

BOARD OF APPEALS

March 23, 2009

7:00 PM

ATTENDANCE: Board Members: Chairman William Malesh, Bob Matthews, Michael Salmon, Henry Barrett, Timothy Thompson, Code Inspector Amy Parker, Town Attorney Keith Baynes, Town Planner, Mary Ann Skilling, Court Reporter Carol Beresh, and Planning and Zoning Coordinator Dianna Battaglia.

Meeting was called to order at 7:00 PM.

Chairman Malesh started the meeting by asking the members to read the minutes from the previous meeting for changes or approval of the minutes.

APPROVAL OF MINUTES

Motion was made by Mr. Matthews to approve the November 24, 2008 meeting minutes as written. **All in Favor; Motion Carried.**

NEW BUSINESS

File No. AP2009-01 – Interpretation of the Zoning Ordinance, Section 93, 5, to allow marina activity of placing dredge spoils in the residential marine (RM) district; **PROPERTY OWNER & APPLICANT:** Fred Linkous; **LOCATION:** 10 River Road, Perryville, MD 21903; Tax Map 801, Parcel 705, Zoned RM.

Mr. Malesh asked representatives to give information and testify why you think this would be a feasible use for this particular area, please come forward and get sworn in.

Mr. John Klein was sworn in. The project that we are addressing tonight is Owens Marina. They are undergoing a redesign of the marina plus a maintenance dredging. They previously maintenance dredged in 1991 and at that time they utilized on site disposal as well. A lot of advances have taken place between now and then. I should say I am a consultant engineer. I have been working with the Linkous' now for three to four years on this process and my specialty is environmental and coastal engineering. I worked for the Corp of Engineers in the EPA with the National Oceanic and Atmospheric Administration. I retired from federal service after thirty (30) years and basically my area of expertise was developing new technologies for coastal development, coastal stabilization, port development, marina development. So during my tenure with the government I spent a considerable amount of time looking at dredging techniques and worked specifically with the waterways experiment station which is the Corp of Engineers headquarters for these kinds of activities and I also had a heavy hand in the development of what they called the Coastal Marina Handbook Assessment which is sort of our bible on how we do things in the coastal zone. I was approached by the Linkous' again about three to four years ago for the purposes of obtaining the necessary permits for their marina expansion and part and parcel of that was also to conduct maintenance

dredging. The issue, what we are here tonight to address is the, how that process, what is part of that process, and ultimately what we could hope to wind up with. The technology that we are utilizing today and a lot of areas throughout the U.S. and primarily in the southeast; it was pioneered through earlier applications that extend all the way back to the early 1970's. And basically it's an approach or a process that is utilized to help rapidly dewater sediments and also to condition those sediments. Traditionally there are numbers of different ways that you can just dispose of it. Dredge it and haul it away. Dredge it and find some upland area that you can berm around and you pump the material in there and let it dewater over time. And it takes a fair amount of time. Back in the 1970's we started looking at ways to more rapidly dewater the sediment and also to make beneficial use of the sediment. A lot of things that I have dealt with is the use of dredge materials in shoreline stabilization and marsh creation projects. In this particular application what we are looking at is removing approximately ten thousand (10,000) cubic yards of material. I know that doesn't mean a whole lot to you in terms of what the size and scale of this thing is but basically we are looking at a lay down area that is a couple of hundred feet wide by an average of about thirty-five (35), forty (40) feet wide. Plans are up here and I have a separate set of plans in the back.

Mr. Malesh asked how high?

Mr. Klein replied we are looking at the use of geo textile bags. I'll answer your question in a second. The bags will pancake down. Geo textile bags are made out of high polymer strength material and they are porous. So what happens is you pump the material in there and dredge material generally is a very wet material and only has what we call twenty percent (20%) solids and eighty percent (80%) of it is moisture. And typically it might be greater or less by five or ten percent (5 or 10%). We pump it into these bags and these bags typically are forty (40) feet in circumference but they pancake so once we fill a bag we're typically looking at five (5) foot tall bags. So we're looking at a footprint that is approximately eighteen (18) foot wide and again we're looking down and a length of approximately one hundred fifty (150) feet, and we're using three bags, maybe four bags here. So we have three down side by side. Again pancake down when they are filled and the footprint again is about eighteen (18) foot wide and that would be about five (5) foot high and we're using approximately two bags that would be one hundred fifty (150) feet long and one bag is one hundred (100) foot long. We have the option if we need to but I think we will have more than enough with that configuration to actually pile another layer up. So the maximum height would be two bags or approximately ten (10) to twelve (12) feet high. I have copies I'd like to hand out to board members just to give you an idea of what this looks like. There is a lot of concern and new a technology that most of you haven't seen it before and what kinds of areas have utilized this sort of approach. And the best one that kind of demonstrates the sensitivities that one might have with using a bag was an application that was in St. Michaels. And I don't know if some of you are familiar with the St. Michaels Inn and boat yard but they utilized the same approach. And what they did is they only used one bag and they repeatedly used that one bag but that bag was the same size. That bag was again forty (40) foot in circumference and pancake down was about six (6) foot high, with a footprint of eighteen (18) foot wide and a hundred (100) foot long. And on the

overhead copy that I gave the board members, you can't see it but that's the boat shed right there, the picture was from Google Earth, and the length of that boat shed was approximately one hundred twenty five (125) feet. They dredged material, they had about four thousand (4,000) cubic yards material they were dealing with which is essentially half of what we are looking at here and this was during their season, the fall season when they started this. They had full occupancy of their cottages right in the vicinity less than a hundred (100) feet away. No smell, no odor, it dewatered right into the adjacent harbor. What helps in this sort of application is when you are pumping the material into the bag you have an opportunity, and we would in this case, using what we call a polymer. And the purpose for the polymer is really to help accelerate the dewatering process and also to condition the sediments if there is any type of concern with any heavy metals, synthetic organics, or other metals in general, it binds that to the sediment. Generally it is bound anyway; the heavy metals are bound to particles. They don't dissolve and run out with the water. So the water that is coming out of these bags is clean it's essentially clear. So when the flocculent goes, the dredge material is put in the bag basically with the use of the polymer we can dewater that sediment in approximately twelve (12) weeks after we finish dredging. So we are asking for not a long term use of this area for the deposition of the sediment but only for a period of about three (3) months after we finish dredging. At which time either the material will be hauled off site or will be utilized back in for further construction purposes that the Linkous' may have in mind for the project.

Mr. Malesh asked how long do you plan to dredge.

Mr. Klein responded that it is kind of weather dependent, but we are looking at a period of probably about four (4) weeks to dredge, up to possibly eight (8) weeks. It's all weather dependent, and if you encounter any machinery problems or anything else. And the twelve (12) week wouldn't necessarily kick in later at the end of the dredging because we would be filling bags as we go along so there would be some overlapping of the dredging window with the actual dewatering time of the sediment.

Mr. Malesh commented so you would fill one bag at a time?

Mr. Klein replied yes. Now the site we had prepared a Sediment and Erosion Control plan for the site and the details show that it is bermed all the way around. Also in the package you will see, this is what it looks like. This is actually filled. Now for this particular application they weren't concerned about lining it because they were utilizing this to berm what was eroding over and they were going to cover it over and vegetate it. And then also that is what one looks like when it is flat. And you notice we also utilize underneath the bag another impermeable layer of filter cloth. This further inhibits any saturation of further concern of the water getting into the ground water table. The way this is all set up it's going to be gravity fed. The bags are going to be filled by gravity and they are also going to be dewatered by gravity because it automatically drains in the storm water system that exists there. So the water is not sitting there. It's draining out of the bags and constantly draining through the existing storm water management facilities.

Mr. Malesh asked what is the weight of your polymer per cubic yard? Is it volume per cubic foot of the polymer?

Mr. Klein replied let me give you an example. We will probably use two (2) twenty (20) gallon barrels for ten thousand (10,000) cubic yards.

Mr. Malesh asked is it liquid?

Mr. Klein responded yes. It gets pumped in. When you are pumping from the dredge and filling up the bag you tee in the line that feeds the polymer in and so what it does is it rapidly absorbs on to the materials. It binds to the material, it helps better bind it together and that helps it settle it down.

Mr. Malesh asked how do you determine the amount to use. You said two fifty gallon barrels for the entire project.

Mr. Klein responded about that, it's based on experience that we had from elsewhere.

Mr. Malesh asked does this stuff, does it take care of the odor as well?

Mr. Klein replied yes because the whole thing, we've never had an issue with odor. I mean you can call up, I'll leave you a name and number and that goes for any of you if you have any concerns about smell or odor or anything, she is running an inn. Her whole business is surrounded around tourism and they had no problem with it. In fact she said it was kind of funny because kids were climbing around and sitting out there. I wouldn't suggest doing that. But the reason why the polymer helps is because any odor you get from, some of you might have had the experience of walking down to a marsh area or a wetland area and you stick your foot in and all of a sudden you have this smell of rotten eggs. The reason why you have that is because the sediments don't get any oxygen and once it gets some oxygen and all the organic material try to decay. That is why you get that kind of smell. As long as you're not having stagnant water sitting there, as you have in a wetland area, you are aerating all the time so you are not getting the potential for the smell that is created in a wetland. People think a wetland area is materials and sediments in there and they stink and you kind to get that mindset. That is not what we have here. The polymers, because it accelerates the dewatering, gets the water out of there as quickly as possible. And even if there were, and I haven't had any experience yet with the concern of having a smell, there are also other neutralizing agents beyond the polymers that we can put in the system to even further address that.

Mr. Malesh said and you put that in the system as it is being pumped out.

Mr. Klein responded no, as it is coming in. Once we get a sense that there is going to be an odor problem, which we have never had, we put that right in the polymer mix.

Mr. Malesh said which is in the fifty (50) gallon drums.

Mr. Klein replied which would be added to the line as it is coming in.

Mr. Bennett asked is there anything in your plan to pump the dredge, the silt, into the bags and leave it there or will you be moving it at some point.

Mr. Klein responded we would be moving it at some point. As I mentioned before, considering the overlapping somewhat of the dredging process with the dewatering process, you are looking at something like twelve (12) to eighteen (18) weeks total length. One step for the material would be when you split the bag open to either utilize that material on site for grading or construction activities or then it is extremely truckable at that point in time to take it offsite. And in that case we don't need a license for a landfill. That condition of sediment we don't have any problem with a landfill accepting it. It doesn't require any special permit or license.

Mr. Malesh said so it sounds like the total time period here involves sixteen (16) to twenty (20) weeks.

Mr. Klein replied that is correct.

Mr. Malesh asked what time of year are you planning on doing this.

Mr. Klein responded this would be starting, because of the window we have because of other environmental related issues, we would be starting this activity in November and go into February. It would be late fall.

Mr. Baynes, Town Attorney, stated Mr. Chairman I may be out of line here but let me make some comment. The applicant submitted an application for a Zoning Certificate for this particular land use. It was denied based on the decision that it was not a permitted use in the RM zone. There is a procedure where that decision can be reviewed by you and that's why we are here tonight. Your real sole decision here tonight is whether this is or is not a permitted use. If it is a permitted use, then fine, we can get into some of the details, but if you find that it is not a permitted use then whether it is a one day process, a four month process, or a year process, doesn't really make any difference and the details about how the process is going to take place, and again that sounds more like we're giving them a special exception to the application. The real decision here is your interpretation of the RM zone and what you decide. I didn't want you to get into a lot of discussion of how long it's going to take if it is not going to be permitted, it doesn't make a difference how long it takes. But if it's not permitted then again it doesn't make any difference, it's not permitted.

Mr. Malesh asked if everyone was following that.

Mr. Bennett said I'm glad you brought that up. When we look at the zoning scenario are we basically focusing on or is it primarily designed for permanent types of structures or temporary use.

Mr. Baynes said when you read that section, or any section, we are dealing here with the RM district permitted uses, they don't distinguish between temporary uses or permitted uses. Those are the uses that are permitted, whether they are going to be in existence for a month or a year or forever. But those are the types of uses that are permitted. And really you get into, well you have to read the whole section, but the second sentence gives a little more details as to what commercial marine uses are permitted in that particular zone.

Mr. Bennett asked what would be the difference between what he wants to do and significant landscaping for example if someone wanted to bring in some more dirt and create more berms because of a noise issue and things of that nature. Does one have to comply with this Ordinance for that as well?

Mr. Baynes replied not for landscaping, no but I don't think landscaping would be considered a use whether it would be for residential or commercial. When you are proposing to use a property as a dredge spoil site, they are going to store these dredge spoils at this particular site, I think you have to make a decision whether it is a permitted use or not regardless of whether it is there for a day, or six months, or a year.

Ms. Skilling, Town Planner, stated that if you read this a little bit farther, the one section that says "in this residential context" and this is being considered as a residential context, "commercial marine uses are limited to yacht clubs, public and private marinas, along with accessory marine related sales and services provided all such activities are conducted in a completely enclosed building, and some small scale retail sales and lodging establishments". The idea and the intent is because of the intermingling of residential and marina there was an intent here to restrict and limit the types of commercial marine operations in that area. And the uses listed in the permissible use table is very limited. These things are very limited and the permissible use table limits the type of activity that would even be permitted in this zone.

Mr. Thompson asked Mr. Klein, you gave a very good presentation that was scientific and sounds good but again the question that I ask based on this section here with the residential area it says "without having an adverse impact on residents in the vicinity". Again I take look at the pictures and I can look at this here that was obviously in a marina area. I don't know how close the nearest house was but I know how the closest house is going to be to this. And a lot of those people are here and this is either going to be in their front yard or at their back door. So the question I have is can you guarantee that this is not going to have an adverse effect, either by odor or by the appearance or by anything else. Because the use of this property is not as it says in this section here. The property is not being used as this clarifies here. Limited to "yacht clubs, public and private marinas, along with accessory marine related sales and services provided all such activities are conducted in a completely enclosed building" and that says it to me right there. The property is being used for something other than the residential section here.

Mr. Malesh said and that is our purpose tonight. To read it and interpret it and apply it to this project.

Mr. Thompson said I can't read it without the fact of "having adverse effect on the residents".

Mr. Malesh said he presented his case that he does not feel it would have an adverse effect.

Mr. Thompson stated and can he guarantee that.

Mr. Malesh said our job is to interpret this section.

Mr. Baynes said if you would want it to be a permitted use, then the applicant has a permit process that he would have to go through with all the type of information that he has provided here tonight would be applicable to that permit process to MDE or Critical Area and things of that nature, but not this board here.

Mr. Malesh asked can this material be barged away like a lot of dredging material is, like to a sand island or something like that?

Mr. Klein replied we have looked at several alternatives barging it away and we haven't been able to identify any areas that could use it as raw material because it's not going to be dewatered, it's not going to be conditioned. And when you're dealing with that sort of situation you have to take it to a licensed facility. And if you barge it away you wind up putting it into trucks that have to be lined with waterproof material and then you have to truck it to a licensed facility.

Mr. Malesh said to the other end where the barge goes.

Mr. Klein replied yes, to where the barge goes. Or they could do it right here. You could pull up dump trucks and slop that stuff in there without it being dewatered and then we'll be dealing with other problems associated with trucks moving in and out of there with all those problems associated with that. Getting back to your other question: can I guarantee, all I can say is I've never had a problem in utilizing this approach with having a smell or a spill. Because we have safety vents in these things to prevent popping, you have to slow down your pumping rate, so all I can say is I never had a problem in utilizing these things.

Mr. Thompson stated is dredging at the base of the Susquehanna River that goes all the way up state to New York, is it any different dredging along a river which brings sediment down many, many miles. Is dredging at the base of the Susquehanna River any different from dredging anywhere else because I'm talking about a river that brings sediment down from hundreds and hundreds of miles.

Mr. Klein said what we are dealing with in terms of the physical characteristics of the silt is very similar.

Mr. Bennett stated your presentation was great but you didn't say why you thought it should be allowed. Why you thought that this should be a permitted use. Why you thought the property should be permitted. Why you should be permitted to dredge this material out to the site for a while and then move on. Because you apparently understand the zoning requirements, etc. and the major question, so apparently there is something you have seen that you have felt it should be permitted.

Mr. Klein responded the thing that I am looking at is the fact that looking heavily on the impact that this would have on the residents. As it is stated there the proposed activity cannot be in conflict with adjacent residential use and I don't see it being that way at all.

Mr. Matthews asked do you see anything in the list of permitted uses that you think this would fall under.

Mr. Klein replied I had a meeting with Ms. Breder and Ms. Skilling and the Linkous'. And what came out of that meeting was the fact that the wording in the regulation was not specific enough for them to make a determination that this would be a permitted use. And that is why we are here tonight.

Mr. Malesh indicated we have a lot of people here and I assume some of them would like to speak. Would anyone else like to speak in favor of this? Would anyone like to speak against this? Please introduce yourself and get sworn in.

Mr. John Buck, 13A Owens Landing Court, was sworn in. A couple of comments I would make would be number one, and the most important one is the question that the gentleman on the end asked and we've been sort of dancing around, the permitted use. Basically, I think Mr. Baynes would probably agree with me, when you look at that table of permitted uses, you have to look at it very narrowly because my understanding of Maryland law, and Mr. Baynes can tell you as your counsel, but my understanding is that unless that use that is being proposed is in that permissible use table it is not to be put on that property. And basically what the applicant is trying to do is come before you and try to tell you that it should be put in there but he's not really responding to your question. This use that they are proposing is a dredge spoil area, and if you look at that permissible use table that is not within that set of uses. And you can't make a random interpretation to say that it is because there is a very specific analysis you have to go through. And if it is not within that table and it can't be put there by interpretation of permissible use, then he can go through another process through perhaps a special exception or a variance and Mr. Baynes can advise you on that. But what they are trying to do here is jam a round peg through a square hole and I don't believe the law permits that. That is the thing that is most important issue that I would make from a legal side. There are some other issues that are less than legal. One is this area down here is a residential community. The focus down in that area for a number of years has been residential. There are marinas down there but marinas by and large if you look up and down the bay the trend is to restrict the use of marinas because really the best value of the land is what is going on down there now which is a residential community, whether you agree with it or not that is what it is. You have a residential community down there with a lot of people who live there and

there are a number of them here tonight. And you have people who live across the road. And I would submit to you that to come before the board and say that this isn't going to have an adverse impact especially in terms of probably the smell I think is less than genuine. I've lived in this county for fifty years and I've been on that river since before I could drive a car and when things come out of that river sometimes they just don't smell too good, no matter what they are. And then the other issue is it is within a stones throw of Rogers Tavern. And this Town has a lot of good things going for it and I think Rogers Tavern is one of them, besides Perryville Park. It's a beautiful park. Rogers Tavern is an asset to the Town, not only because it brings people in but it makes money for the Town. People rent there, they have weddings there, they have parties there and you're talking about putting dredge spoils there by a community asset. It just doesn't make sense. So I think in short it doesn't make sense on a number of levels, it doesn't make sense legally, it doesn't make sense just from a good business perspective for the Town to have something like that down in that area where you have residents, you have businesses, you have people coming in to visit Rogers Tavern and I can say from living down at Owens Landing you have fairly good traffic in and out of that area on the weekend because of Rogers Tavern. So it just doesn't make sense and I would submit that the application should be turned down.

Eric Morsicato, 18C Owens Landing Court, was sworn in. The one question I really would have, and I didn't have all the information because I just heard about the hearing tonight. My first question would be what is this for? Is the dredging for the marina itself to get the silt out, what is it for?

Mr. Klein replied it is maintenance dredging.

Mr. Morsicato said then I have to be more on the other end of the spectrum. To me if its maintenance of an existing facility and this was done as a kind of, I know I was involved a little bit in the initial rezoning here. If it was evolved around the zoning of that marina, to bring that marina up to the standards that was one of the objectives of the Mayor and the counsel and the Planning Commission when we did it. To me this is really only a maintenance question. It isn't really a zoning question. It's a pertinent question to me, the real question is: are they working within the current zoning that's there. It seems like it because if they were putting something else in there, this is a temporary permitting process that is going on and I know and I agree with Mr. Buck. That there are certain usages that are evolving in that area that should be there but that marina usage was something not only when the last Mayor and Commissioners agreed with but it goes all the way back to the 1970's when the first zoning came here and that's what they attempted to do. Now if you agree with that, then the next question is what does this allow. To me it's more of a temporary thing. It's a permitting process that we have to align ourselves with, what is the best way to get rid of this material at this site. And that's kind of where I'm at. I know one of the problems at Owens Landing, and there are different views, just like there is before the board here and with the Commissioners', there are different views. A lot of people at Owens Landing want to see those piers brought back up to standards and I've heard a lot of those and there are a lot of people

who would rather not see it. And that's kind of the different view points that you have going on.

Barbara Ballard, 6B Owens Landing Court, was sworn in. I represent, I'm president of the board at Owens Landing and we see the need for the dredging of the marina, for the marina to continue to exist and we would certainly like to see it flourish. However, we are concerned about the dredge spoils and how it impacts us. One of the things that he indicated is that the water would seep out and go into the natural drain storm. Well on River Road there are no drain storms so that would be coming onto the road.

Mr. Malesh stated he walked the property the other day and there is a storm drain on site.

Ms. Ballard stated there is one. But that is a lot of water especially in the winter time and that would cross the road and come toward our property so that would be a deterrent to us. As well as blocking the road with a pipe that would have to be there as well. So those two things especially would impact us, as well as we feel, the smell.

Larry Souder, 34C Owens Landing Court, was sworn in. I am president of Owens Landing II which is further down the line. The questions I have based on what I heard, you talked about the one that was down at St. Michaels and I heard you talk about it had one bag, and the one up here if I heard you right is going to have multiple bags with some on top. Also, I need to understand the area because truthfully I used to live in Owens Landing I but I live further down now, but down is the key word and he used the word gravity. Ms. Ballard brought up an excellent point and indicated that she is concerned about it being in the winter time. I also need to let you know that I keep a boat in the marina and I want to see the marina flourish because I know they need to and I know that this needs to be done. But the question that I have with the gravity and the twelve (12) weeks and eighty percent (80%) of the bag content as water seeping down that hill past that one drain is that in the winter time, and we've only had a couple of storms this year, but the requirement for salt and maintenance, I'm not even talking about smell or the esthetic value of those bags or the lack of but I'm talking about just the disposing of the eighty percent (80%) water. To me raises the question that is exactly where is that water going to end up because water tends to have a mind of its own. Now I don't presume that it is all going to reach down at our end and I'm not just selfishly saying that because I know the other homeowners have questions but I really do want to see the marina dredge. The land, I'm not even sure what we're talking about. Are we talking about the part between River Road and the condos? Is that what we are talking about? It also seems like this is part of a larger project and I keep only hearing this question and I guess it's the way decisions are made but I have a question about the water and where it goes. I have a question of it freezing and are the residents being imperiled. We constantly try to keep our insurance rates to cover the unforeseen but we know when a storm is coming and we know how its going to be salted, but if there is a blast of deep freeze and we have this thing coming out in December or January and twenty (20) weeks to recover from that time or February I just want to know how I'm going to handle it when it reaches down to our part let alone how these guys are going to handle it because the water is going to be right there. Now it's not a steep hill but a hill is a hill and water goes where it wants to

go so I have a question about that and I just want to know if anybody has thought about that. I don't know where, it's not all going to seep in the ground right underneath of where they are sitting, or is it?

Mr. Klein responded the project was designed with a berm around the area to lay down the tubes. And it was designed in concurrence with Cecil County standards and where the water is going to be coming off and going into the existing storm drain system. That's why we had to do a separate sealed Sediment and Erosion Control Plan. So it's been reviewed for prospectively your concerns, by the county already.

Mr. Souder responded and they are saying it is ok. That is a crowned hill if I'm not mistaken.

Mr. Klein replied part of the plan is we are coming in and grading that area before we put anything there and you can see the proposed grading plan that is part of the sealed set.

Mr. Souder commented I didn't hear anyone address that but now I know the green area is going to be torn up.

Mr. Klein responded it is going to be regraded with a berm around the area so any potential of flooding, say you have another hurricane Agnes, God forbid, and you have all this rainfall coming down, what we are doing is we are confining that area with a berm around it in the eventuality that any excess runoff that we have to contend with. So it's not going to be a sheet flow. It's not going to be flow across that topography as you now see it. That whole site is going to be regraded with a berm around it before we lay down the bags. We'll ensure that all the runoff is directed into the existing storm water management facility.

Mr. Malesh stated this site is between River Road and Roundhouse Drive, correct.

Mr. Klein replied that is correct.

Mr. Souder indicated what I'm asking, that actually brings up a really good point. The way I'm listening to this, I'm thinking that it is the land that is directly away from the Owens Landing I but I don't know that for sure. But even if it's out on the other area, I have a trailer sitting on that land right now so if they tell me to move it of course I'm going to and I understand that's their land and I also know that actually opens even more questions because Roundhouse Drive is even higher than River Road. We currently use River Road as access. I don't know if that is changing or not changing and no plans to change it.

Mr. Klein responded no plans to change it, for this part of it, no.

Mr. Souder commented I'm just asking because we're looking at a road that even if you grade it and change it I'm still interested in where the water is going to go and if I didn't ask this question my board would be asking me why I didn't ask the question. So I know

this year we had a sincere question about the use of salt and how much money we spent and we only had minor storms. So I'm just asking how we're going to deal with the water so I can understand. I do want the marina to grow because I'm part of it.

Mr. Klein said it has been addressed.

Mr. Steve Abdalla, 7C Owens Landing Court, was sworn in. My question, the infiltration of the spoils from the dredging materials from the water area up through adjacent to Owens Landing building six which is the southern most building to the location where the spoils will be deposited. I would just ask, the question is I would ask the board to consider what is the deposition of that area of that property to what extent will that piping occur on any easement that is owned by Owens Landing. What is the disposition of that property with regard to the piping and the materials and where that piping will be, and any possible breakage in the piping, and results of that breakage, I just wanted to bring up that potential impact and that location of that impact. It's not just the location of where the spoils are but the location of the infiltration of the sediment from the dredging area to the location of the spoils.

Mr. Baynes commented that this board does not have any authority to direct how this project will or will not be done. That is all going to be governed by MDE, Critical Area Commission, Cecil County and the state of Maryland, those approving agencies. This board can only say whether this is a permitted use or not a permitted use. That's it. They don't have any other authority to say how it's going to be done, where it's going to be done.

Mr. Souder replied I understand that. Perhaps I didn't make it clear enough. The question was does the area where that piping will occur, does that land area get considered in your decision as well or just and only the area where the spoils will be deposited. That was the question. Is there any additional impact with the location of the piping with the pumps and the dredging and the motors, and the generators and all that.

Mr. Malesh said if we were to agree that this is a permitted use in this, then the state of Maryland holds these guys by the big toe upside down on all those things. It is actually not part of our jurisdiction.

Mr. John Serrano, 409 Front Street, was sworn in. There's two things that bother me about what was said. We're trying to give everybody a chance and be level headed about it but we've been dancing around guaranteeing of the smell and you can't guarantee that. Another thing that he was beating around the bush was the fact of getting it away from here and needing trucks. We're going to have to look at it one way or another on how to get it out of here, either before or after. Why aren't we looking at that now. He said something in regard to truck traffic. Well if there is truck traffic now or truck traffic later, what is the difference. We still have to look at getting it out of here so why aren't we looking at other means of getting it out of here. Why focus on one way of taking care of this problem instead of looking at other ways of handling this as well. Why wasn't that presented to us. Just one way, that's the only thing I'm talking about. You have to

get it out of here regardless and you said something about trucks and traffic and how are we going to get it out of here later on or out of here now, what is the difference.

Mr. Klein responded if we get it out by trucks now without conditioning the material, it's got so much wetness to it you would be slopping stuff all over the roadways with it. So trucking it out after we condition it, it is solid, much more solid and we don't have leakage issues associated with stuff coming out of the trucks. It is a big, big problem. The other issue of possibly putting it on a barge and take it somewhere else and then do whatever you have to do, the expense for doing that would make this project prohibitive.

Mr. Serrano replied so it's an expense issue.

Mr. Klein indicated it is a huge expense issue. Plus you are double handling the material. Plus you are transporting it to the barges and have to go through another trucking issue. This way we are eliminating a whole step in this process by ensuring that what we would be transporting from the site would not have as much of the detrimental affects that something that splashes around soupy in the back of the truck even though we could try to work with that.

Mr. Bennett asked are dredge spoil areas, are they regulated as the same structure as the land fields or garbage dumps.

Ms. Skilling stated the Maryland Department of the Environment I believe there was an outstanding permit pending for this dredge spoil site. There will also be Critical Area issues because of the impacts to the buffer. The actual dredge spoil site itself does not lie within the one hundred (100) foot buffer, some part may but not all of it. There will be mitigation for that and because it is in the intensely developed area of the Critical Area, there will still be impacts with it. They are going to have to address storm water management, impacts to the area during the dewatering, any kind of impacts to the whole buffer which will require mitigation. So that has never been approved yet. That is still pending. All those things are pending and MDE will not issue this permit until such time that they get some kind of authorization from the Town.

Mr. Bennett said the reason I ask that question is because I'm hung up on the terminology within the section where we need to interpret. And we keep coming back to this place called activity and certainly there would be an increased credibility to terminate because this is an activity, per se, if there was some kind of structure within the Maryland Department of the Environment hierarchy that says within dredge spoil sites must this, that, or the other. That it has to be approved by and once we see that it would be unlikely that this quote activity would fall under this requirement.

Ms. Skilling replied but the issue here is, is the activity permitted, and MDE will not issue a permit in an area that it is not permitted. And that is the issue.

Mr. Malesh said that is the decision to be made.

Mr. Bennett said I guess my question here is does it rise to the level of activity.

Ms. Skilling replied it is an activity that we're not saying that they cannot dredge. It's just the activity in which they are doing it in this particular zone and where they are putting it in that zone is not permitted. To me, if I have to read this, there are very distinct things that are in here for a commercial operation in a residential zone. When the Ordinance was done there was a lot of commingling of residential areas and marinas. And there were concerns at the time when that commingling happens, what is going to be the safety factor for residential and marine people that are existing there, moving boats, doing certain things to boats. That is why, and I happened to be on that committee as well, why these things were set with this mingling of residential and marina operations. And it continues to be a concern with the other residential areas here. It is a residential district too. If you look at the RM zone, as it is in our zoning, as a residential district.

Mr. Thompson stated but what it says in the code right here, you talk about the word activity, it says "such activities are conducted in a completely enclosed building". That is very clear. It doesn't say activities outside, it says activities in a building. So the word activity is connected directly to enclosed building. So the word activity isn't in question here, it tells us very clearly what we have to vote on. How we should vote.

Mr. Malesh asked any other statements from the floor. We're going to have an open discussion here and I will say personally, that I have a boat in this marina so I'm not going to be voting in this thing but I can put my two cents in. The marina is very shallow and dredging the marina will bring in bigger and better boats and probably help the community. However, I read this thing six times now, three times at home and three here and it is not a permitted use. Now that is my two cents. I won't be voting one way or the other. Mr. Matthews is also at the marina so we have three people voting tonight.

Mr. Matthews stated I have multiple conflicts. I live at Owens Landing, I'm on the board at Owens Landing, and I have a boat there. So I will not be voting this evening.

Mr. Salmon said I would like to make a motion that we vote on our interpretation of Section 93, 5.

Motion was made by Mr. Thompson and seconded by Mr. Bennett to deny the application based on the fact that it does not meet the requirements of Section 93.5. It does not fall in the appropriate category for us to consider it as a permitted use. **Two (2) in Favor, one (1) Opposed (Mr. Salmon).** Two (2) abstained due to potential conflicts with the applicant (Chairman Malesh and Mr. Matthews). **Motion Passed.**

Mr. Bennett questioned the validity of the vote in the code where it talks about a majority of those present.

Mr. Baynes responded two of the individuals excused themselves because they have conflicts but you do have a majority of members at this point.

Motion made by Mr. Matthews and seconded by Mr. Bennett to adjourn the meeting at 8:00 p.m. **All in Favor; Motion passed.**

Respectfully submitted,

Dianna M. Battaglia
Planning & Zoning Coordinator