best that we can get for you and that you deserve. If he comes in Friday and brings in the final site plan, he can get his Release that day and go directly to the Fire Marshall. If he brings it in Thursday, he's a day earlier; so I don't see what the problem is. We're not delaying this.

Mark Quigley: No.

Don Mazzeo: No. What we were looking for is some kind of emphasis to be placed upon the applicant.

Virginia Weeks: Not our job.

Don Mazzeo: And I'm hearing that we cannot and should not.

Seth Thompson: The problem is you could create a situation, where as Robin suggested, a third party somehow delays it and then you're in a position where the approval expires, arguably, and then they have to come back in; which I'm sure nobody would want, in terms

of that delay, so that it looks like the attendance tonight probably is an indicator to the applicant that people expect us to go forward quickly. I think that's right that the Commission can't attach a condition in terms of pushing that forward.

Don Mazzeo: Thank you. I will accept a motion on this particular application. This is for preliminary approval, is this not?

Virginia Weeks: Some guidance, Mr. Thompson? I move that we approve that we approve preliminary site plan for Phase 1 of the Heritage Creek Community Center, with the stipulation that the parking is increased from 13 to 27 spaces and that the amended mapping and site plan are in Town Hall by Friday morning.

Seth Thompson: I think that's fine, just for the record to be clear; it's that the 27 spaces are already as shown in Phase 2.

Virginia Weeks: Right, as shown.

Seth Thompson: Great.

Virginia Weeks: For Phase 1 and Phase 2; that it's all to be incorporated into Phase 1.

Seth Thompson: Correct.

Don Mazzeo: I have a motion. Do I have a second?

Linda Edelen: I second.

Don Mazzeo: All in favor say aye. Opposed. Motion is carried. We have a preliminary site plan approval for Phase 1 of the Community Center.

- b) The applicant, Ocean Atlantic Management, LLC, is requesting a preliminary site plan review/approval for the construction of Phase 2 of the Community Center located at 301 Garden Street. The property is located in the Heritage Creek subdivision and further identified by Sussex County Tax Map and Parcel # 2-35-20.00-842.00. The application was submitted on behalf of Fernmoor Homes at Heritage Creek.

Don Mazzeo: Let's go on to public hearing number two. We have representation of the applicant.

Mike Kobin, with George, Miles and Buhr: I'm not sure what else to say.

Don Mazzeo: I guess my first question will be, just as a general one, is that you have responded to each and every one of the items that we had?

Mike Kobin: Yes, Sir. Phase 1 and 2 reviews were handled together and all of the comments for both have been satisfied.

Don Mazzeo: And a question of Mr. Ellis. We had a complete review of Phase 2.

Michael Ellis of Pennoni Associates: Yes and all comments have been addressed. We have no further comments.

Don Mazzeo: Very good. Do we have any questions from the Commission at this time regarding Phase 2?

Virginia Weeks: One for the engineer. The construction is up to city standards and town standards, the paving, the sidewalks are the proper width, all of that has been checked?

Michael Ellis: Yes, we've performed a complete review and have no further comments.

Virginia Weeks: Thank you.

Don Mazzeo: Okay, as there are no further questions from the Commission, I will now open this to the public for anyone in the audience who is interested in asking a question or has a comment regarding this application. Hearing no one we have closed the public portion of that particular application and at this time, I will accept a motion.

Virginia Weeks: Mr. Chairman, I have one question, please. On the site plan that will be submitted for the Town, there are two different pages here and I just want to make sure that

the one that indicates the potential future parking area, that that is on the final site plan and marked, as such. You can see there, the circle, it's there?

Mike Kobin: Yes, it's there.

Virginia Weeks: That's sure to be there.

Mike Kobin: It's in your package. Yes, Ma'am.

Virginia Weeks: Thank you. That's all.

Don Mazzeo: Any other comments? Hearing none, I'll accept a motion on this application; this is again for preliminary site plan review/approval.

Mark Quigley: I motion that we accept.

Virginia Weeks: I'll second the motion.

Don Mazzeo: All in favor say aye. Opposed. Motion is passed. Preliminary site plan approval for Phase 2 of the Community Center is approved and passed.

Virginia Weeks: Mr. Chairman, are we going to do final site plan this evening for these two items?

Don Mazzeo: The intent was and it is on the agenda thereof.

Virginia Weeks: Well rather than keeping these people here through all the...

Don Mazzeo: That's where we're heading.

Virginia Weeks: Good.

Don Mazzeo: This is no longer a public hearing, you understand.

7. Business – Discussion and possible vote on the following items:

- c) The applicant, Ocean Atlantic Management, LLC, is requesting a final site plan review/approval for the construction of Phase 1 of the Community Center located at 301 Garden Street. The property is located in the Heritage Creek subdivision and further identified by Sussex County Tax Map and Parcel # 2-35-20.00-842.00. The application was submitted on behalf of Fernmoor Homes at Heritage Creek.

Don Mazzeo: Do we have representation? It's part of the routine, folks.

Mike Kobin, George, Miles and Buhr

Don Mazzeo: Is there anything you'd like to add that you have not already stated this evening, nor have agreed to have done by Friday this week?

Mike Kobin: No, Sir.

Don Mazzeo: And our application is complete, by way of our engineer effective with what we have spoken about this evening?

Michael Ellis of Pennoni Associates: Yes.

Don Mazzeo: Any questions, comments from the Commission? Hearing none, I will accept a motion on this application. Again, this is for final site plan review/approval of Phase 1 of the Community Center.

Virginia Weeks: Mr. Chairman, I make a motion that we approve final site plan for Phase 1 of the Community Center of Fernmoor Homes at Heritage Creek based on the already approved preliminary plan approval with 27 parking spots.

Don Mazzeo: Do I have a second?

Mark Quigley: I second.

Don Mazzeo: We have a motion and a second for approval. All in favor say aye. Opposed. Motion is carried. We have final approval of Phase 1.

- d) The applicant, Ocean Atlantic Management, LLC, is requesting a final site plan review/approval for the construction of Phase 2 of the Community Center located at 301

Garden Street. The property is located in the Heritage Creek subdivision and further identified by Sussex County Tax Map and Parcel # 2-35-20.00-842.00. The application was submitted on behalf of Fernmoor Homes at Heritage Creek.

Don Mazzeo: Any questions or comments from the Commission? Wait a minute, Mike, you want to introduce yourself again?

Mike Kobin, George, Miles and Buhr:

Don Mazzeo: You've met all of the engineering letter comments?

Mike Kobin: Yes, Sir.

Don Mazzeo: And Mr. Ellis?

Michael Ellis of Pennoni Associates: Yes.

Don Mazzeo: Any questions or comments from the Commission? Hearing none, I'll accept a motion for final plan approval.

Virginia Weeks: Mr. Chairman, I move that we move for final site plan approval of Phase 2 of the Community Center of Heritage Creek.

Linda Edelen: I second.

Don Mazzeo: All in favor say aye. Opposed. Motion has passed. Phase 1 and Phase 2 have now been finalized.

- c) The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision review/approval for Phase 6 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Don Mazzeo: We have a representation for this application.

Mike Kobin, George, Miles and Buhr and Ben Gordy with Ocean Atlantic Management:

Hopefully in your package you have a little bound booklet that we'll be walking through and Phase 6 is the area outlined with the dark border here and it contains 69 lots altogether; four single family homes, two duplex units, three triplex units and 60 townhomes for a total of 69. Phase 6 area is 9.85 acres and it's here adjacent to Phase 2B, along Governor's Avenue, Fox, Hay and Prospect Streets. The housing types you've all seen before. This one is predominantly townhomes. Parking spaces, Mr. Savage noted that there was a typo on the cover sheet of the original; there are 144 spaces provided and I believe there were 138 that were required. There should have been only for the single family garage spaces. So this is a larger scale plan of the area and there have been no changes to the approved Master Plan in this area; everything that you see here is the same as it was for that approval. There are some comments here from Mr. Savage that I can tackle now, if you like.

Don Mazzeo: Please. This would be the time for that.

Mike Kobin: Item 2 here. I'm not entirely sure what the concern is. It's referring to 166-174, but those houses, unlike the ones previously here, behind the Community Center all front on a public street; so I don't think you're going to see the issue of problems with addressing or anything else.

Virginia Weeks: I have a question. You have named the driveway between the houses that front Heritage Boulevard and Prospect Street, you've named that Falcon Lane. Correct?

Mike Kobin: All the alleys have names. Yes.

Virginia Weeks: My problem is why does this one need to have a name, when both of these have addresses on the other streets? This is simply a driveway. How wide is this?

Mike Kobin: It's 15' wide.

Virginia Weeks: Does it have curbing?

Mike Kobin: It's an alley. No. No curbing.

Virginia Weeks: We're required in alleys under our sub-division law to have curbing wherever; I don't think that this should be called an alley. I think it's confusing and I think that it's unnecessary. There are no addresses on Falcon Lane. There's no reason to name it Falcon Lane. It's simply a driveway like you have in many cities, in Washington, DC everywhere, where they access their garages. All these houses front on a street. So rather than naming it, I would like to see that the builder be required above each garage to put the address, the complete address with the street on top of the garage. For example, 121 Prospect Street, 122 Prospect Street, so they know which garage is with which house. But the Lane doesn't need to be named.

Mike Kobin: I would argue that there's really no need for that, because all these houses can be accessed from the street.

Virginia Weeks: Well why does the Lane need a name.

Don Mazzeo: That would be a question that we would pose to the professionals at the table.

Mike Kobin: You've got to go back to 2003 for that.

Don Mazzeo: On the Master Plan it was there, as a named roadbed and Robin...

Robin Davis: I would say Mr. Kobin is correct and Mr. Chairman you're correct. During the Master Plan, normally all the streets in town have a name; whether they have a physical address assigned to that, or not; all alleys and streets and everything have a name to it. I think it's just for identification purposes.

Virginia Weeks: There's nothing on it.

Robin Davis: I don't know the reasoning why. I can't give you the reasoning why. I wasn't involved in the Master Plan approval of Cannery Village or of Heritage Creek.

Virginia Weeks: We're going to have to put a sign post. It's going to interfere with emergency vehicles; getting into emergency vehicles fit in this alley. Can they make that turn? Can fire trucks get in there?

Mike Kobin: I don't know.

Virginia Weeks: I think we need to know that.

Robin Davis: It's no different than what it was before, with the other alleys.

Mike Kobin: The Plan has been reviewed and approved by the Fire Marshall's office.

Virginia Weeks: That's fine, but I want fire trucks to be able to get to the back of those buildings. I mean, if there's a fire in the back of one of those buildings and there's a baby in that room, how are you going to get to it?

Mike Kobin: The same way they get to it everywhere else in town; the hoses are as long as you can reach, 300'.

Virginia Weeks: You can't get a truck back there.

Mike Kobin: You don't need to get a truck back there; you can get the hose back there.

Virginia Weeks: I disagree. You can make them a little wider; you can...

Mike Kobin: The alleys are designed to the town's standards for an alley and it's not a street.

Virginia Weeks: You can exceed the town's standards. The town's standards are 15'. You could make it wide enough to fit a...

Don Mazzeo: What was on our Master Plan approval? I said, our, the town's Master Plan approval for this particular...

Mike Kobin: Just what you see. It's been that way from day one. The layout has changed over the years, but that aspect has never changed.

Don Mazzeo: So the concept of the 15' wide alleyway, has always been on the plan.

Mike Kobin: Been on the plans and it's also in your ordinance.

Don Mazzeo: I agree with you Mrs. Weeks about trying to get emergency equipment in there,

however a fire truck may or may not be able to turn there, but they have other ways of getting down there with their equipment; it may not be the biggest piece of equipment, but they also have hoses and they have fire stands to connect to and it's only... what's your dimensions from either of the end... I can't read it here and I don't have my... What's the dimension from either intersection; coming in along the back of the houses?

Mike Kobin: It's a little over 400'.

Don Mazzeo: 400', so it's maximum 200' to the center.

Mike Kobin: Yes, Sir.

Tim Nicholson: The closest fire hydrant?

Mike Kobin: Hydrants are everywhere in this development.

Don Mazzeo: Is there one in the alleyway?

Mike Kobin: Not in the alleys. No.

Don Mazzeo: So they're not everywhere, are they?

Mike Kobin: Well, okay. I stand corrected.

Don Mazzeo: Okay.

Robin Davis: The utilities do not go down the alleys, so there's no water main down the alley.

Don Mazzeo: Based on your plan, where is the location of two hydrants, one on each end of the length of the 400', on the front obviously, or on the side?

Mike Kobin: One here.

Don Mazzeo: Probably one at each intersection would be my guess.

Mike Kobin: There is, yes.

Don Mazzeo: So it's still only 200' maximum.

Virginia Weeks: The other question I have is how deep are the aprons in front of the garage? Can a car pull in and park on the apron?

Mike Kobin: Yes.

Don Mazzeo: I think we discussed that some time ago; making sure of that one.

Virginia Weeks: I wasn't here for that one.

Don Mazzeo: I know. We made sure of that one. Anything else you'd like to offer right now?

Mike Kobin: Actually we've got a couple more comments from Mr. Savage. Number three does talk about the parking spaces; there are 138 required and actually there's a rounding difference. He's got 143, I came up with 144. There are enough parking spaces. Number four he asks about recommending that all past and future phases be delineated; he wanted a revised Master Plan. I don't have any objection to doing that. I will tell you that we've been asked for what will be Phase 7 to do the rest of the development, so you should be seeing just one more phase and there may be as was done with some of the earlier phases, there might be some sub-phasing in that; that phase is a fairly large chunk; but you should one see one more phase coming to you.

Virginia Weeks: How far is this phase from the school? I mean, when are you going to be able to put the connectivity into Cannery Village, etc.? There's supposed to be a walking path between the two developments.

Mike Kobin: That wouldn't be complete until this piece is in, Phase 7; so as a practical matter you couldn't do too much with that, until that piece gets done.

Virginia Weeks: Can you tell me where it's going to be located?

Mike Kobin: I believe it was just going to be along the roadway here.

Virginia Weeks: Thank you. Because I think that it's important that as these become populated, that the people that are there who may want to walk to downtown and so on, don't have to walk along Route 5. It's time to get that connectivity in, I think.

Mike Kobin: There was a question about the phasing that would be accessed. This phase would naturally have to be accessed off of Governor's. The good news there is that nobody's home fronts on that street and even when we get beyond that end, to [Phase] 7, this would be the natural choice for staging out to that; it would be the least obtrusive. There's a question about off-street parking spaces and I can only partially answer this. They're called out in your ordinances 10X22'... I've got a couple of things to show you here. On the bottom is our revised Master Plan and this is from 2005. This was prepared by Land Tech. I can't tell you exactly why this was done this way, but their parking was shown 7' wide and the travel lanes between 12' and I think as much as 15' or 16'. I think it's most a matter of semantics, because your minor street is required to be 32' back of curb, to back of curb and minor streets provided in Heritage Creek are 33'3"; minor collectors are required to be 40' and the provided are 43.34' and major collectors 24' each direction of travel and provided has been 24.67'; so basically what you see in the sections are the parking shown a little narrower, but the travel lanes are shown wider than they might normally be and since none of this is striped, I would suggest that it doesn't mean a whole lot; but I did want to try to explain it. I'm not sure how we got to this to begin with, but it's been in the Master Plan for quite awhile and we could certainly change those sections. I don't have any objection to that if you prefer not to see it like that anymore, but I'm not sure what... I think that's it for Mr. Savage's comments.

Don Mazzeo: Do we have any questions from the Commission of our applicant at this point?

Virginia Weeks: How are you going to... I'm sorry, I must have missed it, the applicant asked how for the future phases, you're going to access Phase 7? How are you going to do that?

Mike Kobin: Along Governor's.

Virginia Weeks: So right down past all the housing, the construction trucks are going to go?

Mike Kobin: Fortunately, no houses front on that roadway.

Virginia Weeks: Yeah, but they have windows. They have bedrooms.

Mike Kobin: I'm not sure what you want me to do. That's the least obtrusive that there is; short of airlifting materials in.

Virginia Weeks: You're right. It's unfortunate.

Mike Kobin: It's kind of the nature of the beast, because you don't start developments from the back and work your way to the entrance, which from the viewpoint of not disturbing anybody would be the best way, but nobody's going to build four miles of road to get to the first house.

Don Mazzeo: Not the most practical. This is a public hearing and I will at this point now, open up this application to any comments, questions from the public regarding Phase 6 at Heritage Creek. We'll start over here.

Fred Manajian, 120 Village Center Boulevard: My question is that Ginny you brought up a very interesting article, according to the Lanes. We in Cannery Village are experiencing basically the same thing and the ordinance that was established by the town back when, sites that the lanes have to be blah, blah, blah, blah; 15' wide, I presume. When it comes to the dedication of the roads to the Town from the community, it has been advised that the lanes are not dedicated; so it doesn't make sense to judge the lane dimensions on something that's passe. It looks like when and if you make your approval now, it would be kind of like setting precedence in that sense, so if they were to increase the size of their lanes, across the board for this entire project, I would think that they could visit the ordinance to establish an adequate distance, so that the problem of utility vehicles, emergency vehicles, would be able to move in and out of those lanes. Where in Cannery Village that doesn't exist. Do you kind of understand what I'm trying to say, more or less is that it looks like when we're trying to judge the size of the lanes in 6, under the ordinance, that was established in 2003, they're adequate. But when

you get to the point to where the Homeowner's Association, which is existing in Heritage Creek and Cannery Village too, they incur the cost of repairs and everything on those lanes. The builder walks away. He doesn't care. What I'm trying to say is that this to me, seems a part of the Planning and Zoning's purview right now. It's actually an interesting article that it should put precedence on establishing adequate lane and I agree with Ginny that I understand back again when they did names, it's superfluous. It doesn't do anything. We don't have one back where we live. It's just a spot and as a matter of fact, we're having a problem with the neighbor's in the adjacent condo's on whose land it is. It just doesn't make sense. That's what I'm trying to say. I think at this juncture, it may be something that can be approached by the Planning and Zoning and the Ordinance Committee. I don't know if there's a legal precedence for this; maybe Seth can add something. Thank you.

Seth Thompson: Fred, I think your comment's an important one, because we do have sub-divisions like yours and like the one that's here tonight that's an LPD (a Large Parcel Development District) and so part of that process was flexibility when it came to street layout; so it's really not the Planning and Zoning Commission that can make the determination on those lanes, as long as the lanes are in accordance with what that Master Plan showed when it was approved by Council. But your comments are important, because I know the Town, including this Commission, has been looking at potentially revising their LPD Ordinance, because there have been some problems. Sometimes that flexibility often leads to uncertainty. I think your comments going forward, probably make a lot of sense and I know the Commission and the Council will appreciate them. I think unfortunately as the Commission is all too aware, whenever something complies with the Master Plan that's already been approved, they're not really in a position to override that, when it comes to the sub-division approval process. But your point is well taken.

Fred Manasian: Will those issues be approached in Land Use?

Seth Thompson: I think there's a workshop on it tomorrow, so if you wanted to speak directly to Council, I think the workshop starts at 6:00 p.m. tomorrow.

Fred Manasian: Thank you.

Don Mazzeo: Thank you. Mr. Miller.

Richard Miller, Gristmill Drive: Two questions for the Commission. Phase 6 has the financial bonding been established to protect the completion of that phase? Is bonding in place?

Don Mazzeo: I can't answer that question.

Richard Miller: Okay.

Virginia Weeks: It's required by the sub-division ordinance.

Richard Miller: But is it in place?

Mike Kobin: We're not there yet.

Robin Davis: Not at this time.

Richard Miller: Okay, thank you. The second question I have and to reinforce Fred's comments about the lanes, my understanding is there's no ordinance that requires the maintenance of the lane by law. Cannery Village, as Fred mentioned, has some discussions right now, but the precedent that was set with Cannery Village has more to do with anecdotal decisions; whether the Town was going to maintain lanes; not a matter of ordinance. So it's not a matter of law that the Town decides whether or not to take control of snow removal, for example. The ordinance is very vague, fortunately, it's more of anecdotal reference to Cannery Village. We are negotiating right now to get the lanes under the purview of the Town, because it adds mileage to the State's reimbursement every foot of town control, so it's to the Town's benefit to take ownership of our lanes also and that would apply to Heritage Creek, also. The

last reference I wanted to make is the flexibility for naming conventions is extraordinary. It really helps given the fact that my street, originally was going to be called Lima Bean Way.
Don Mazzeo: Thank you Mr. Miller. Any other comments, questions from the public regarding this application? Hearing and seeing none, the public portion of that application is now closed.

Virginia Weeks: Mr. Chairman, I have a question, of course. Item number 7. This review is solely based upon information provided in preliminary plan sub-division and does not include review of construction drawings or associated details. Additional comments may be generated during the review of construction documents. Is that allowed, Seth, once we do preliminary sub-division...

Seth Thompson: We're going through the sub-division process at this point, so we haven't gotten to the site plan process and I think Mr. Kobin wants to address that, but you know we're still dividing up the parcel into the individual parcels, via the sub-division process right now.

Virginia Weeks: Okay, thank you.

Mike Kobin: Typically the Town Engineer won't do their review of the construction drawings until preliminary has been granted.

Don Mazzeo: We still have an application and a meeting going on folks. Mr. Kobin was there anything else that you wanted to add at this point?

Mike Kobin: No, Sir, if there were any other questions.

Don Mazzeo: Mr. Ellis do you have any further engineering comment?

Michael Ellis: The applicant has addressed our comments on our review letter dated December 31st. Comment number three as they responded was a typographical error that should be addressed on the plans, but is in compliance with the ordinance. Comment number four regarding delineating the phasing, they have agreed to address on the plans and comment number six, in regards to the parking, that while it doesn't meet the 10X22' requirement, if it is in accordance with the Master Plan, then that would seem to be acceptable.

Seth Thompson: I think my understanding from what Mr. Kobin said, was that basically it was a distinction, without a difference; that the full width is there, it's just the parking spaces have been labeled more narrowly than what the ordinance says.

Don Mazzeo: And they're not lined.

Seth Thompson: Right.

Michael Ellis: So we have no further comments.

Don Mazzeo: Thank you very much. Any other comments from the Commission? Hearing none, I'll accept a motion on this application, which is going to be for preliminary sub-division approval for Phase 6 of Heritage Creek.

Linda Edelen: I so move that the application for preliminary site plan review and approval.

Mark Quigley: I second it.

Seth Thompson: And to be clear, is that incorporating the notations made on Pennoni Associates' December 31, 2013...?

Linda Edelen: Yes.

Seth Thompson: Great, thank you.

Don Mazzeo: Any other comments prior to voting? We have a motion and a second to approve preliminary. All in favor say aye. Opposed.

Virginia Weeks: I'm opposed.

Don Mazzeo: Motion has passed.

Virginia Weeks: I would like to say for the record, I'm opposed because of the width of the alley and that emergency vehicles cannot fit down there.

Don Mazzeo: That is so noted in the record.

Virginia Weeks: Thank you.

- d) The applicant, Dogfish Properties, LLC, is requesting a site plan review/approval for the modifications of two approved site plans. The modification includes the redesign of the wastewater structures and the elimination of the containment pond for the process wastewater storage tank. The property is located at 6 Cannery Village Center and further identified by Sussex County Tax Map and Parcel #2-35-20.11-52.01

Don Mazzeo: Our final public hearing item and I'll let our engineer's change hats over here. Do we have representation of the applicant here, this evening?

Mark Dunkle, Parkowski, Guerke and Swayze, Wilmington, Dover and Georgetown: I'm here on behalf of the application Dogfish Properties. The lawyer will speak at a minimum tonight and Nick Benz the Chief Operating Officer will be giving you the overall presentation, but this submission that you've received and your summary is accurate. These are essentially do-overs of existing, previously approved two site plans. They do meet the legal requirements of your ordinance and they've been reviewed by your engineer. The areas that are being basically redone with these site plans were once reviewed and approved previously by the town. Mr. Benz can explain you why and the benefits. I did submit, as an additional submission to Mr. Thompson and I'm sure he's passed that out to you, just some information, deed record information regarding the adjoining residential neighborhood. Just to give you some history, since that's really outside the ordinance, I think it's relevant to your understanding. Basically this is an industrially zoned property and this site plan is in total accordance with the continued use of the industrial property and with that... Of course, at the end, we'd ask that you grant approval, both preliminary and final to the submission tonight and that you find that it does meet the requirements of the Code and I will turn this over to Nick Benz.

Nick Benz, Chief Operating Officer of Dogfish Head Craft Brewery, Dogfish Properties, LLC: I'm going to go over what we're doing here. As Mark pointed out, our attorney, this is really a revision to two previous site plans. Why is a revision necessary? The reality is in order to try to kill a few birds with one stone in previous phases coming before this Commission, we attempted to grab the proper location for what would eventually become our wastewater pre-treatment and treatment facility and the simple fact is we guessed wrong. So the revision's necessary quite simply because we did not know exactly what the solution or technology we were going to buy several years ago when we received the original permission and now we know exactly what technology we're going with and a few modifications were necessary because the footprint of the facility we're putting in, was outside the boundaries of the pre-approved; therefore and it exceeded the 500 square feet that's permitted according to the Town's Codes without needing additional approval; hence is why we're sitting here today. So what do we mean by wastewater? Some people get scared by that terminology. It is not the number one, the number two or sometimes number three that goes down the toilets in your home; this is not human coliforms. It is not what you think of as wastewater that a municipality has. These are our biologic and organic discharges from the brewery that all originate from an agricultural source. It's malt, it's barley, it's hops, it's fruits, spices and everything else that we make our beers with yeast. Since 2003, we were kicked off, asked to leave the Town's wastewater treatment system because it was, at that time, at it's max capacity; could not handle our needs. Subsequently Tidewater has taken over those services, but since 2003 we have been spray irrigating and land applying, per DNREC's regulations, every single drop of effluent, wastewater, that has been leaving our facility. We have five

different land leases surrounding Milton. We have trucks that haul the effluent, full strength effluent, without any pre-treatment whatsoever to neighboring farms and it acts like liquid gold fertilizer that now farmers actually fight over because it has an amazing nutrient quality. That trucking is two-fold problematic for us. One is it increases the trucking and therefore the nuisance from the Town's standpoint and the neighbor's standpoint. Two is, it simply doesn't scale as we continue to get bigger. We knew pre-treatment and treatment was going to be necessary at some point, since we were kicked off in 2003 and we are now at that point. After well over a year of evaluating a number of different technologies that exist out there, we found one that best matches our needs. In fact, it's done and made by the exact same company in Vermont that built Magic Hat; wastewater treatment facility at Magic Hat Breweries up in the Vermont region. It's proven to work in breweries. It's proven to work in dairies where the BOD levels are substantially higher; yogurt manufacturers, sour cream, milks, cheeses. So covered with the effluent was why we're here seeking permission. It is in the exact same area where we had planned to put a wastewater pre-treatment facility before. It's in the exact same location where we currently store all of our wastewater that comes out of the building; transfer from a tank to a tanker truck; take it to a farm; spray irrigate it; come back and we do that sunrise to sundown, all day, five days a week; sometimes six days a week, per our regulations by DNREC that limit the amount of gallons per square inch, per square foot, per square mile, whatever per square you want to measure and also the hours of operation that are permissible. We monitor the pH soils and do everything that we need to in accordance with DNREC's processes. So here we are and we're spending about \$8.5 million on a pre-treatment and treatment, full treatment facility, where we'll be one of the first breweries in the United States, that I'm aware of that will go from full effluent water back to clean drinking quality water standard for complete recycle and reuse within the brewery. In Europe this is very common, where raw materials are a heck of a lot more coveted and preserved; not as common in the United States. So what we'll be doing is taking all of our wastewater that previously went on land, we'll be passing it through a bio-reactor that will break down the biological components. It will go through secondary and tertiary filtration, including a final step of reverse osmosis, that will RO every gallon and the clean water that comes out of the RO process, will be stored in a clean water tank and then that will be reused in the brewery side for CIP which is Cleaning Purposes of Tanks; it will be reused for boiler feed water makeup. It will be used for cooling tower water makeup and all the point sources for external and internal tank cleaning. The water that's used to make the beer, is still coming out of the well, but the good news is that for every barrel of beer we make, it takes four barrels, and a barrel is 31 gallons; to make a barrel of beer, it takes four gallons of water from the well to do so and we're on a well for every drop of water we take from the Town. We do not take one drop from the water tower, from a municipality standpoint; it all comes out of our production well. We do have town water supplying the few toilets and sinks within the buildings, but all the water to make beer is coming out of a well. Now, if we make one barrel of beer, it generates three barrels of wastewater that previously went to spray irrigation on farmland. Now out of that three barrels that is technically wastewater today, 80% of that, 2.4 barrels will be brought back to the front end and completely cleaned and reused. That was only .6 gallons necessary to be supplemented to the other well. What this means is we'll be taxing significantly less the water tables that we're pulling out of today, because we're investing in the complete recycling and cleaning of the water back to the front end of the process. But we're not going to stop there. We're going to put a power generation back-end on this, where when the bugs eat; the bugs, I mean the bacteria that's inside of the bio-digester, that is breaking down the biological

components, it is generating methane and that methane gas would typically be flared off and you would waste that energy and it would just be a flame sitting there, burning all the time, like you see when you drive by oil refineries. Instead of doing that, we'll take that gas and pass it through a generation system where we'll burn it through a gas turbine, generate electricity and pump it back into the electrical grid; and then we'll be receiving electrical credits, because we're generating alternative energy off of what was a waste stream before. We will then also have the ability to switch that power supply, instead of back to the grid in times like we've seen this treacherous winter and power has gone down, to protect a large quantity of beer inside of the fermentation vessels. We'll be able to kick the electricity to our internal systems and run internal systems as long as we can use it through inverters and they'll act like a back-up power generation on site for Dogfish. Not to run full operations, it only has the capacity at maximum to generate about 40% of our annual electricity needs; but it's enough to keep critical systems going, IT systems, communication systems and specifically the cooling systems that keep the tanks cold enough for the beer to exist in good shape. Where's the equipment going to exist? In front of you and what was submitted to you, you have plans and documentation, but what's in front of you here, visually, is an elevation drawing showing every previous approval, including the grain expansion building, fermenter tanks, grain silos, everything that's been part of a previous phase. The very left portion of this elevation is the wastewater proposed solution. What you see in a tan tank on this picture, in the yellowish tan color, is the existing 60,000 gallon tall equalization tank that is already sitting there and in place, so that gives you a perspective of scale. There were two choices to embark upon on the new bio-digester. We could have gone with small diameter and very tall or we could have gone with a very wide diameter and short. We chose the wide diameter and short for the obvious reasons that are two-fold. One from an engineering standpoint, it's actually more efficient for Dogfish, win number one. Two, it's far less obtrusive then if you add a tank that's taller than that yellowy tan brown, that would be within the 75' limit of Light Industrial, but certainly would potentially create another eyesore. We embarked on this shorter and larger diameter bio-reactor. In order to do so, according to DNREC and Sussex County Conservation District Regulations, there are two ways to accommodate an outside tank. One is to put the tank up and provide a containment, which is how we had done it in the past, which is why there was a containment pond there. This application is suggesting the removal of which, because the second permitted option is to not have containment, but instead have proper monitoring of your effluent and proper plans in place per Sussex County Conservation District Rules and Regulations to comply by the second permissible option. We are choosing option number two, as that permits us to go to the less visually obtrusive tank, to remove it further from the property line; meaning the fence line of specifically Lots 21 and 22, within Chestnut Crossing and get it as far back towards the Round Pole Branch and further away from that property line, as is possible. That also permits us to not have to remove any of the mature vegetation that already exists in place as a natural visual buffer. People think of wastewater, sometimes you also think of foul odors. In order to capture the gas off of the bio-reactor, compress it, burn it and turn it into electricity, this system is inherently hermetically sealed. We want to trap every molecule of gas we can, because that provides a better return on our investment to generate more electricity. The odors are contained and trapped within this vessel. In fact, it should be lower then the transferring that we currently do, where we have open hoses from the tanks into our tanker trucks that we do every day to take them out to the farmland currently. So the odors will absolutely be no worse than what they are today and in fact, the better we get the odor control, meaning because it's hermetically sealed, the better off

we do financially, so there's a huge incentive for us to take care of that in an appropriate way. But the design inherently already takes that into account. Finally, is the noise. When the bacteria, we call them bugs, when the bugs are inside of that bio-digester eating, they sound like this; there is no sound. Just bugs eating food. There is slight noises. The largest noise source will be coming from the co-generation equipment which is a spinning piece of equipment that is a turbine converting the gas into electricity as it burns it; we are well aware of our ordinance at the fence line per the Light Industrial Zoning that's in place and we will comply with that and we'll make sure that our engineer's comply with that. We've situated that equipment as far away, again, from the property line, as we possibly could. So we're well aware of our noise requirements and we will intend to comply with that. At this moment we have all of our approvals, with the Fire Marshall's approval, Sussex County Conservation District's approval, we have DNREC's approval and the Town Engineer's recommendations after having read that we satisfied the rules per the Town's Ordinances and at the bottom of the Town's notes was also a recommendation to do a preliminary and a final this evening. With that, I think I've presented everything I need to. I'm open for questions or we'll sit or the public hearing is next.

Don Mazzeo: This is the public hearing.

Nick Benz: So I can sit?

Don Mazzeo: You can sit at the moment. We'll start with a couple of questions that I have. The location of the proposed bio-reactor, the distance from the fence to it's proposed location... I'll just ask the basic question. Your engineering drawing indicates that it's about 61' from the line, from the back edge of that piece of property and I'm just wondering, is there any reason why it couldn't be further away, still; then beyond the 60'?

Nick Benz: The proximity of the Round Pole Branch is as far back as we can move it, in our review process with Sussex County Conservation District and DNREC where the terrain will quickly begin to fall off going to the Round Pole Branch.

Don Mazzeo: You're in the flood plain?

Nick Benz: Correct.

Don Mazzeo: So you have actually maximized the distance from...

Nick Benz: It cannot move any further. Yes.

Don Mazzeo: That's the only question I have at the moment. Anyone else from the Commission? Nothing at this point.

Virginia Weeks: How much liquid is contained in that tank?

Nick Benz: It's a one million gallon tank.

Virginia Weeks: One million gallons and in a what if situation. What if something happens and it has to quit? What do you do if you have to empty it?

Nick Benz: If we have to empty the tank?

Virginia Weeks: What if there's a fire or what if something happens?

Nick Benz: We still retain all of our land application permits with DNREC. I know it's technical, what I said for the three barrels of water that currently goes to be spray irrigated to farmland, 80% of that will be recycled back into the clean water tank. There's still 20% that is all the concentrated stuff that needs to still go to spray irrigation, so we will still maintain tanker trucks; we'll still maintain land application permits with DNREC and we will have the ability, with our own trucks...

Virginia Weeks: How many gallons in that again? Three million?

Nick Benz: One million gallon tank. That is the maximum capacity, but that's not the operating level within the vessel. The operating level within the vessel fluctuates throughout

the course of the week, much like... it's a buffer tank; much like a water tower, you might pump the water up at the municipal level during the day and it depletes. It's a fluctuating level all day long within the tank.

Virginia Weeks: When you were before us previously, some years ago, the pond was required because you wanted that in case there was a problem and you needed to have overflow or whatever or something leaked; there was a place for it to go. I just want to know, what's in the plans now if that happens to this tank?

Nick Benz: That wasn't the requirement at the time. There's two permitted ways to proceed. At that time we chose to Door A, because it matched our design at that time. There's also permitted through DNREC and Sussex County Conservation District, to not have a containment pond, as long as you follow other procedures and recommendations involving monitoring. Every single time it rains, there are specific procedures that we have to follow to show that there are no issues and we have to have emergency plans in place, for that. We're complying with their rules, hence their permission, that they have granted to us for this with their final approvals.

Virginia Weeks: For the engineer, can we be assured that the sloping of the land, the topography of the land, slopes away from Chestnut Crossing; because we all know Sussex County really doesn't have any ordinances for flooding; to prevent flooding from rain or so on and I would hate to see something happen and have all this go over towards...

Nick Benz: In the plans that we're provided you'll see topography lines on at least one of those drawings and the topography lines clearly show that all lands slope away from the community and towards the Round Pole Branch, which is all part of what's considered water shed one in DNREC's lingo and that is the natural progression of the land that will not be disturbed or changed this design.

Virginia Weeks: Not being an engineer, I would just like to have the engineer confirm that for us. Thank you.

Nick Benz: Sorry.

Don Mazzeo: While he's looking at that, Nick, you said there's no particular containment method on this; it's hermetically sealed. I'll ask the question. What is your containment method, should this particular one million gallon vessel produce a leak?

Virginia Weeks: Exactly.

Don Mazzeo: I don't care where it's going right now, but I'm just saying, if it produces a leak, a truck stupidly backs into it and you've got 800,000 gallons of something in there; what prevents it from just going all over the place.

Nick Benz: Containment's not a requirement under the second option with Sussex County Conservation District or DNREC. In the exact same way that when you drive into Cannery Village and you pass the nice tree house or, subjective opinion, you pass the tree house and there is a large number of outdoor 600 barrel tanks, for the exact same reasons why those tanks do not require external containment or any other industrial site that you pass; as long as they're meeting the rules and regulations that are in place for non-containment vessels on a Light Industrial facility, which we are according to their rules and regulations.

Don Mazzeo: Okay, second question I have is, you indicated there's going to be a reduction in the number of trucks, due to this change of methodology. Could you estimate the number of trucks that you're going to reduce? It's just a guesstimate.

Nick Benz: It is. At the moment, we operate, depending on conditions anywhere from 8 to 10 eighteen-wheeler trucks a day, today. This will reduce to one per day at our current production output.

Don Mazzeo: But you're going to increase that to perhaps 2 to 3 at most, then?

Nick Benz: As we increase over time, that will max out somewhere in the 5 to 7 range; 300% larger than where we are today. So my point is that the number of trucks today that we're operating without a system in place, will not be exceeded by the maximum amount of trucks that will be under this solution, at it's maximum design point way out there into the future.

Don Mazzeo: Good.

Virginia Weeks: I have another question. I mean it's lovely to see all those trees in there and so on when they're all filled up and have leaves on them, but basically that's scrub wood back there. We've had this discussion before and that form of landscape buffering is for me, unacceptable; those people in those houses are going to sit and look at that very, for you, beautiful tank, but maybe not so much for them and those should be evergreens. Those should be tall evergreens. They should be some form of a tall evergreen, so it's blocked all year long and not just in the summer and the spring.

Nick Benz: If I was Mother Nature and could wave a wand and make 35 years pass to get tall evergreens...

Virginia Weeks: No, but Dogfish should dig them up and put in evergreens.

Nick Benz: Few comments. One, the tank is smaller than the current tank that exists out there, today, of which you only see the top of from the vantage points within Chestnut Crossing. Two, all of the properties, parcels 17 through 22 that are on this property line, had a deed restriction specifically stated on their property that says you are next to a Light Industrial facility that has the lights, sounds, odors and I'm quoting... and it's also recorded on the Master Sub-Division Plan of all lots in Chestnut Crossing.

Virginia Weeks: That's not what I'm talking about. What is the diameter of the tank, please?

Nick Benz: 81' diameter.

Virginia Weeks: Well I have to tell you, I'm a strange bird. I was walking around the backyards out there this weekend, looking at this and an 81' wide tank, 33' high, when you're sitting on your porch is not something you want to look at. What's it going to bother you to put in some evergreens and help the neighbor's out? Take those trees down and put in some evergreens. Those are scrub trees.

Nick Benz: This is mature vegetation, that are already 50+' tall trees.

Virginia Weeks: But they don't even really hide it when they're in full bloom. They're old trees.

Don Mazzeo: What color will the tank be?

Nick Benz: The exact same color that the aluminum cladding of the existing fermentation tanks and the existing bright tanks that stick through the roof are. It's totally consistent with the color palette of the brewery.

Don Mazzeo: Could that tank be painted a more pleasant color, for viewing from the properties behind?

Virginia Weeks: It's cheaper to put in trees.

Nick Benz: I respectfully disagree.

Unidentified Engineer for Dogfish: I'll be answering that question. I'll respond to the question about the grading. The plans do show that there is a swail on the southwest corner that prevents run-off onto the adjacent residential lots; then the swail ends, but run-off does continue to fall to the northeast. It will not run on to the adjacent properties.

Virginia Weeks: Thank you very much.

Nick Benz: Perhaps this visual will help. I'm going to put up a different board, to show you what we could have done without coming before this Commission; to show you how much

thought and effort we put into this.

Don Mazzeo: Nick, I don't really want to do that.

Nick Benz: Okay.

Don Mazzeo: The reason I do that is because this is your application that you've given to us today; not what you might have done; so this is what you want to have done and you're presenting it to us tonight. So this is what we all want to see. And Ginny has a point to say can we get better...

Nick Benz: With all due respect, we planted \$30,000 worth of evergreen trees on the property line of Chestnut Crossing and everyone of those single trees were dead, today, because they're not taken care of by the folks who own those lots on Chestnut Crossing. Also, with all due respect, not one property owner of Lots 17 through 22 whom this directly affects, has stood before this Commission and said I take issue with what Dogfish is doing because I will be sitting on my porch and I don't like the obstruction of that particular tank.

Don Mazzeo: Well we haven't opened this up to the public yet either.

Nick Benz: Fair enough.

Virginia Weeks: With all due respect, we're not here to protect that one owner. We're here to do the best we can for the Town.

Nick Benz: Your commentary was based on that property owner, as a hypothetical.

Virginia Weeks: That's right and that's part of the Town.

Mark Quigley: I have a question, Nick. What's the total construction of the 81' tank?

Nick Benz: What do you mean the total construction?

Mark Quigley: What's the construction of the tank?

Nick Benz: Modular.

Mark Quigley: What type of material?

Nick Benz: I believe it's a...

Virginia Weeks: Is it similar to the tanks in the front of the building?

Nick Benz: It's an interior and exterior porcelain lined metal think; think of it like the old 50's cookware that had the white porcelain on the outside of the tin structure. This will show up in panels on an eighteen-wheeler and constructed on site. It's not one monicoek tank that is dropped into place, because it's so large that can't be transported over the roads.

Mark Quigley: I may have a little more advantage then some on this Commission. I actually designed and engineered my own reclaim system for car washes that I use, in my own business for years; so everything you spoke about tonight and I've reviewed it myself, I like it in general.

Nick Benz: Thank you.

Mark Quigley: Some of these other concerns, they're concerns.

Nick Benz: The answer is yes, we can make it a different color. There's a color palette selection that can be chosen from dark to light. We chose to present the aluminum color that's in the exact same look and feel of every other vessel that does stick up above visual sight lines for continuity purposes. In fact, the picture I saw of the tank at Magic Hat is a dark brown color, much like the backing of your name plate tags sitting on your desk; which could more easily blend into tree trunk colors.

Don Mazzeo: You would be amenable to changing it to a different color than stark metal? I call it stark metal.

Nick Benz: We didn't even photo shop the rainbow into this, but this is a picture of the exact vessel at Magic Hat Brewery in the darker brown color.

Don Mazzeo: Now if you could only get the trees with it there.

Nick Benz: Here's another view from a different perspective without the rainbow, if you'd like.

Mark Quigley: Is there an additional cost to have colors?

Nick Benz: No. As long as it's within the manufacturer's color palette choices, you're not going to a custom color. No.

Mark Quigley: Okay.

Don Mazzeo: Any other questions at this time from the Commission?

Mark Quigley: I guess it is a little telling, if the people that live there didn't come in; if they chose a color scheme to match their existing brand...

Virginia Weeks: Not all the houses are occupied.

Mark Quigley: That's just the way it goes, sometimes.

Don Mazzeo: Alright before we move on here at the Commission, I would like to open this up to the public for any comments, questions or concerns regarding this application.

Sam Garde, 115 Sassafra Lane, Chestnut Crossing: I note that the applicant said that no one from Chestnut Crossing has ever come forward and I am coming forward to say I don't want to have to look at this, even though I know I'm going to have to. There were several comments made. This tank, the bio-reactor generates methane gas; methane gas burns and it is explosive. The American Petroleum Institute (the API) has a standard for building tanks, which obviously this does not have to meet; because their standard requires berming and a place to take care of a leak, should it happen, so I'm wondering what standard this tank is being built to. API may have changed since I knew something about it, but it obviously does not comply with API, even though it contains methane. The attorney had made a comment that he had distributed a document, somehow, concerning residential properties. I'm a resident and I haven't seen it, so I would ask the Commission to share that with the residents. I didn't say thank you to Nick. First of all, he gave an excellent presentation. I reviewed some of the drawings this morning and had a large number of questions which he responded to. So I've eliminated all of my questions, because he basically has, with the possible exception of DNREC, the drawings showed that, or at least I should say, my understanding of the drawings showed that the DNREC approval had not yet been received. I think I heard Nick say that he has received DNREC approval, so I ask the Commission whether DNREC approval has been received or not. And my last comment is on noise. Our zoning ordinance says that he can make up to 85 DB at his boundary; however, that's not the end of the story. The rest of the story is the Town has a noise ordinance. The noise ordinance, which is Chapter 148 of our Town Code, states that noise levels from stationery source shall not exceed levels indicated in a table. The table requires that noises in residential area not exceed 65 DB daytime and 55 DB nighttime. It also further states very clearly in Code 148, where two or more zoning districts are involved, the maximum noise level for the more restrictive zoning district, shall apply. So therefore, if he makes 85 DB at his boundary and 3' away is the boundary for a residential area, he has to be down to 65 and 55. The nature of the physics of sound does not allow that, so I maintain that he should have 65 and 55 in accordance with our Code. A further point, our Code in Chapter 1, Article 1-7, says where any conflict exists between a Chapter, Article, Division or Section of the Code and any Chapter or any Section of the Town Charter or State Code, the latter shall prevail. The State Code, interestingly enough, empowers to DNREC to adopt standards, rules and regulations for the prevention, control, reduction and abatement of noise pollution. DNREC, Title 7, Section 1100, Chapter 1149 are the noise regulations for the State of Delaware. That regulation states that the maximum noise levels allowed by industrial emitters, as observed by receptors in any residential area, shall not exceed 65 DB daytime, 55

DB nighttime. Therefore, my conclusion is that no matter what he can make inside his boundary on my boundary, one foot away, he's restricted to 65 and 55. Thank you.

Don Mazzeo: Would anyone else like to make comment?

Ellen Calhoun, 106 Sassafras Lane: On the other side of the development from Dogfish Head. I too, was unaware, that Dogfish was going to have huge expansions while I was in the process of purchasing my property, but I would like to comment on what Ginny said about the additional greenery to disguise this. I live, as I said on the other side of Chestnut Crossing. I look out my breakfast room windows and my living room windows and what I see today is a bunch of semi-trailer container things; because the leaves are all off these trees; which are pretty sparse and as someone mentioned are old trees, they're not even when they're in bloom filling in that space. So from my point-of-view and as I said, I'm much further away than the folks on the border of the brewery, I can see this from my house and it's not pleasant. Sam mentioned the issue of the decibels. I can also hear it. I can't keep my windows opened when the weather is nice. So I really think that if the Commission does approve this, that it would be greatly enhanced and if Dogfish would agree to take over the maintenance of additional greenery, that would be a nice thing to do for the community. Thank you.

Don Mazzeo: Thank you, Ellen. Anyone else like to comment?

Fred Manajian, 125 Village Center Boulevard: I'm assuming that the location of this, he says this is from the west property view. As it presently in place, I can still see these myself. My proximity is in this area, basically where the greenery's going to go in there and stuff like that. I neither disapprove nor think that it needs to be approved by me personally, but just from my observations of being a neighbor in the community, I think it's an excellent project in a commercial development that they're putting forth. The reduction of the traffic, especially on Village Center Boulevard, the reduction of that would be beneficial to us. As experienced by the expansion in the adjacent area, that I just showed you, the truck entrance is directly in front of our house. I talked to Nick just a moment ago expressing that they bring in their green vehicles. The green vehicles which will become part and parcel of this new tank; the noise level of the truck and the discharging of it, he uses a wooden stick to bang the trucks _____ to get out; that is at nighttime; as well as during the day, too. This is not a dastardly complaint towards anything, you know what I'm saying; but I don't foresee any problem, but it was brought up to us at that time... when I got up and I think I came at a time and I expressed approval for the placement of this large development. At that time, we were advised that the trucks would come from the Cave Neck Road area and make that traverse around and then naturally go into the granary and then drop their grain; that was fine; that's exactly what is happening. The problem was that there is no garage door. The garage door is a chain link door that comes down, which is indicative of a construction site door and therefore it creates that noise. Not bothersome to me, it is bothersome, but it's not bothersome to I and the neighbors; but we can see from the number of people who actually... In Cannery Village normally we have a large turnout for a lot of projects. This is a perfect example of my community not being a participant for the concerns of ours. That's something I have to deal with. I have no objections to this. The only thing I would wish is that the noise abatement be addressed by the Commission and I would be most appreciative of that. As far as if they feel that's necessary, I don't know. That's something that Dogfish has to cross with you all, but I don't foresee any problem with them. I think you should approve this. Thank you.

Don Mazzeo: Thank you, Fred. Any other comments, questions. Hearing none, the public portion is closed. Come on up, Nick. You've heard from a couple of neighbor's about the noise and I'm not sure legal would chime in on this one about the decibel level; whether it be 85 at

the fence, or 65 2" away. I don't know how we would address that.

Seth Thompson: Really, it's not something for the Planning and Zoning Commission to address. The Town has a noise ordinance. It sounds like DNREC has a noise ordinance and Sam, you did your homework obviously, so I shouldn't call it a noise ordinance, I should call it noise regulations; that's typically how DNREC operates. But the Town's Ordinance or DNREC's regulations really exist outside of this. In other words, the Commission can't modify those and waive those for anybody and so it's not something that the Commission needs to attach a condition to. So, for instance, the Commission wouldn't need to say and you need to abide by the noise ordinance. Well yes that's true. That's true of everybody. So it really isn't something the Commission needs to weigh in on and as far as DNREC, obviously the Commission can't do anything about what DNREC does, so that's my viewpoint. Again, it's not really within your control to waive that requirement, to require something more significant; there's not the authority under the noise ordinance to do that. If somebody feels that there's a violation of the noise ordinance, then the Code Enforcer is the one really with the jurisdiction to deal with that issue, but it's not something that would be an appropriate condition on this type of application, because again, you're not able to modify it.

Don Mazzeo: Completely understood. I'm going to allow Sam to have a comment.

Sam Garde: One of the reasons I brought it up is that the engineers report stipulates that they're allowed to make 85 DB at the site boundary; that's in the report that you have.

Don Mazzeo: That's also what the regulations in Town say.

Sam Garde: It's what the zoning ordinance says, it's not what the noise ordinance says and our noise ordinance says that the more restrictive controls.

Seth Thompson: Again, I don't think we need to reach that legal conclusion tonight.

Don Mazzeo: I wasn't anticipating for that.

Seth Thompson: It's certainly an interesting debate. I just don't know if it's one the Commission needs to have.

Don Mazzeo: It's perhaps something that might be addressed at a session, down the road; maybe at an Ad Hoc Ordinance Review. We happen to have three members sitting here this evening. My question to you Nick, is regarding the noise. What type of equipment do you have that will be in place with this new operation, that will be making noise, that perhaps could be reduced. I know you want to keep it at below 85, but is there a method that can be implemented to reduce it even further? Yes, it will be costly, I understand that.

Nick Benz: There's always a method. It costs money. Anything can be done, it just costs money to do so. The only piece of equipment is...

Don Mazzeo: I guess my question is, is this applicant willing to put a couple of dollars towards reducing it below the 85 DB level.

Nick Benz: It will already be below, because 85 is the maximum.

Don Mazzeo: Does the number 70, 50, 40. What number would it be predicated on the knowledge of your equipment?

Nick Benz: I don't know. It will be below 85.

Don Mazzeo: So it could be 84?

Nick Benz: Sure.

Don Mazzeo: Okay.

Seth Thompson: If it's okay, let me ask it a different way. If this application is approved and is built, do you anticipate the noise increasing?

Nick Benz: I'm sorry. The ghost in my head just whispered something to me. The equipment that generates noise is 55 DB at the unit.

Seth Thompson: Is that equipment in existence currently?

Nick Benz: No. It is an additional piece of equipment that is converting that gas to electricity.

Seth Thompson: On the site plan, which is the piece of equipment that makes the noise? Or is it the bio-reactor?

Seth Thompson: That's what I thought you had said.

Nick Benz: The reactor makes no noise. It's just a tank holding liquid.

Virginia Weeks: It's a vibration though.

Nick Benz: On your plan, it's the piece furthest from the property line, a long rectangular unit called Prop Cogen.

Don Mazzeo: Proposed secondary module.

Nick Benz: Prop Cogen.

Don Mazzeo: Proposed.

Nick Benz: No. Yes, correct.

Don Mazzeo: Thank you.

Nick Benz: But it's not the proposed secondary module, it's the one to the right of that called Proposed Cogen. C-O-G-E-N.

Don Mazzeo: So you're all the way out away from the property line, as far as you're probably going to get.

Nick Benz: It is the furthest piece of equipment from the property line; on purpose and by design.

Don Mazzeo: And that piece of equipment is what height? 3' high? 10' high? 15' high? I'll rephrase that. The height of that piece of equipment is higher than or shorter than all the equipment that's in front of it, on that plan? Will there be a noise buffer built in? Let's get it straight.

Virginia Weeks: Is it noise or is it vibration?

Don Mazzeo: Well it is what it is, you know.

Nick Benz: It's the same height as all the other boxes on the unit and it's shorter than all of the tanks that are on; all the circles, it's shorter than; all of the rectangles or squares, it's the same height as.

Don Mazzeo: I want to see them do this on the notes. Okay, so in essence, then we can say...

Nick Benz: The site plan submitted actually shows elevations of all the pieces of equipment that you have.

Don Mazzeo: Did I miss that plan? What number is that on?

Nick Benz: Sheet 5 of 11.

Don Mazzeo: Sheet 5. I didn't turn the page? Is that what you're telling me? I'm on Sheet 5.

Nick Benz: Where it says Module Height, 8-12' and then there are arrows coming off of all the pieces of equipment.

Don Mazzeo: Oh yeah, there we go. 8-12'. That kind of narrows it down, doesn't it?

Nick Benz: Those are the modules.

Don Mazzeo: 8-12'. Okay.

Nick Benz: It's better than 75, which the zoning permits.

Virginia Weeks: Quick question. Is there any storage of dangerous materials, say like you have that nitric acid, you have 300 gallons of it that you had a problem with? Is it nitric acid that you had a problem with last August? You had a spillage?

Nick Benz: Oh, inside the building. Yeah that was a 300 gallon tote for cleaning purposes.

Virginia Weeks: Is there anything like that out here? Are there any hazardous materials out there?

Nick Benz: No.

Virginia Weeks: No.

Mark Quigley: The 20% that you're going to be hauling off, well that couldn't fall under any type of a hazardous waste, because you're pumping it into the...

Nick Benz: It's water with a high concentration of phosphorus and nitrogen.

Virginia Weeks: No, but in the cleaning...

Don Mazzeo: And for the record, I applaud your efforts to make this a much better system than it could have been; regardless of whether you showed it to me or not; just the whole process is much better and that's my personal opinion.

Mark Quigley: Outstanding.

Don Mazzeo: Anything that reduces pollution, reduces truck traffic, which _____ is now pollution, this is going to meet that. My problem is still, yes I know every person who brought the property along there signed off that says they recognize that there's a Light Industrial and they have no right to complain, as long as you meet all the criteria; but could we make it a better color; could we do something to put some kind of a buffer there? Can we build a fence that goes 12' high? I know that's against the ordinances, but is there some way we could put a privacy fence there, that would perhaps block more of it, so when the trees that are dying in some cases aren't going to have leaves on them, there's still a fence there? Yes, I know there's no easy way to do that. Would you be amenable to putting in a privacy fence?

Unidentified Engineer for Dogfish: There's currently a fence there.

Nick Benz: There is a fence that Chestnut Crossing put in place. It's the exact same white vinyl fence. It's 6' tall, that runs the entire length of the... sorry, it's 8' tall, it's the entire length of the 75' building, in terms of the corner, we'll mask this. We're not removing... First of all, it's not our fence, we didn't put it up.

Don Mazzeo: It's not your fence. I understand that. I know the fence is there.

Nick Benz: We're not moving it.

Don Mazzeo: I've been there. I'm just saying is there some way we can add height to that fence.

Virginia Weeks: Well Mr. Chairman if I may?

Don Mazzeo: Please.

Virginia Weeks: You know, they have beautiful landscaping at Cave Neck Road when it goes in and they have beautiful landscaping in front of where the public comes to see, by the clubhouse in Cannery Village. I don't understand why they can't afford to put a couple of evergreens in there and fix it. They have all this stuff they're going to spray everywhere and they're making water for in use; it's not even going to... They use well water. It doesn't even cost them water to irrigate. Why can't they just put in some evergreens? All it's going to cost them is the cost of the trees.

Mark Quigley: Well it sounds like they've already put trees in and somebody said they died.

Virginia Weeks: No, no, no. They put the trees on the Chestnut Crossing property and I have no idea what happened. I don't know if they died. I was out there. The house down the thing has three big Leland Cypresses behind it, that seem to be doing very well. I actually didn't see any dead trees, but I didn't look for any. But these don't shield anything and if you're sitting in your house, they need to be good neighbor's to these people and put up

some lousy evergreens that are going to cost them what, \$700, \$1,000? They're spending \$8 million. You know, to tell me that they can't afford to put in some evergreens.

Nick Benz: I would be happy to consider a different tank color and I believe something in the green or brown spectrum would be most to look like a tree, as opposed to aluminum.

Mark Quigley: But then that would be the next thing, is they'd say why did you pick brown?

Virginia Weeks: A tank is a tank.

Mark Quigley: I think we're beating a dead horse here. I mean Dogfish Head is a good neighbor to the community, the Town.

Virginia Weeks: The Town? It's a mutual respect.

Mark Quigley: It is, but they happen to be very good to the Town.

Virginia Weeks: And the Town happens to be very good to Dogfish.

Mark Quigley: Okay, so let's get on with it then. Let's move on.

Virginia Weeks: So plant some trees.

Mark Quigley: I'm not in agreement of spending anymore of Dogfish Head's money.

Virginia Weeks: Okay.

Don Mazzeo: Ms. Edelen.

Linda Edelen: Yes, I knew you were going to come to me soon. I've been so quiet.

Don Mazzeo: You've been too quiet.

Linda Edelen: I know. I think it's a wonderful project. I like the idea that the tank is as low as it is. I'm impressed that you could actually... it's huge. It's huge, but it's not as high as I might have expected and not as high as some of the others that are there. Buffering at Chestnut Crossing is a difficult thing and I'm not going to insist at my capacity as a Commissioner that you plant anymore trees. I would like you to consider, which I think you have, making it a different color. I think this just looks like farm country to me. I'm impressed with that.

Virginia Weeks: That is farm country, that's Vermont.

Nick Benz: It's Sussex County.

Linda Edelen: I don't know. That's the only thing I have to say.

Don Mazzeo: Okay, I think we've beaten them quite extensively. We'll get back to it. Mr. Ellis, it's time. Shall we go through some of the engineering comments while we have our representative here to make any responses that perhaps have not met the criteria that you have placed upon them?

Michael Ellis, Pennoni Associates: They've addressed several of the comments from our March 11, 2014 letter in the verbal presentation. Comment number two is just an item of note that we've only reviewed the site plans; we've not reviewed any water treatment plans for the project. Comment number six, I believe that numbers four and five have been addressed; discussed with noise and screening. Number six, the applicant mentioned, I believe I heard the same thing that there was a DNREC permit that was granted. I don't know if that was a miscommunication. I'd like to inquire as to what the status with DNREC is and I'll give them a moment. And I think the only other remaining item then, is comment number seven, that they need to provide testing and inspection of the foundation fill material prior to the system becoming operational. So, at this point the only question I have is if you can clarify, I believe you mentioned a DNREC permit had been obtained; could you clarify that?

Nick Benz: The DNREC permits I'm referring to are the permits we have in my presentation, to haul water to the variety of farms that exist around the Town of Milton to

currently dispose of our existing wastewater. I believe, if I understand comment six properly, is that when the pond is going to be removed, after it's been completed, you apply for the equivalent of a building permit to DNREC to properly decommission per their rules and regulations, the pond that was previously in place, because it's no longer needed for the new engineering solution in front of them. I think I got that right. Voices in my head, yes.

Michael Ellis: So then there is no DNREC approval at this point in time for, just to clarify, for the proposed treatment system?

Nick Benz: It's treated like a building permit, so once we have it built, we will get permission from DNREC to operate as a proper... the wastewater treatment function of it, not the location. Planning and Zoning are separate issues.

Michael Ellis: Understood. So the DNREC permit will be obtained?

Nick Benz: Correct. But not until it's built.

Michael Ellis: Understood. I have no further comments or questions.

Don Mazzeo: Thank you. I'm personally torn. Color is... a nice brown or a green would be fine, but we need to give you specifics before we can go forward. We have had a comment that this brown looks very nice. Does the rest of the Commission have any discussion regarding a color?

Mark Quigley: I liked their original plan that it... What did you say? It matches the rest of the equipment.

Nick Benz: Gray aluminum, I think, is the right way to classify it, which matches the existing 600 barrel fermenters by the tree house; the bright tanks that stick through the roof and the new tanks that were just added on the parking lot side of the building.

Don Mazzeo: Ms. Weeks, did you have a color choice?

Virginia Weeks: No.

Mark Quigley: I think if you pick a color, somebody else is just going to complain about it. It just wasn't the right color.

Virginia Weeks: I have no opinion about the color, because no matter what it, it's going to be a visual blight on Chestnut Crossing. So it doesn't matter what the color is.

Don Mazzeo: Alright, by consensus then, I'm going to comment that whatever you choose in your color scheme, to match the balance of your equipment that would meet well with me.

Virginia Weeks: I don't think it's in our purview; I don't think we're allowed to tell him what color to do it anyway.

Don Mazzeo: But we're looking at it to try to prevent the view of it and under the circumstances, I was suggesting that we could ask them to make a color option. At this point, I'll withdraw any color options.

Virginia Weeks: To be honest with you, I think Dogfish has done a magnificent job in designing it's buildings and it's architecture. It's done well. I would trust them to do color-wise what's most appropriate.

Don Mazzeo: Color is off the plate. Don't even think about changing your original concept. We talked about it. It's dead. Just as a secondary comment, it's got nothing to do with color, parking and truck traffic are not going to be impacted one way or the other, by this?

Nick Benz: Correct. The trucking lanes remain intact and in fact, they will be utilized less frequently because of less trucks coming in and out to haul our wastewater; which means less trucks in the door that Fred's talking about.

Don Mazzeo: Well now that's been entered into the commentary, Fred has suggested that it's a chain link type door; that it's not solid; that when your trucks pull in, that it's really

not sealing off the building. From what I recall at the outset of the discussions several moons ago, that the equipment trucks were going to pull in, the doors were going to be closed and everything was going to be calm, cool and quiet inside, or outside I should say. Inside there was still going to be noise, etc. I'm gathering that's not what happened.

Nick Benz: Do I comment on this, because it's outside the purview? I'm happy to answer Fred's question, off line and I have an answer for Fred, but I don't think it's part of this process for this application.

Seth Thompson: It is a little bit confusing for this application, although I understand the Commission's question, but I guess if it could be addressed outside of the context of the current application...

Don Mazzeo: Okay, we'll do that at a later date then. Then I have no further comments regarding this application and I'm hearing nothing additional from our Commission members.

Mark Quigley: I just have one last comment. I wish everybody that came before us, had the package as complete as you guys do. It was a pleasure to go through it for me. It was enjoyable. Some of them, it's just, well you saw the last one.

Nick Benz: Don't give the voices in my head a big ego.

Mark Quigley: It wasn't so much to you, it was to them.

Nick Benz: Thank you, on behalf of Element and Lighthouse.

Don Mazzeo: Just remember, you hired them.

Nick Benz: That's true. Every time it's been the same people involved in our submissions.

Mark Quigley: The rest should take a lesson from these guys. I'll tell you that.

Don Mazzeo: Alright hearing no additional comments, then I will accept a motion on preliminary site plan review... Do we have two parts to this? That's my question, I guess.

Seth Thompson: It's noted for a final approval, as well, since they have all of their outside agency approvals; so if there weren't going to be any conditions that they needed to meet, again with the outside agency approvals, they could go forward on final approval.

Don Mazzeo: Then I am poised to entertain a motion on this application for preliminary.

Mark Quigley: I motion.

Don Mazzeo: You motion.

Mark Quigley: For preliminary.

Don Mazzeo: With any and all attached documents which our engineer reviewed.

Mark Quigley: Yes, Sir.

Don Mazzeo: And applicable letters from approvals, etc.

Seth Thompson: Really that would be on the final.

Don Mazzeo: So okay, we really don't have to go any further. We have a motion to approve preliminary on Dogfish Properties LLC application. Do we have a second?

Linda Edelen: Second.

Don Mazzeo: All in favor say aye. Opposed.

Virginia Weeks: Opposed. My reason being that I don't feel we've done our diligence in protecting Chestnut Crossing.

Don Mazzeo: Motion has been accepted.

Seth Thompson: Just for the record, Tim Nicholson left prior to that application being considered.

Don Mazzeo: We still have a quorum, we still have a majority.

Seth Thompson: You do. I just wanted the record to be clear that he wasn't involved in that application.

Don Mazzeo: And...

Virginia Weeks: Motion to adjourn?

Don Mazzeo: No, we have one more because they're asking for a final site plan review and approval and since we've just done the preliminary and there were no conditions attached to it, that I'm aware of, I will now accept a motion to approve for final Dogfish Properties LLC application.

Linda Edelen: I make a motion that we approve the final site plan request of Dogfish Properties, as discussed today.

Mark Quigley: Second.

Virginia Weeks: I have a question. Mr. Thompson, what about the DNREC, do we need to have those for final approval?

Don Mazzeo: We can't.

Robin Davis: We can't get it.

Seth Thompson: And I guess we need to be clear on which DNREC permits we're talking about. The DNREC permit they were discussing wouldn't be issued until after the construction was complete.

Don Mazzeo: It has to be built.

Virginia Weeks: Okay, so we are not in need of any DNREC approvals?

Don Mazzeo: Nope.

Virginia Weeks: I just wanted to make sure.

Seth Thompson: That's my understanding, although I'll defer to the engineer on that one.

Michael Ellis: Yes, that is correct.

Virginia Weeks: Thank you.

Don Mazzeo: Now I have a motion to approve. Do we have a second?

Mark Quigley: Second.

Don Mazzeo: All in favor say aye. Opposed. Motion carried.

Mark Quigley: You're not going to say no?

Virginia Weeks: No, I lost on preliminary. I'm not against final.

Don Mazzeo: Motion has passed. Final approval has been granted.

Nick Benz: Thank you.

8. Adjournment

Virginia Weeks: I tried that already. You didn't want it.

Mark Quigley: Motion to adjourn.

Linda Edelen: Second.

Don Mazzeo: All in favor say aye. Opposed. Motion to adjourn is approved. Meeting adjourned at 8:50 p.m.