EASTCHESTER PLANNING BOARD MEETING - 7/20/21

THE CHAIRMAN: Good evening. This is the town of Eastchester Planning Board meeting of Tuesday, July 20th, 2021. If everyone would rise for the Pledge of Allegiance, please.

(Pledge of Allegiance.)

THE CHAIRMAN: So I'll do the roll.

Mr. Phil Nemecek.

MR. NEMECEK: Present.

THE CHAIRMAN: Jim Bonanno is here.

Mark Cunningham.

MR. CUNNINGHAM: Present.

THE CHAIRMAN: Louis Campana.

MR. CAMPANA: Present.

THE CHAIRMAN: Great. So I would like to welcome everyone to the in-person meeting. It was nice to see everyone on Zoom, but it's great to see everyone in person. We get to see each other and have real interaction. Thank you for your patience during the Zoom that we all participated in, and now we are all experts at it.

So I think we have one meeting minutes that we can approve while we're here, and that is April 22nd. We've read them, there are

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replacing that door with a window and wall and bringing the house into compliance there as well.

I'm just going to flip the page.

MR. CUNNINGHAM: Bring the mic with you.

MR. BADALY: So I just brought up the elevation here, and I'm just going to run through a couple of the changes we're doing and the materials we're proposing.

So on the main part of the house, we're doing a two story addition and providing a gable roof with a portico above the entryway. That has an arched window that gives off into a two story atrium at the foyer and into the staircase. The existing house has shutters, but we're replacing all of the shutters, siding, windows, roofing, so all of that is actually going to be new.

We provided specifications for all of the materials as well. We're also providing an expansion above the garage and above the existing breezeway. So the door that we see on the left-hand side of the front door, which is

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second floor.

THE CHAIRMAN: Okay.

MR. BADALY: I'll just mention also, that all of the windows are being replaced. Those are Andersen 400's. They'll be with a black frame. The siding will be white. Most of the trim work will be white.

THE CHAIRMAN: Okay.

MR. NEMECK: Are there any plantings contemplated with the renovations?

MR. BADALY: Absolutely. We didn't submit a landscaping plan as part of the scope of building permit, but significant landscaping is going to take place in order to make the front yard much more appealing.

MR. NEMECK: I see in the before and after photos, there are nice trees on both sides.

MR. BADALY: The house is not in great shape right now.

MR. NEMECK: I understand.

THE CHAIRMAN: So the landscape plan will be prepared by a landscape architect and it will be --

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MR. BADALY: Correct. It's beyond my capabilities to do.

MS. UHLE: That's not a condition of approval. I think he was just asking if they were planning to plant. That wouldn't be submitted to our department. Just for new construction.

MR. NEMECKE: I think I saw the numbers, but it's approximately an 800 square foot additional living space?

MR. BADALY: Correct. So the existing floor area is roughly 2150 and the proposed is 28 something. It's just under 2900 square feet proposed.

MR. NEMECKE: Okay.

THE CHAIRMAN: As far as the additional impervious, there's CULTECs going where; at the rear of the property?

MR. BADALY: Correct. So it's proposed right under the driveway because the expansion is for the driveway, and then the rear yard -- I don't know if I printed the storm water plan with me.

THE CHAIRMAN: If you have it, we'll

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look at it. If not, we get the idea. Perfect.

MR. BADALY: So we provided a subsurface chamber, CULTEC, and that's to the side of the driveway.

THE CHAIRMAN: Okay. I don't have any other comments. Gentlemen?

MR. CAMPANA: No comments here.

THE CHAIRMAN: Hang on. We're just going to do a public hearing, so don't go far.

I make a motion to open the public hearing on this application, 21-23, 4 Hanfling Road.

MR. NEMECKE: Second.

THE CHAIRMAN: All in favor.

(AYE)

MR. NEMECKE: For old time sake, can we have Rob recognize anybody in the audience? THE CHAIRMAN: Let's raise your hand if you have a comment. Use the hand feature.

Since there's no comments, I make a motion to close the public hearing on Application 21-23, 4 Hanfling Road.

MR. NEMECKE: Second.

THE CHAIRMAN: All in favor.

(AYE)

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tonight we’re not going to offer any further formal presentation, but we’ll just be happy to answer any questions from whatever member of our project team is relevant to those.

MR. NEMECEK: I watched some of the ARB meeting, and I heard your comments and do not disagree with them. It seems like you got a very positive reception. Can you just summarize for this board what concerns the ARB -- what comments the ARB had, if any, on your proposed plantings. I know there were light fixtures that are being gussied up and alike. If you could just give a really brief summary of what the ARB had to say. Thank you.

MR. VILLAREALE: Certainly. Good evening. For the record, Diego Villareale with JMC, the planning and engineering and landscape architecture consultant for the applicant.

The ARB meeting, as Mr. Davis had indicated, it was just a good summary of the overall improvements that were being done to the site. The landscaping around the entire perimeter of the building is going to be replaced. There’s improvements to the landscaping along the frontages of the property on New Wilmot Road, as well as White Plains Road. All of the sidewalks are being replaced in and around the perimeter of the building.

Again, working with Ms. Uhle, all of this was prepared, documented on a site plan and it’s committed to being done all at once as opposed to in any types of phases or anything like that. It’s all going to be done at one time.

The board just really had some general questions about some of the specific planting areas and the types of plantings that were being installed. We did have a landscaping plan that was there. There was a comment regarding the inclusion of maybe some landscape and some up lighting near the main entrances of building just to compliment some of the proposed landscaping that’s going in, which is certainly something we could include. The light fixtures themselves in and around the parking lot are all being rehabilitated and parged. The bottoms are all painted yellow.

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like to have a post occupancy study to ensure that the projections were in line, and that everything is working appropriately.

In terms of the other areas of the building and the occupancies, the applicant's engineer had made certain assumptions regarding the uses, and we are fine with those. If there are any variations, then they would have to come back to the planner and make a determination, together with me, whether or not it's substantial that it would have to go back to the Planning Board.

At this point, there are also certain improvements, for example, at the access driveways that will be coordinated with the applicant, and we've also requested that we have what we call a work zone traffic control plan. So, for example, when modifications to the curbed islands are being done at the driveways, to make sure that traffic is being maintained properly during that. All standard items.

At this point, we have reviewed it, we are happy with all the responses, the revisions.

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they made to the plans. If there are any questions you have, I can answer them.

MR. NEMECEK: Yes. I'm looking at your July 9th report, and you mention the post occupancy study. I believe the recommendation here is that it can be completed within six months of the full occupancy of the first 90,000 square feet. If I recall correctly, the total square footage here is about 210,000 or so?

MR. GREALY: 210, 220.

MR. NEMECEK: Yes. So how full is the occupancy study going to be based on the occupancy of half of the available space?

MR. GREALY: The purpose of that study after the initial occupancy, the intended use here in that first phase is a little bit unknown. A lot of the other uses that were included in the study, medical, you know, offices, it's pretty consistently, you know, from one site to the next you know what the generation is, what the parking is, you've seen it before. So we wanted to the opportunity to see how this is functioning and, most
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they could still potentially have additional
tenants, and they would be included in that
study. I didn’t mean to answer you, but I
wanted to clarify it was a timeframe now based
on the CC, not based on the full occupancy.

MR. NEMECK: You’ve actually answered
the question that I was indirectly getting out,
but I also want an answer to the question in
terms of how is it going in terms of --

MR. DAVIS: To answer Mr. Nemecek’s
question, the owners are actively negotiating
with tenants. As we speak, there are a number
of serious negotiations going on. So, yes, we
are trying to tenant it as soon as possible,
and we do expect probably to at least have one
other major tenant for a major portion of the
space within that six month period.

MR. NEMECK: Okay. Then we already
have Conditions of Approval, should we approve,
that would address including that --

MS. UHLE: Exactly. That’s what it
says.

MR. NEMECK: Okay. Perfect.

THE CHAIRMAN: Thank you, Dr. Grealy,

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21-22, 750 White Plains Road.

MR. NEMECK: Second.

THE CHAIRMAN: All in favor.

(AYE)

MS. UHLE: Just maybe for the record
I’ll just mention that you received copies of
the proposed Conditions of Approval, and the
applicant received a copy as well. They’re
also available in the back in case any
residents are curious about them. I don’t know
if you need to discuss any of them, otherwise
you were provided with them earlier today.

THE CHAIRMAN: I’m not going to read
them. It’s quite voluminous. They are
thorough.

MR. CUNNINGHAM: Well done, though, I
must say. I read them at lunchtime today.

Very nice reading. Very thorough. God job,
Margaret.

THE CHAIRMAN: Thank you. I scanned
it on the train. I’m sure Phil read it. Thank
you, Phil.

MR. CUNNINGHAM: To make sure
everything spelled right.

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by the way. I think most of the conditions
that were approved that we have in front of us
pertain to items that you brought up and you
discussed and there’s other ones here. I think
for the most part, it’s pretty clear as what
has to be followed up on. You certainly
provided all of that guidance. Thank you.

That’s it. This is still an open
public hearing, so we’re going to see if there
are any members of the public to comment on
this application.

MS. UHLE: You should make a motion to
reopen the public hearing.

THE CHAIRMAN: Have to reopen?

MS. UHLE: Yes.

THE CHAIRMAN: Okay. So then I make a
motion to reopen the public hearing on
Application 21-22, 750 White Plains Road.

MR. NEMECK: Second.

THE CHAIRMAN: All in favor.

(AYE)

THE CHAIRMAN: I make a motion to
approve Application 21-22, 750 White Plains
Road, subject to the conditions provided to the
board and discussed at the meeting.

MR. NEMECK: Second.

THE CHAIRMAN: All in favor.

(AYE)

THE CHAIRMAN: Thank you for the
design. It came out very nice. Thank you.

The next and final application is
19-42, 5 Ray Place.

MR. BOHLANDER: All set?

THE CHAIRMAN: Yes.

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MR. BOHLANDER: Good evening, Chairman and members of the Planning Board. My name is Rick Bohlander. I’m with JMC. I’m the civil engineer on the 5 Ray Place project.

Just a quick, brief summary of the 5 Ray Place project. We’re proposing a multi-family residence of 21 units. At our last meeting, there were several comments, concerns that were brought up in regards to construction staging, the safety plan, excavation operations, and the sanitary sewer mitigation. We have since provided several documents to address some of those comments.

One of the documents was the drawing C200, the JMC Erosion and Sedimentation Control Plan, which had a comment on it from Mr. Grealy that I’ll touch on towards the end of my presentation; a proposal from Vanguard, who will do the vibration monitoring during the demolition and the rock removal. We also provide the Soil Boring report from Carlin & Simpson just describing the height of rock throughout the site. Also, a rock removal sketch from Brooker Engineering; a scope of work from Cortese Construction, who will be the contractor on the project; and three work zone traffic control plans provided from JMC.

Just to touch briefly on the submitted documents -- I’m not sure if you had a chance to review them -- the scope of work provided from Cortese Construction, it just broke down -- one of the concerns at last month’s meeting was the staging of the project and the phasing of the project, so in that document he kind of just breaks down the phasing, which is broken down into four phases.

The first phase obviously will be the installation of all the sediment erosion control measures, along with some of the demo, which is mostly consisting of the removal of asphalt, curbing and whatnot.

The next phase will contain the rock removal, that’s the excavation of subgrade and the installation of the storm water detention system, along with the whole storm water system as a whole; inlets, piping and whatnot.

The next phase is excavation for the building footings, and then the pouring of the footings and the walls. After the walls and the footings have cured, the next step is backfilling the subgrade.

The final phase of that portion of the project is the off site work, the work along Ray Place. The trenching for the sanitary and the water and installation of the sanitary and the water.

The next document, just to briefly summarize, is the proposal from Vanguard. There were concerns about just the structural integrity of surrounding buildings during the vibration during the rock removal, and they’ve kind of outlined how they will provide vibration monitoring. They will also provide any pre-construction evaluation of the surrounding buildings, the surrounding area prior to the start of construction to ensure everyone’s safety. The vibration monitors will be set up at the site in between the site and the 24 Enclave property. The readings from this vibration monitoring will be provided to the owner, to the contractor in real time on a website. If something should happen, they will...
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the cleaning of that pipe if it needs it. It
will also be videoed -- this is the second part
of the mitigation -- it will be videoed to look
for just the condition of the pipe, if there
are any certain places to repair that pipe.

The third portion will be, going
upstream on Harney from the manhole that I was
just speaking about at the intersection --
there used to be an intersection and then the
roads were realigned -- at Harney and Brook
Street, the manhole, it splits with a pipe
going down Woodruff and then a pipe going down
Harney, we are proposing to repair, clean out
and do whatever we have to do to make sure that
manhole is operating to its full function.

Kind of the last part of the
mitigation, as I said, you know, we will video
the sanitary sewer line running from the
manhole at the Woodruff and Scarsdale Avenue
intersection to the Harney and Scarsdale Avenue
intersection, and obviously repair any problems
with that up to a certain amount of money.
There could be nothing wrong with the pipe,
there could be a lot wrong with the pipe, but

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questions then. Do utilities go in during
excavation; is that the first thing that goes
in?

MR. BOHLANDER: So that would be
towards the end of the excavation. That would
be in the, I'll call it, third phase where we
would -- the excavation for the building
footings would take place. The footings would
be poured, the walls would be poured, and then
the next phase would be the construction along
Ray Place, the installation of the sanitary and
the water.

THE CHAIRMAN: Before they start the
super structure, the utilities go in? They
don't occur at the same time?

MR. BOHLANDER: I couldn't hear you.

THE CHAIRMAN: Before they start
construction of the super structure after the
foundations are done, the utilities go in, and
once that's completed, then they start erecting
the building?

MR. BOHLANDER: The utilities to the
building would be subbed out so they could
install along Ray Place, and then connect into

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we have capped it at a certain amount of money.

There was one specific comment from
Mr. Grealy, the traffic consulting engineer,
about on C200, the Erosion and Sediment Control
Plan, the limited disturbance is also shown as
a construction fence, which, if you're familiar
with the drawing, it's out on Ray Place. So
Mr. Grealy asked us to put together the work
zone traffic control plans just to address the
fact that we will be doing work within the road
and how we would handle, you know, shifting
lanes and handle traffic and handle
pedestrians. I provided those three drawings.
I kind of split it up into three phases: The
trenching for the sanitary sewer line, which is
on I guess that would be the west side of the
Ray Place; and the water line, which is on the
east side of Ray Place; and then just kind of
the work that's confined to our site.

That was really it for comments and
concerns. I would be happy to answer any
questions. There was a lot provided to you
guys, so I anticipate questions. Fire away.

THE CHAIRMAN: I guess we have to ask

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sense doing it separately just to limit the amount of disturbance and just safety.

THE CHAIRMAN: As you said, there's two issues; the I & I issues, which I think we're going to ask Mr. Cermele to comment on; and then also the rock. Then as part of the traffic issues, I imagine it's all been resolved, but I think we'll ask Mr. Grealy if he has any further comments when you're done.

Mark.

MR. CUNNINGHAM: The remedial work for the sewer system, that has nothing -- well, I mean, not that it doesn't have anything to do with the building, but that's part of conditions -- will that work be done first in phase one?

MR. BOHLANDER: So that still needs to be finalized, and we'll coordinate with the Town, but we anticipate that being prior to the C of O, the issuance of the C of O.

MR. CUNNINGHAM: Okay. So we have a building up and if that doesn't work, then we have a problem.

MS. UHLE: Again, it's not that it

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doesn't work. They are clearly providing mitigation measures, so they will have to have installed those mitigation measures. Those mitigation measures will provide mitigation. So they will work to the extent that, you know, a manhole will be repaired and replaced, a manhole will be installed.

MR. CUNNINGHAM: I understand. My choice of words probably wasn't right, that it wouldn't work. I understand that it works now, there's issues with it. This remedial work will make that system better. I just think from my perspective is that with that system fixed and remedial work done, you have all that time to see that this is actually an improvement to the system, as opposed to when the building is up seeing that it hasn't corrected it or helped.

MR. NEMECEK: The Town's interests have been capably represented in the process.

MS. UHLE: Absolutely.

MR. NEMECEK: I know we talked about there were other potential measures that could be taken, but that were cost prohibitive.

MS. UHLE: Not feasible.

MR. NEMECEK: Not proper to try to foist on one applicant or this particular applicant. The thought is, the Town was capably represented in the negotiations -- I don't know if that's the right word -- the discussions that surrounded identifying an appropriate mitigation effort, that obviously the Town believes is going to help. I know Joe wouldn't be picking something out that is just make work.

MR. CUNNINGHAM: That was my point.

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MR. NEMECEK: The point is if it doesn't work, it isn't because the applicant didn't do what they promised to do, it's just that somehow, despite all the best efforts -- and, who knows, there are many other circumstances in play -- nobody is guaranteeing a hundred percent success here.

MS. UHLE: Again, I'm just really concerned about how this keeps getting expressed. The applicant is not responsible to solve that problem down at that one particular point. We're hoping that these mitigation measures will make a difference and they will alleviate it. It may not solve it. It's a step. It would be wonderful if it solved it, but maybe it takes five other developers to contribute, or the Town, before you actually notice success. The way we're defining success is scaring me.

THE CHAIRMAN: It's not a quantitative thing, it's a qualitative thing. Our consultant will pay attention, make sure he agrees with those, as long his concerns are expressed. I imagine he will be involved.

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MS. UHLE: Just, by the way, to backtrack a little, one of the conditions of approval for Lord & Taylor -- right now they're actually decreasing flows into that system, but one of the conditions of approval is as new tenants come in, they are going to have to address how that affects the sanitary sewer flows. Once they increase the flows over existing conditions, they too will have to provide some kind of mitigation measure. That building is within the same system. They will be required to do something very similar, and maybe then you'll see some tangible --

THE CHAIRMAN: Okay. Not to belabor the point. Thank you. Got it. I don't have any other questions. I know way too much about I & I.

Dr. Grealy, is there anything you would like to offer on the traffic?

MR. GREALY: Philip Grealy, Colliers Engineering again.

Mr. Chairman, members of the board, we have reviewed this application from the start, okay. One of our concerns was how during

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color traffic would be maintained. We didn't want any back ups. We wanted access to all the properties. So the plans that were prepared, what we call work zone traffic control plans, sometimes they're not prepared until the applicant is ready to go to construction. They've actually prepared those, showed how they're going to maintain traffic flow, keep access to the different properties on Ray Place, such as The Enclave. It's very specific that they have to maintain full access to each of the properties while they're doing the work. Their progression is logical in terms of working on one side of the road and then transferring it. So they've provided the information.

There are a whole series of other recommendations in terms of conditions of approval that we have on resurfacing the road, upgrades to the sidewalk, etcetera, but we've talked about those in the past.

Our last remaining issue was to just see how during construction they plan to coordinate, and they've provided those

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MR. GREALLY: Thank you.

THE CHAIRMAN: Mr. Cermele, I know the applicant gave a lot of comments about the I & I. Certainly, if you could give your nod, or I think we know enough about it I'm sure. You do not have try and quantify what's going on, just give us you are assurances about the I & I that everyone's best interest is being represented.

MR. CERMELE: This mitigation was an effort not only by the applicant, but our office, Margaret, the Highway Department, collective kind of search and find and look for avenues that would make sense in this particular instance. As was said repeatedly, this was not meant to be a cure all. It's just to offset the potential impact from this development. I think with the combination that we have and what's being proposed, we'll certainly see a benefit.

Just to add to Mr. Bohlander's comments, the manhole in Harney Road -- typically manholes in a sanitary system as you flow downstream, they combine flows and they continue on their way. This particular

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manhole, the downstream flows are split. There's a primary discharge along Harney and a secondary route down toward Woodruff. In inspecting that manhole, the invert -- over the years, it's an old system -- it's in need of a fix. So the plan is to make those repairs to that invert, reestablish the primary flow onto Harney, which would take that flow that is currently going towards Woodruff out of that section of the sewer. It ultimately all reconvenes and converges back at Harney before it goes under parkway. We'll short circuit that longer route that it's taking right now to Woodruff.

The clean out manhole on Scarsdale Avenue, again, as was said, those manholes today are about 500 feet apart, which doesn't meet current standards. The length alone makes it difficult to main, but, to make matters worse, the manhole at Harney is approximately 40 feet deep. Just to physically get something in there to maintain and scope that section of the line from the downstream manhole up is next to impossible. Installing that interim manhole

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will certainly help. The Town will be able to maintain and inspect that line.

Should anything come of the sewer inspection on that section of the line on Scarsdale Avenue, we'll work with the applicant, his engineers to determine what the best course of action would be to the repair to that line, obviously with the cap of the not to exceed cost in the Resolution, keeping that in mind.

THE CHAIRMAN: Thank you. You're the expert, so if you're okay with it, I'm not okay with it. I'm not going to question anything. I'm an expert in something else. So thank you. So then I guess --

MS. UHLE: Can I just say a couple of other things?

THE CHAIRMAN: Sure.

MS. UHLE: I know there are some people from the neighborhood here, and I think they saw that the draft Conditions of Approval are available for anyone that's here. If they want to review them, they're on the back table.

One thing I want to point out just to

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the board that is a little more unusual for us only because we have not had this particular circumstance very often, we are retaining a structural engineer with regard to the rock removal activities. The applicant did provide you sort of the time frame with regard those. I think the rock removal activities are only within at two to three week time frame overall. We are going to them take all those documents that they submitted and sort of come up with more streamlined rock removal protocols, and I have a structural engineer that will be reviewing those. That will specifically identify the properties that need to have a pre-construction survey or pre-chipping survey, if that's what they're doing, where the vibration sensors will go and that kind of stuff. Even though the applicant has proposed that already, it's sort of like developing the maintenance and protection and traffic plan and consolidating everything into one plan that then will be removed by our structural engineer. So I just wanted to --

THE CHAIRMAN: That's a good point.

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09/20/2021 08:54:32 AM
That was the other issue. As you pointed out, we have our expert that is going to be following that also closely, so it’s not going to go unnoticed.

MR. NEMECEK: By the way, I think it’s worth repeating what Mr. Cermele said, that he didn’t just make this decision, he had input from the Planning Department, from the Highway Department, from various stakeholders in the Town who are all out to represent the best interest of the Town.

THE CHAIRMAN: Right. He’s just the orchestra conductor. No other comments. So then I will -- I have to reopen the public hearing. So I make a motion to reopen the public hearing on Application 19-42, 5 Ray Place.

MR. NEMECEK: Second.

THE CHAIRMAN: All in favor.

(AYE)

THE CHAIRMAN: So before we start, the issues we’re discussing that are in front of us right now are the ones that we’ve already put forth. There’s the rock removal and a limited DINA M. MORGAN, REPORTER

number of I & I type things. As far as the massing of the building, I think we hit on that. So if we could confine out comments to the issues that are in front of us today, that would be best.

That being said, public. Sure, come on down.

MR. BRODNIK: Good evening, Mr. Chairman, members of the board. My name is Andrew Brodnick. I’m an attorney, and I represent The Enclave in a Article 78 proceeding that was brought with respect to the variances that were issued by the Zoning Board of Appeals. That was a close vote, three to two. Of course I believe there is a lot of merit to the Article 78 that we brought.

In response, the applicant brought what I think can fairly be characterized as a procedural objection, a Motion to Dismiss, which is currently pending before the court. It will take months for that to be decided. If the motion to dismiss is decided, at that point the applicant will then put in an answer and then the court will rule.

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THE CHAIRMAN: Great. Thank you. I wasn’t aware of that, but it’s certainly helpful to know. I think, like you said, the applicant can make their own decision if they want to proceed.

MR. BRODNIK: They could. If they do, then we have a whole mess where whether move for injunctions, this, that or the other thing. Again, I don’t want to argue the merits of the Article 78. It was a close vote, it was three to two. There were some procedural issues that were raised, as Margaret well knows. I just think it would be certainly advantageous, and I think just good process, if that issue could be addressed if and when site plan approval is granted. It could be, perhaps, conditional upon the resolution of the litigation, or perhaps, again, I could work something out with the applicant. I’m friendly with Dan Tartaglia, who is the attorney, maybe I’ll reach out to him in the next week or so.

I just wanted to bring that issue to the DINA M. MORGAN, REPORTER
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MR. NEMECEK: If I could ask, in connection with the Article 78 proceeding, has there been any motion for temporary relief, temporary restraining order, preliminary injunction relief, that would stop the process; has there been any such application?

MR. BRODNICK: There has not been, no.

MR. NEMECEK: It sounds like you're asking us to kind of stop it.

MR. BRODNICK: Oh, no.

MR. NEMECEK: You may have the ability to do so in front of the court.

MR. BRODNICK: I would have that opportunity. If and when site plan approval is obtained, I could, if there isn't other arrangements made, make such an application before the court.

MR. NEMECEK: Okay. Got it.

MS. UHLE: Also, just so that you know, we do have land use council that has been working on the Article 78 proceedings.

MR. NEMECEK: I thought so.

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THE CHAIRMAN: Great. Thank you.

MR. BRODNICK: Thank you.

MR. FASCIGLIONE: Good evening. My name is Michael Fasciglione, 43 Woodruff Avenue. 57 year resident at Woodruff Avenue, lifelong resident of the town of Eastchester, and a member of the North Eastchester Civic Association. May I say, it's a pleasure to finally be able to have a meeting face-to-face after all those many months of Zoom meetings, which, at best, were difficult to control and have many restrictions as we saw it.

Basically, I'm here to just bring up two nagging issues with reference to the Ray Place project that never have been truly answered to our satisfaction over the 12 months, basically, of Zoom meetings that we've had.

The first item makes reference to basically a question as to why the developer has not been required to produce any financial comparatives showing compliance with Eastchester law number 5, which makes reference to basically Zoning Board use of variances.

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2 will quickly quote what I'm trying to refer to:
3 No such variance shall be granted by the Zoning Board without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.
4
5 MR. TUDISCO: I'm going to stop you there because you are quoting something that is potentially an item pending before the Zoning Board, which this is not, and you know that.
6 Also, you are misquoting the law because that is the standard for a use variance. They requested areas variances. There is no issue of financial need or hardship that is applicable for an area variance. That has been explained on a number of occasions.
7
8 MR. FASCIGLIONE: I see. Pardon me ignorance, could you describe the difference between a use and an area variance? A use variance is where you wish to change the use of a property. If you are seeking the change of the usage of the property, your argument would be or the burden that you would have to overcome is to show that you can't use it for its designated purpose because of undue financial hardship.

With respect to an area variance, if your project is at variance with the law, you are asking for special permission based upon certain circumstances in terms of setbacks, in terms of other things. Financials are not relevant whatsoever. That issue has been brought up time and time again by members of the public, and each time we explained it. I'm in a difficult position here because there is a viewing audience that is watching at home, and I want to make sure that the law is quoted accurately or is applied accurately.

MR. FASCIGLIONE: I understand. My final question concerning that -- pardon the tutorial -- where does the area variance appear in the zoning laws; does it appear as part of that Section 10 because I did not see it?

MR. TUDISCO: Margaret, do you have the zoning law here?

MS. UHLE: Yes.

MR. FASCIGLIONE: I make reference to Section 10 of Local Law 5.

MS. UHLE: It's Section 10.B.2. It's
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just Section 10.B.2. Section 10.B.1 talks about the unnecessary hardship which relates to a use variance. 10.B.2 states the requirements for area variances. 

MR. FASCIGLIONE: I was going to bring up 10.B.1 as part of my defense here, the fact that it says: The applicant cannot realize a reasonable return provided that lack of return is substantial, as demonstrated by competent financial evidence.

MS. UHLE: Mr. Fasciglione --
MR. FASCIGLIONE: The point I'm trying to make, if it says -- again, I didn't write the law --

MS. UHLE: Again, as Mr. Tudisco indicated to you -- two different issues. The Zoning Board has already made their determination. As you know, residents filed an Article 78 based on that determination. That was not one of the arguments that was made in the Article 78 because, again, there are two very distinct different types of applications for variances.

A use variance, because it deals with
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actually changing a permitted use within a district, has a very higher threshold for approval, and it has a number of different thresholds, and it's very difficult to obtain because of that. One of those is, an applicant has to show that there's true financial hardship without them getting any kind of reasonable return on their property.

Area variances there is not a very large threshold. They're much easier to obtain. Those deal with the lot and bulk requirements and just convincing a board that there won’t be an undesirable change in the character of the neighborhood, that it's not terribly substantial. There are different tests for area variances, and that's what Mr. Tudisco was telling you.

The use variances absolutely don't apply to this particular application. Even if they did, that was before the Zoning Board, and there's been an Article 78 or a lawsuit filed against the Zoning Board for their determination. So if the Zoning Board misunderstood something or did something
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inappropriately, that would be addressed during the Article 78, but not before this board.

MR. FASCIGLIONE: I see. Thank you very much. I'm going to go back and reread that law again. It's part of my evening reading.

I'm just going to quickly touch on a second portion of what I feel is important. The fact that during the entire procedure, this 10 to 12 month procedure, Planning Board, Zoning Board, and back here at Planning, there has never been a time when the developer has been asked to supply some sort of an alternate proposal to this project, that would sort of more closely comply with the Town Laws. In fact, at one of the meetings on November 20th, I made a very non-professional proposal of what I thought would be a very good compromise, which would enable a fifth floor to be taken off, a reconfiguration of the parking structure so as to be able to add additional apartments there, and maybe have some sort of a compromise. To be very blunt with you, it was just shot down. It was ignored. The ZBA

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didn't think it had any merit, and they just sort of covered it over. The point I'm trying to make is that we, as residents of the North Eastchester area, have been diligent in trying to fight what we consider over construction in this area. There have been a couple of other projects that have come through, which we've been able to slow down because we thought they were just not in keeping with the quality of our town. We feel that this building -- although it's a beautiful building -- is just an over construction, and it's going to cause a number of different problems.

What we're asking you to do is, please don't make a decision this evening. Look carefully at this. I see that there are a number of proposals that are being made, which, in a sense, are based upon moving forward. I'm just concerned with shovels going in the ground before this has been fully resolved. So I ask you to please give this another look and try to see whether we can come to a more agreeable solution. Thank you.

MR. TUDISCO: I just also want to
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Mr. Fasciglione: I do understand that.

Mr. Nemecek: I know we heard from you, Mr. Fasciglione, many times, albeit not always in person like today. We appreciate it, and consider very carefully all the input from the Town.

Mr. Fasciglione: Being that the Planning Board is the lead board in this matter, that, to me, makes me understand although the Zoning Board made a decision, the final decision is yours to make. Again, we plead that hopefully we could come to some sort of a compromise that would make us all a little happier. Thank you again for your time.

The Chairman: Thank you.

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1 Board.

2 MR. GALANEK: Thank you. I appreciate that. This is something that we have a fix.
3 It's not a fix, it's a Band-Aid. Now, the reason why I bring that out, if that was a problem for all these years, how come all of a sudden now we have interest in trying to fix it? Why now? I'll tell you why now. Because this project wants to get a rubber stamp so it could get approved. Now, if they go with the beautiful technology of looking in there with the videos, which is great, and they find that, yes, they think -- and then what happens -- well, let's say they think it's going to work, you know, it's pretty clean, maybe a little cleaning around, doing a little tender loving care and we'll get this sewerage to flow a little bit better. Now, the board approves it and says, okay, good to go, we're going to have the water go out, no problems. What happens if there is a problem? Is the board going to say this is a condition, if this is a problem, the taxpayers of Eastchester are not going to pay for additional surge lines, larger surge lines?

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1 MS. UHLE: Yes. There's a proposed storm water management plan that's been reviewed and discussed and approved by our engineering consultant.
2 MR. GALANEK: There is a holding --
3 THE CHAIRMAN: Where are you going with this?
4 MR. GALANEK: -- A holding so that once it's possible to release that water, it's going to get released; is that my understanding?
5 THE CHAIRMAN: So I don't know the design of that system. Our consultants do, and they've comment on it. So if there was a problem with it, they would have made the comment and presented it.
6 MR. NEMECEK: We've had this discussion.
7 MS. UHLE: I was going to say, Mr. Galanek --
8 MR. GALANEK: I'm old, a lot of my parts don't work, can I ask you just to speak a little bit louder.
9 MS. UHLE: Yes. You have brought this up. The storm water management plan was prepared by the applicant. It was reviewed by our engineering consultant, it was reviewed by Planning Board members. The plans were available online, comment memos are available online. As a condition of approval, there are some minor things that need to be kind of finalized as conditions of approval, so I'm not quite clear what you're getting at this evening.
10 MR. GALANEK: First, to answer your statement, and very respectfully, Margaret, I had asked for those plans, the drawings, the plans awhile back, and you said you were going to send them. Never got them. Not a big deal.

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You could check.

MS. UHLE: They're also available online by simply linking on.

MR. GALANEK: At that point, you didn't say that.

MS. UHLE: I'm not sure whether you sent me a follow-up e-mail. I just want to make it very clear, and I think Mr. Sweeney and anyone else in the North Eastchester Civic Association or at The Enclave will tell you, that I respond to each and every e-mail and each and every request that I get. I might have mentioned something at a meeting and I apologize if I didn't follow up, but had you sent me an e-mail, those drawings would have been attached and sent to you immediately.

MR. GALANEK: Okay. I appreciate that, but that was not mentioned what the conditions were. You said you would send it.

Okay. I am not here to take my machine gun out to make Swiss Cheese of you. I'm not here for that. All I'm saying is, that's the thing. Currently, we do have a system that's going to hold back this water, it isn't.

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a 150 years worth of experience in living in the town. So it's now a matter of where we're at and what we need to get done.

From what we know now, which we didn't know in the last meeting, is now the MTA is off the record. They're not going to allow them to go through the tunnel. They've also come back and said there's a proposal that it could cost $750,000 to put a pipe down underneath the track, which we still don't know is viable yet.

What we have is, the things that we thought were going to work. Currently, I don't think they're a workable solution right now. The net value of what we have is the mitigation -- do you want to see what mitigation looks like? I hope we can get this on TV. This is what mitigation looks like in my neighborhood. This is what mitigation looks like. It hasn't been solved. So now we're going to do a mitigation process and hope that we're going to get it done after the fact. It's not going to happen because this is what we have.

The Town was so nice because they bolted down a headstone on the sewer. Guess

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changed; correct?

THE CHAIRMAN: No.

MR. GALANEK: No. Okay. So again, my final statement is going back to the original, if there is a problem and we need larger sewage pipes, larger storm pipes to handle this development, who is going to pay for it? Is that going to be written in, that the developer is responsible for it? Before you approve anything, I would ask you to really think about that.

THE CHAIRMAN: Thank you.

MR. GALANEK: Thank you.

THE CHAIRMAN: Any further comments?

Mr. Sweeney.

MR. SWEENEY: Good evening, Chairman and members of the Planning Board, Margaret and Richard. We've been at this for some time.

MR. NEMECZ: Mr. Sweeney, you're supposed to identify yourself for the record and your address.

MR. SWEENEY: Yes. It's Frank Sweeney, 22 Lakeview Avenue. Not that I like it, but with three of us here, we have about

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what happened? All around the sewer head turned to garbage. So I'm really concerned that somehow after it gets out of here, we still got to get this to the Yonkers processing plant. Is that a fair statement? We have to get to Yonkers. How are we going to do it? This mitigation doesn't help me. It doesn't help any of our neighbors in the north end. And you're standing there looking blank. This is my neighborhood. This is your neighborhood. Let's not go forward until we resolve the mitigation -- not mitigation, find solutions.

I went to the Town Board last week and identified that the Town Board needs to be involved and capital appreciation in order to correct this problem. It's not the developer's problem. This is long due, 15 years of waiting this to bubble up.

I'm sure you're all aware that when Margaret back on March 18, 1920 -- 2020 wrote to the Westchester County Planning Board referral review, they stipulated six or seven items. I hope you've all reviewed this in detail. I'm sure you have. It weighs out the
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plan what's going to be required. I don't see
the Town doing it.
The first one being -- the first item
they wanted to see something about fair
housing, they wanted to see pedestrian access,
unbundled parking, county sewer impact. Right
here, number 5. I know this is a referral
agency, but they clearly lay out very, very
pertinent things that need to get done. At the
time the ownership was passed, they recommended
corrective action be enforceable. Storm water
management, number 6. It goes on to say you
need to get it solved and not wait for the
issue to be resolved. Talk about green
technology. This is signed by Norma Drummond,
who is the Commissioner of the Westchester
County Planning Board Referral Review. Now, I
hope you've all reviewed this in intimate
detail. It is a suggestion, but I don't see
where we've actually taken it into
consideration in this proposal.

THE CHAIRMAN: I think you're
overstating. When memos such as this are sent
to Margaret, I'm pretty sure she pays attention
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to it and implements everything on it. So by
saying we don't pay attention to it is sort of
minimizing the amount of effort that goes into
this operation.

MS. UHLE: I also want to clarify one
thing. Mr. Sweeney, the County letter from the
Westchester County Planning Board, which is a
letter that indicates recommendations for
things for the Planning Board to consider, not
requirements, in talking about this particular
project it says -- let's see -- it's a policy
that municipal governments require applicants
to identify mitigation measures that will
offset the projected increase in sewage flow by
requiring the applicant to discuss methods of
inflow and infiltration mitigation. That's
exactly what this board has required the
applicant to do. So the applicant has
addressed issues related to inflow and
infiltration directly related to the increase
in sewer flow, and they are proposing
mitigation measures. That is an issue that
this board took very seriously from day one of
this application in order to address that very
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illegal connections. That's something totally
separate and unrelated to this particular
application and is totally a Town Board --
MR. SWEENEY: When is it going to be
done?

MS. UHLE: Again, that's the Town
Board. Nobody on this board has that
authority. What I wanted to tell you again,
because you keep referencing this letter, the
letter with regard to County sewer impacts has
two very distinctive separate paragraphs.
One relates to what the Planning
Board's responsibilities are with regard to
reviewing the application. They have taken
this very seriously from day one. They've had
the applicant identify proposed sewer flows,
and they're requiring that he provide
mitigation measures to address those flows to
alleviate the problem that you pointed out.

The second paragraph has to do with
what they recommend the Town do. That is one
hundred percent a Town Board determination that
nobody on this board has any control over, and
it's totally unrelated to this application.
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MR. SWEENEY: Can you tell me where the storm sewer and the household sewerage comes together? Do we know that?

MR. TUDISCO: Mr. Sweeney, you specifically brought up that memorandum, and you said that it says here that the County is recommending on new projects that the applicant show mitigation, and that's exactly what happened here. In terms of town-wide policy and what the Town should do in a separate paragraph, those are issues that this board has no authority over and have to be addressed by the Town Board.

MR. NEMECEK: You said you've gone to the Town Board. You even said yourself, this is not an issue for this developer. You're right about that.

MR. SWEENEY: I went to the Town Board, and I got the same reaction. Everybody sat there with their hands on the table.

MR. TUDISCO: But that's not the reaction here. We're telling you what you asked this board to do, they've done, and it's been explained to you on a number of occasions.

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MR. NEMECEK: If I could, Rob, your very letter here, and Margaret stopped short of this paragraph, the last sentence of the first paragraph in the section on county sewer impacts, it says the best means to do so -- and that is mitigation efforts -- is through the reduction of I & I at a ratio of three to one for market rate units. That three to one ratio, I, personally, have explained to you twice after hearing it.

MR. SWEENEY: Explain this to me twice.

(Indicating.)

MR. NEMECEK: That's a different issue.

MR. SWEENEY: It's not a different issue. This happens every single time with two inches of rain.

MS. UHLE: That's what we're trying to help mitigate and alleviate.

MR. SWEENEY: Where are you going to process the sewage and the storm water to get it to Yonkers? That's all I'm asking. How are we going to get it there? You're saying it's illegal connections. They're pumping water during rain into the sanitary sewer system, which is increasing water into those pipes so that you're getting that bubbling up. So what we're trying to have the applicant do is repair some of those pipes so that the water doesn't infiltrate those pipes, create manholes so that the pipes could be more readily cleaned so that the flow could go more freely through those pipes.

The issue about going under the tracks or through the tunnel, etcetera, that was to create a bypass to take some pressure off of that manhole. That was only one of the alternatives that was totally unfeasible because of the cost of it. The sanitary sewer is still going through these same pipes. What we're trying to do is repair those pipes and make it easier to clean them out or to redirect the flow where we're repairing that one manhole, so that that manhole that bubbles up doesn't get all the pressure on it. Believe me, we have had hours and hours and hours of discussion trying to do our due diligence for...
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one reason only, and that is to address the
problem that you have a concern with. I
guarantee you, the builder would rather do
nothing. The only reason -- no offense to the
builder -- the reason he's doing it is because
you have a Highway Engineer, you have a
Director of Planning, you have an engineering
consultant that have taken this issue
incredibly seriously, but we have to do it
within legal parameters, and that's what we've
done.

MR. SWEENEY: I'm not questioning the
legality or the effort that they put in to try
and solve it, but the Town hasn't solved it.
The Town hasn't solved it. Now they're asking
you to make a decision based on something that
maybe is not going to get fixed. I appreciate
the approval for the conditions tonight, but
again, it's after the fact. I'm looking for
something up front, that's all. Something up
front.
The pipes, JMC, when we did the
previous appointment, they were 80 to 90
percent at capacity then. That was about eight

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years ago. It hasn't changed. It hasn't
changed.

We would like to see the project get
through, but we can't live with this type of
sewage and unknown. Everybody is sitting back
and saying, not my problem, you know.

MR. TUDISCO: I'm going to disagree
with you there because that's not what they've
said. You said the Town has to do something,
and the Town Board is designated for that
process. This board has to make sure that this
developer is not going to add to that problem.
In fact, it's going to mitigate that problem on
a three to one basis. We have brought in
engineers to make sure that that's, in fact,
what they're doing. So nobody is sitting back.
This is exactly what they're doing to address
those exact concerns. You may not agree with
them. You may want to see more. You may want
to see that problem completely fixed. But the
engineer explained, and Margaret explained, and
the Chairman explained earlier, that it's not
the responsibility of each applicant to fix the
total Town's drainage problems. They have to

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such as a mitigation effort here, it is going
to stay the same. As Mr. Bonanno said, the
Chairman, this is a best effort to -- first of
all, to make sure that this application isn’t
going to make the system worse, but as Mr.
Tudisco said, every effort is being made to
secure -- and there are no guarantees, but we
have all the best minds on this, and, with all
due respect, people who know a lot more about
this subject than I do, than Mr. Tudisco does,
more than the Chairman does, than you do, and they
are saying this is our best opportunity to
affect a positive change and you want to stop
it in its tract.

MR. SWEENEY: I don’t want to stop it
in its tracks. I want a solution, that’s all.

THE CHAIRMAN: The solution has been
put forth. The solution is here. It’s on the
drawings, and it’s what’s going to get
constructed.

MR. SWEENEY: We surely don’t want the
thing built and it has those photos, that I’m
almost embarrassed to show on TV. Almost
embarrassed. You wouldn’t want to walk within

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a block and a half of that sewer.

MS. UHLE: Mr. Sweeney, have you, as
the President of the North Eastchester Civic
Association, talked to your residents about
illegal connections or sump pumping into the
sanitary sewers? Because that is likely one of
the -- and again, I don’t know sure, but that
likely is creating or contributing to that
problem, is people that during storm events
sump pump into the sanitary sewer system, and
that’s individual homeowners and individual
residents. That’s what the County letter says,
the Town implement a program that
requires inspection of sewer laterals from
private homes for leaks and illegal connections
into the sewer system, such as from sump pumps.

So again, people may not realize in your
neighborhood, that sump pumping into the
sanitary sewer system contributes to this
particular problem. So that may just be simply
an education program too, but I wanted to point
that out to you because you are the President
of the North Eastchester Civic Association.
This is something that residents have a very

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2 THE CHAIRMAN: It's not something we're discussing under this application. It was just a comment to bring it to your attention.
3 MR. SWEENEY: Okay. All I ask is we need some time. We ask you to take it under advisement and defer the decision until the September time frame. I do appreciate your time and efforts. Thank you.
4 THE CHAIRMAN: Thank you.
5 MR. NEMECEK: Thank you.
6 THE CHAIRMAN: Mr. Galanek.
7 MR. GALANEK: Good evening, again.
8 Just to recap a little bit on what Frank was saying, we have the sewage at a certain level right now. When you put in a large project like Ray Place, that's going to compound that level higher because there's going to be more water, sewage going through. What I think Frank is asking, or possibly saying or asking, is that over the last several meetings, some of the things was mentioned and it's still mentioned again tonight, how the developer is going to actually go in and look in the sewage.

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2 you know, both ways inspection, and then also with cameras, which is great, but this has been going on. So I think what Frank may be saying is, before you vote on anything to approve this, let's see the results from all the beautiful inspection that they're going to do so we have an idea what situation we actually have encountered from Brook Street down to the actual connections to the sewage.

Again, as I said, if there's a problem and this gets approved, and they find out or we find out, the Town finds out, everybody finds out that, unfortunately, we got a problem here, we need larger sewage pipes or the sewage pipes we have are old and dilapidated, they're leaking, they're doing this, and now we need new ones, and we're going to have to pay for them. If they were going to pay for it, the developer, that would be fine and dandy, but in reality, they're not going to do that.

Again, what I think Frank is alluding and saying is, before you give a rubber stamp on this thing, let's see what results we get back from the investigations, which has been

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2 mentioned over the last couple of meetings, and it still hasn't been done, to my understanding.
3 I thank you again.
4 THE CHAIRMAN: Okay. So then I'm going to make a motion to close the public hearing on this application, 19-42, 5 Ray Place.
5 MR. NEMECEK: Second.
6 THE CHAIRMAN: All in favor.
7 (AYE)
8 THE CHAIRMAN: I think we've exhausted all of the studies and we've discussed this. We certainly appreciate all the comments brought forth by you three gentlemen and your concern over your community and your roads. I don't think that anything you brought forth has gone unnoticed and unresponded to by Margaret or any of the consultants.

That being said, I'm comfortable that what's been put forth is adequate and will be followed up clearly by our consultants, such that any design would be adhered to. So unless you gentlemen have any other comments that you would like to add or supplement, I'm going to

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<td>blood or marriage, and that I am in no way</td>
</tr>
<tr>
<td></td>
<td>interested in the outcome of this matter.</td>
</tr>
<tr>
<td></td>
<td>IN WITNESS WHEREOF, I have hereunto set</td>
</tr>
<tr>
<td></td>
<td>my hand this 17th day of September, 2021.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>1</th>
<th>EASTCHESTER PLANNING BOARD MEETING - 7/20/21</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>MR. NEMECEK: Second.</td>
</tr>
<tr>
<td>3</td>
<td>THE CHAIRMAN: All in favor.</td>
</tr>
<tr>
<td>4</td>
<td>(AYE)</td>
</tr>
<tr>
<td>5</td>
<td>THE CHAIRMAN: Thank you. That being</td>
</tr>
<tr>
<td>6</td>
<td>said, I think we're done; right?</td>
</tr>
<tr>
<td>7</td>
<td>I make a motion to close the public</td>
</tr>
<tr>
<td>8</td>
<td>hearing of July 20th, 2021.</td>
</tr>
<tr>
<td>9</td>
<td>MR. NEMECEK: Second.</td>
</tr>
<tr>
<td>10</td>
<td>THE CHAIRMAN: All in favor.</td>
</tr>
<tr>
<td>11</td>
<td>(AYE)</td>
</tr>
<tr>
<td>12</td>
<td>THE CHAIRMAN: Great. Thank you.</td>
</tr>
<tr>
<td>13</td>
<td>MR. NEMECEK: Enjoy your summer, everyone.</td>
</tr>
<tr>
<td>14</td>
<td>THE CHAIRMAN: Thanks, guys.</td>
</tr>
</tbody>
</table>

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DINA M. MORGAN, REPORTER

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