OCEANPORT PLANNING BOARD
MINUTES
November 10, 2015

Chairman Widdis called the meeting to order at 7:30 p.m. and gave the Statement of Compliance with the Open Public Meetings Act: "Adequate notice of this meeting has been provided by notice to the Asbury Park Press and The Link News on January 29, 2015, and by the posting of same on the municipal bulletin board and Borough Web Site."

Chairman Widdis led the flag salute.

MEMBERS PRESENT: Mayor Mahon, Mr. Foster, Councilman Gallo, Mr. Savarese, Mr. Kleiberg, Mr. Kahle, Mr. Sullivan, Mr. Whitson

MEMBERS ABSENT: Mr. Fichter

OFFICIALS PRESENT: Jeanne Smith, Board Secretary, Rick DeNoia, Esq., Board Attorney, Board Engineer/Planner William White

OATH OF OFFICE: The Oath of Office was administered to Joseph Foster as Class II Member.

BOARD BUSINESS:

1. Minutes of the meeting of October 27, 2015 were approved on a motion from Mr. Whitson and a second from Mr. Kleiberg and approved by the eligible Board members.
2. Recommendations for Proposed Fort Monmouth Reuse Plan #4 – Mr. Widdis stated the letter prepared by Mr. White will serve as the basis of the Board's comments. Mr. White stated one recommendation was to consider a new ordinance to address outdoor dining with regards to hours of operation, separation of public and private areas. Mr. Whitson commented about on site parking. Chairman Widdis stated lighting affects the neighborhood and the Board needs to be concerned about timing of lights. Mr. Savarese requested a definition of the Dance Hall. Mayor Mahon stated the reuse is for a microbrewery/café. Discussion ensued on the statute that governs the amount allowed to be brewed per year. Chairman Widdis stated there's a need to define shared parking. Mayor Mahon stated there was a parking lot near the FMERA building that was used as shared parking in the past. Mr. Foster suggested looking at Eatontown's "dark skies". Mayor Mahon stated there are general provisions regarding the types of street lighting in the reuse plan. Chairman Widdis stated the Board agreed to approve the removal of the helicopter pad. There was discussion about relocating it elsewhere. Chairman Widdis expressed concern over overnight parking and snow removal. Councilman Gallo expressed concern about the concert hall being next to the church. Consensus was to recommend as proposed. Mr. Whitson moved to recommend support for the plan #4 with the added recommendations and comments which was seconded by Mr. Savarese and approved by the Board unanimously.

OLD BUSINESS:

3. PB2014-01.2 AcuteCare, LLC – Phase II
   1075 Stephenson Avenue
   Block 110.01, Lot 1
   Request for Site Plan Approval with Variance(s)

Mr. White was sworn in for the record as the Board's Engineer and Planner.

Mayor Mahon and Councilman Gallo recused themselves from the matter and exited at 7:43 p.m.

Mr. DeNoia proceeded to explain to the Board his request to have this matter placed on the Agenda, recalled events concerning the application including the Applicant's appearance before the Board for Preliminary and Final Site Plan Approval for Phase II of their project as they had already been given Preliminary and Final for Phase I; several meetings resulting in the vote by the Board to approve the Preliminary and Final Site Plan and grant the parking variance and ancillary requests. Mr. DeNoia continued that normal procedure was sometime thereafter the vote of the Board is memorialized in the form of a resolution which memorializes facts, findings and conclusions of law and then the Board votes to determine that the resolution accurately reflects the proceedings – it was not a "re-vote" of the substance of the application. Mr. DeNoia stated that subsequent to that vote and prior to the actual memorializing resolution being submitted and considered by the Board, a number of circumstances arose which need to be considered by the Board and the Board needs to provide him with guidance with regard to it, specifically, 3 letters have circulated: the first dated September 9, 2015 by Beth McManus, Borough Planner who does our COAH planning and the way the process works is that FMERA determines the use on Fort Monmouth, the town has input as to how that site is developed such as lighting, noise, parking and things of that nature. Ultimately before this Board has jurisdiction to determine bulk and site requirements, there has to be a use determination preliminarily as a condition precedent to getting to this Board. What Ms. McManus did in her reviewing the reuse plan and various documents were consistent with what she was asked to do, she came upon a circumstance that indicated that the amendment to the reuse plan allowed for Use "A" or Use "B" for that site and it was based on her determination. Mr. DeNoia stated the board is at a situation where something that was approved by the board now has circumstances which may make the board want to reconsider and/or determine that based on both planners' concerns needs to be further investigated.

There are essentially three choices. One is to unilaterally attempt to rescind the approval, which he did not recommend without a hearing and an opportunity for the applicant to participate. For the record, Mr. DeNoia stated case law and Cox, which is a treaty on land use, are clear that generally a board may not rescind an action once it is taken or reopen a hearing once it is terminated in rendering a decision except under circumstances of fraud, mistake of fact or mistake of law. If there was a mistake that it was believed it was consistent with the reuse,that would be an opportunity for the board to make a motion to open up and have a hearing to reconsider the board's actions based on that information. The law states that a hearing or a re-hearing may be done on the application of any interested person or by the board's own motion when unusual circumstances require that in the interest of justice that that be done, if there be mistake of law, fact or fraud. There is no suggestion that the applicant defrauded the board. But Mr. DeNoia needs direction from the board whether to proceed memorializing the resolution to affirm or to decide to reopen it based on the option of potential mistake of fact or law based on the two planning letters. Mr. DeNoia needs direction whether to reopen the hearing and talk about substantial jurisdictional issues. If that is carried, the board would have to set a hearing date and provide notice to the applicant and public. Ms. McManus and Mr. White can provide their positions. The Mayor and/or the applicant can provide their positions. Then the board can make their determination.

Mr. DeNoia was previously authorized to do the resolution of approval. He needs to know whether the intervening factors are substantial enough that the Board wants to reconsider that. Secondly, it is important to create a record in the event this is reviewed by another forum, the record is clear that the board is acting fairly and in the best interests of the borough. There were no questions from the board. Mr. DeNoia reviewed Martin v.Clark, 102 New Jersey Super 84, it's a law division case. Garofolo v. Burlington, Gregory v. Borough of Avalon, 391 New Jersey Super. These cases create the legal ability for the board, should it choose, to have a rehearing.

Mr. DeNoia suggested the last official action of the board was a vote to approve. It has never been memorialized because these additional facts have surfaced. Mr. DeNoia asked again if he should continue with the memorialization or hold a new hearing. Mr. Kleiberg would like to see a new hearing. Mr. Kahle would like to have Ms. McManus testify. Chairman Widdis would like the ability to have Mr. White and Ms. McManus to speak to these issues. At the same time, the board would issue a notice to the public and applicant.

Mr. DeNoia stated one of his concerns is to act fundamentally fairly and in accordance with due process and that there is a record that reflects everyone has a chance to participate and the board considering all of the input, making a decision based upon that input. Mr. Widdis summarized the options of the board, either to rescind the approval or have Mr. White and Ms. McManus appear and notice the public and Armand to participate.

Mr. Kleiberg made a motion to rehear the matter. Mr.Whitson motioned to reopen the Acute Care, LLC application. Reference was made to the letter from Maser October 9, 2015 and from Ms. McManus, September 9, 2015. There was also a rebuttal letter from FMERA dated October 23rd. Mr. Whitson made the motion and Mr. Kleiberg seconded. Motion carried.

AYES:	Mr. Whitson, Mr. Kleiberg, Mr.Savarese, Chairman Widdis
NAYES:	None
ABSTAIN:	Mr. Sullivan
ABSENT:	Mr. Fichter
INELIGIBLE:	Mr. Foster, Mr. Kahle

Mayor Mahon and Councilman Gallo resumed their seats at the dais at 8:00 pm

NEW BUSINESS:

4. PB2014-07.1 Parent, Kimberly
   23 Branch Avenue
   Block 139, Lot 44
   Request for Minor Subdivision with Bulk Variances

A-1 Plot Plan prepared by Nelson Engineering Associates, Inc. dated June 6, 2014, last revised October 27, 2015

A-2 Minor Subdivision Plat prepared by Nelson Engineering Associates, Inc. dated June 6, 2014, last revised September 10, 2015.

A-3 Supplemental Drainage Data, Minor Subdivision, 23 Branch Avenue, prepared by Robert A. Nelson, PE, dated October 27, 2015.

A-4 Colored Portion of Tax Map - Lot Width Analysis, prepared by Allison Coffin, P.P., undated.

A-5 Lot Width Data, 1 Sheet, prepared by Allison Coffin, undated.

Mr. Savarese recused himself from the matter being an adjacent neighbor.

Jennifer Krimko, Attorney for the Applicant, appeared on behalf of Kimberly Parent, gave an explanation of past hearings on the matter, the dismissal of the application without prejudice for various reasons, a description of recommended changes that were made to the new plan, drainage plan and other supporting documentation.

The following persons were sworn in for the record: David Boesch, Certified License Architect and Project Manager as an expert in landscape architecture and project management for the Applicant, Allison Coffin, Professional Planner for the Applicant.

Ms. Krimko presented and described several documents for the record which were marked **A-1, A-2, A-3, A-4** and **A-5.**

Mr. DeNoia stated service had been reviewed, was in order and the Board had jurisdiction to hear the application.

David Boesch provided testimony including general description of project, location, lot characteristics, setback criteria, the unique shape of the lot in total area, the need for a variance for lot width only, drainage characteristics on the lot, drainage patterns, water table, soil samplings, permeability testing of the soil, proposed plan for a French drain, collection of roof leader down spouts, perforated piping that would disburse water over entire length, described the purpose of the system and its features.

Before proceeding with questioning, Mr. DeNoia addressed the issue of Mr. Boesch's qualifications and having been before the Board previously was accepted by the Board as an expert in landscape architecture and project management.

Chairman Widdis asked Mr. White for any questions or comments.

Mr. White asked for clarification on the lot widths and to be sure for the record the front setback the variance being sought was 92.09 – not 92.5 which Mr. Boesch apologized as he had misspoke during his testimony. Mr. White commented that he had no issues with the drainage. Chairman Widdis brought attention to item 3 of Mr. White's letter which Mr. White said they would work out, was a minor item.

Chairman Widdis asked for questions from the Board members.

Mr. Foster asked – the testing where it was determined it was sandy soil, was that representative of the rest of the site. Mr. Boesch answered they found the soils to be fairly uniform.

Mr. Whitson asked with a relatively high water table and they are putting all the water in a concentrated area, does that affect the water table. Mr. Boesch answered theoretically the water is rain water that falls on the site and they are keeping it on the site. Chairman Widdis commented that testimony was that the water table was 4' below and was told yes, and lower than surrounding properties.

Mr. Kahle asked about the trench, didn't it have to be some distance above the water table. Mr. White answered they were looking into that with the modifications. Mr. Kahle asked about the swale and water with the neighbor and where it was being directed. Mr. Kahle asked if there were any grates to catch water or was it just going to be on the ground. Mr. White answered, on the ground, and would continue in the grass area.

Mayor Mahon commented that on first application he'd had concerns about the drainage and impacts on surrounding properties but it appears they have solved that and thanked them.

Mr. Kleiberg asked questions about the 2 recharge trenches which Mr. White answered. Mr. Kleiberg asked details about the quality of the system and dimensions.

Ms. Krimko further advised on the item in Mr. White's letter about review of the map and stated that they would be filing by deed and therefore it was not necessary for Mr. White to review the map.

Chairman Widdis asked about the proposed house, the side setback would be 10.5 and was told yes; on the other side was told 18.6' and therefore complies. Chairman Widdis asked the house would be set 50' from the garage; the other house was set back 47' to front porch.

Mr. DeNoia asked Mr. White if he was satisfied that all drainage conditions were compliant with his letter and was told yes. Mr. DeNoia asked the Applicant understands that the houses will be built pursuant to the footprints that are part of this application to which Ms. Krimko responded yes, may be smaller but would not require a variance.

PUBLIC:
Chairman Widdis opened the meeting to the public for questions for this witness only.

Ron Sickler, 45 Morris Place, asked with regards to the sand how many core drillings were performed. Mr. Boesch answered one in the center towards the rear of the lot. Mr. Sickler questioned whether 1 core sample was sufficient to state that the soils were uniform for the whole lot for a lot that size and questioned if the Board was satisfied with just 1 sample. Ms. Krimko answered the Applicant was satisfied as well as the Board Engineer.

As no one else from the public wished to be heard Chairman Widdis closed that portion of the hearing.

Allison Coffin, Professional Planner, presented her qualifications and having been before the Board previously was accepted by the Board as an expert in the field of planning.

Ms. Coffin described the variance relief being sought and then explained her review of the property, surrounding neighborhoods, gave a description of Exhibit A-4 and A-5 and referring to same provided testimony seeking relief for lot width, the reasonable use of the property, the existing narrowness of the site – applying the ordinance limits the reasonable use of the property and it was her opinion that met the C(1) hardship standard for positive impacts; and while technically they needed a variance the lots were still twice the size required in area, under the C(2) standards, flexible standard, having 2 homes on the lot was a better use alternative than 1 large home on the lot; the improved drainage was one of the benefits of the proposed work, promotes consistent streetscape, neighbor character having inconsistent lot widths and no negative impact to light, air and space, visually will blend in and it was her opinion that it would not have a substantial detriment to the neighborhood.

Chairman Widdis asked for questions from the Board members for which there were none.

Chairman Widdis asked on this street, were there no other larger lot widths any with more than 100'. Discussion ensued including – Lot 42, 43 and 47.

Ms. Krimko asked in looking at the neighborhood context, the marker wasn't the street but was the larger area which Ms. Coffin affirmed. Chairman Widdis commented except for the number of large lots on this street as opposed to those on Elizabeth Drive.

PUBLIC:
Chairman Widdis opened the meeting to the public for questions for this witness only. As no one from the public wished to be heard Chairman Widdis closed that portion of the hearing.

Ms. Krimko had no additional witnesses and asked for statements from the public.

PUBLIC:
Chairman Widdis opened the meeting to the public for statements or comments on the application. As no one from the public wished to be heard Chairman Widdis closed that portion of the hearing.

Mr. Sullivan made a motion to approve the application which was seconded by Mayor Mahon. Mr. Kahle asked that the motion included conditional upon compliance with Mr. White's letter. The motion received the following roll call:

AYES:	Mayor Mahon, Mr. Foster, Councilman Gallo, Mr. Savarese, Mr. Kleiberg, Mr. Kahle, Mr. Sullivan, Mr. Whitson
NAYES:	Mr. Widdis
ABSTAIN:	None
ABSENT:	Mr. Fichter

Ms. Smith stated the motion carried.

Mr. Savarese resumed his seat at the dais at 8:50 p.m.

RESOLUTIONS:

5. PB2015-14: Morris, Andrea (35 Manitto Place). As the Resolution was made available to the Board previously, Mr. DeNoia summarized the Resolution after which Mayor Mahon made a motion to approve the resolution which was seconded by Mr. Fichter and received the following roll call:

AYES:	Mayor Mahon, Councilman Gallo, Mr. Kleiberg, Mr. Kahle, Mr. Whitson
NAYES:	None
ABSTAIN:	None
ABSENT:	Mr. Fichter
INELIGIBLE:	Mr. Foster, Mr. Savarese, Mr. Sullivan, Mr. Widdis

Ms. Smith stated the motion carried.

PETITIONS FROM THE PUBLIC: Chairman Widdis opened the meeting to Petitions from the Public.

David Stehnecs, 14 Centennial Place, asked if the letter received from FMERA was a legal opinion of the Attorney General or law firm or an opinion of a FMERA staff member as to their interpretation of the law. Chairman Widdis responded that it was a letter from the Executive Director Bruce Steadman and not any professional. Mr. DeNoia added that the thrust of the letter was indicating their ability and their exclusivity with regard to determining use; what our Planners were suggesting wasn't that use was something that we had the ability to determine but were basically saying was that in the very itemized, articulated reuse plan it indicates that the Applicant could do "A" or "B" and in our opinion they did "C" which is neither "A" or "B" and we are not determining use. It's questioning compliance. Mr. Stehnecs discussed location of the hospital and 85 units which are not included in the plan.

Ron Sickler, 45 Morris Place, asked in the original purchase agreement they had to select "A" or "B". Mr. DeNoia responded no, FMERA ultimately determines use and if someone wants to do something inconsistent with the Reuse Plan it needs a plan amendment. The Board's Planner has given an opinion that the determination by FMERA for use was inconsistent with the reuse plan. Mr. DeNoia stated FMERA comes up with a plan, they determine use. The plan can be amended. It goes to host towns for input. Mr. Sticker asked about when FMERA came with their initial plan, did they change it. Mr. Widdis responded that there was an opinion by the Board's planner that suggests that their Reuse Plan that they have on file now says something to the effect that it does not allow them to put the 82 units on that property. Mr. DeNoia stated that normally use is determined as a condition precedent before it is submitted to the board. FMERA determines use, not the board. There were questions about COAH and COAH involvement and issues as to what kind of credits the borough would get. The Board Planner looked into the Reuse Plan to determine the COAH requirements impact on the Borough.

Mr. Sickler further commented that the properties being sold over there seem to be undergoing a metamorphosis and should be disturbing to the people of the Borough. Mr. Sickler questioned when the units came into play, did the borough know about them from the beginning or is this triggering what the Board can approve or not approve. Mr. DeNoia responded stating that the Board does not evaluate the use. FMERA makes the determination if the use is consistent with the Plan or the Reuse Plan. The Borough Planner looked at it for COAH purposes but for that it would not have been re-addressed. The new information that it's inconsistent with the Reuse Plan and the amendment to the Reuse Plan and the use requirement that was a condition precedent to coming here for site approval. The Board wants an opportunity to get the planners, FMERA, etc. together and have a discussion about whether the use is compatible.

Roseanne Letson, 37 Morris Place, asked questions about the Board members. Mr. Foster was appointed to replace Mr. Johnson. Chairman Widdis responded affirmatively. Ms. Letson asked if Mr. Johnson was on Council. Chairman Widdis responded that Mr. Johnson was not on the Planning Board. Ms. Letson asked if he vacated his position on the Planning Board was this past year. Chairman Widdis responded affirmatively. Ms. Letson asked if there were three people from Council on the Planning Board. Mr. DeNoia advised that the individuals are the Environmental Commission liaison of the Board. Ms. Letson asked why Mr. Foster's appointment was not on the agenda. Mr. DeNoia responded that it was on the last meeting's agenda.

As no one else from the public wished to be heard, Chairman Widdis closed that portion of the meeting.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 8:52 p.m. on a motion by Mayor Mahon which was seconded by Mr. Kleiberg and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary