OCEANPORT PLANNING BOARD
MINUTES
October 13, 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, Councilman Gallo, Mr. Kleiberg, Mr. Sullivan, Mr. Kahle, Mr. Fichter, Mr. Savarese, Mr. Whitson, Mr. Widdis

MEMBERS ABSENT: None

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

BOARD BUSINESS:

1. Minutes of the meeting of July 14, 2015 were approved on a motion from Mr. Whitson and a second from Mr. Sullivan and approved by the eligible Board members.
2. Minutes of the August 11, 2015 meeting – Ms. Smith advised that those minutes were not complete and would be on for the October 27, 2015 meeting agenda.
3. Minutes of the meeting of September 8, 2015. Mr. Whitson asked for a correction to the minutes to reflect that the Buckman resolution was moved by Mr. Whitson and seconded by Mr. Kleiberg. With that correction the September 8, 2015 meeting minutes were approved on a motion by Mr. Whitson and a second from Mr. Kleiberg and approved by the eligible Board members.
4. Recommendations for Proposed Fort Monmouth Reuse Plan #3 – Chairman Widdis then discussed proposed Amendment #3 to the Fort Monmouth Reuse Plan dated August 2015, advised of the protocol that involves comments by the host communities and that this amendment only involved property in Tinton Falls and asked Mr. White to outline the changes. Mr. White was sworn in for the record as the Board's Engineer and Planner. Mr. White summarized that there were 5 zoning districts being changed in Tinton Falls area, residential 288 units proposed initially, will be maintained with a shift in medium density to increase the amount of low density – larger lot sizes; library for town center removed; gas mart on Hope Road to be demolished, cleaned up, new building and land for County Park System; addition to pistol range which was now being proposed private; some commercial areas being converted to have light industrial and reuse of old buildings. Chairman Widdis pointed out that page 22 broke out the number of residential by density type, overall amendments minor in nature, no impact anticipated for Oceanport. Mr. White testified that it was his opinion that there was no impact to the Borough of Oceanport as it did not directly abut and there was no real impact to the Borough.

   Chairman Widdis asked for a motion or comments from the Board. Mr. Whitson made a motion to support the proposed Amendment #3 given there were no foreseen adverse effects to the Borough of Oceanport and the matter was focused on the Borough of Tinton Falls which was seconded by Mr. Kahle and received the following roll call:

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

Ms. Smith stated the motion carried.

Mayor Mahon stated for the record that he had abstained as an ex-officio member of the FMERA Board that would vote on it.

Mr. DeNoia commented for the public that this was one of the steps in the process to make a change to the Plan in a given town, was presented to the other towns and given to the planning board for recommendation back to the governing body as an advisory resource.

OLD BUSINESS:
Chairman Widdis then reviewed for the public the remaining Agenda items and advised those present for the DeMarco Development application that that matter would not be heard this evening at the request of the Applicant to carry the application to provide additional time to prepare revised maps.

6. PB2015-13 DeMarco Development
   91 Monmouth Road
   Block 136, Lot 51
   Request for Minor Subdivision with Variances

Mr. DeNoia added for the record that the Board had accepted jurisdiction and the application hearing had been adjourned to this date certain in order to prepare new maps and that the Applicant had requested to carry to the October 27, 2015 meeting with no additional notice to be provided and that anyone present for that application should attend the October 27, 2015 meeting for which there was no objection by the Board.

Chairman Widdis announced the next matter of business was AcuteCare. Mayor Mahon stated for the record he was recusing himself from the matter, he also sits on the FMERA board and additionally this matter is subject to review by the Borough Attorney before the Mayor and Council. Councilman Gallo also stated that he was recusing himself from the matter as well.

Both Mayor Mahon and Councilman Gallo exited the meeting at 7:43 p.m.

5. PB2014-01.02 AcuteCare LLC
   1075 Stephenson Avenue
   Block 110.01, Lot 1
   Request for Site Plan Approval with variance(s) – Phase II

Chairman Widdis stated that under matter of the AcuteCare, we have received information from the Planner, Bill White as well as Beth McManus who serves as the Planner for the Oceanport Council and there's documentation – they just received this and suggests that the application that was made to us for the 85 units may not comply with what FMERA has given them, they thought they were having approval and the Board may not have been able to – did not have jurisdiction to hear this matter. Chairman Widdis continued that he believes this matter is still under review from the Attorney and others and certainly the Board and he doesn't think at this point that the Board is in a position to make a decision one way or another.

Mr. DeNoia added that in fairness of what's going on – a memo was created by Elizabeth McManus which was then sent to our Planner who reviewed it and a memo went out on October 9, last Friday (Mr. White answers "correct"); and it was an internal work memo that the Applicant hasn't seen yet but is also something that questions jurisdiction and Elizabeth McManus who started this process was unavailable to be here this evening. There was originally a concern about if jurisdiction was an issue whether or not that put the Board in position to void anything that was done previously but he believes that there are enough potential issues and with McManus not being available tonight and in fairness to everyone going quickly is not in the best interest in coming to a resolution. He believes that the Applicant has requested tonight a copy of the memo that was presented to the Board and he thinks since they are going to consider that we have 2 choices – either Mr. White has to articulate it and summarize it and put on the record what he felt and then the Board can determine if its an internal work memo or just redundant to what our professional had said and make that copy available to the Applicant and his professional. Other than that upon hearing whatever input the Applicant hears, if they choose to want to get rebuttable input or information from a planner or FMERA or from whomever, that's not available tonight either so in lieu of the initial issue of deciding whether we do or don't have jurisdiction he thinks what's probably now has surfaced is that there is 2 opinions that are subject to interpretation and to fairly give the Applicant an opportunity to react to those which he doesn't think anyone was prepared to do this evening. He thinks it should start by having Mr. White articulate what his position is that started this whole sequences.

Mr. White proceeded with his statement – as the Board may recall Ms. McManus was present at the July 14th hearing and the Board asked her to look into a few things with respect to the credits and unit types and the impact to the Borough's COAH obligation. She generated a memorandum from that and he was asked to review this memorandum and it found that basically what the Redevelopment Plan originally permitted was replacement of the hospital with a 60,000 square foot health care clinic, a separate 20,000 square foot professional medical offices with low and medium density housing – that's the original Plan. As the Board may recall they talked about Amendment #2 that provided for an alternate development of the property and would allow them to retain the existing structure for use for medical and office use and transfer the residential units to another parcel and he thinks one of the biggest problems that the Board had when they saw Amendment #2 the Board wanted to make sure they weren't getting additional units on another parcel as the Board may recall when Amendment #2 came through here. The total units in the Borough are the same no matter where they are but basically the Reuse Plan gives one option – the Amendment gives you a second option. The application that was submitted seems to be a deviation from either one of them – it's a conglomerate of the 2 of them when its clear it was an option – an *or* – not an and/or type redevelopment for this property. So Ms. McManus opined that she felt the Board didn't have jurisdiction and he himself is of the same opinion based on that fact as its pretty clear that the Board doesn't have the ability to grant use variances – we only can grant bulk variances and this seems to be a change in the use which really requires another Amendment to the Plan which the Board just heard one tonight to redevelop the site different than what is in the Reuse Plan or the previous; and the one tonight was an amendment already – Amendment #1. Now this is Amendment #3 which amends #1 and the Reuse Plan for that property. Mr. White apologized for not getting it out earlier for the Board to have a chance to review it.

Chairman Widdis read from Mr. White's memo – "our office also concurs with Ms. McManus' findings and that Phase II application is a combination of retaining the structure and provision of a high density housing on that same site is inconsistent with FMERA's Redevelopment Plan and amendment #2."

Chairman Widdis asked for any questions of Mr. White regarding the memo. Mr. McOmber asked if that included him.

Chairman Widdis asked for any questions from the Board and hearing none acknowledged Armen McOmber.

Armen McOmber, law firm of McOmber & McOmber, P.C. Red Bank, New Jersey on behalf of the Applicant AcuteCare Management Services LLC commented that he could not comment directly on a memo or letter he hasn't seen, he did have a couple questions for Mr. White. Mr. McOmber asked Mr. White did you speak or consult with Mr. Philips, the Planner for FMERA before authoring your letter. Mr. White responded no sir. Mr. McOmber asked if he was aware if Ms. McManus had any consultations with Mr. Philips or anyone. Mr. White answered he was not aware. Mr. McOmber asked if he spoke to anyone at FMERA about. Mr. White answered no sir. Mr. McOmber asked your letter is squarely based on Ms. McManus. Mr. White answered no, that was his review of the documents. Mr. McOmber asked *your* review of the documents. Mr. White answered the original plan and amendment #2. Mr. McOmber asked and this was just something that Ms. McManus brought to your attention and you, on your own volition…Mr. White answered no, the Board asked him to. Mr. McOmber: the Board asked you to look at the use? Mr. White answered at her memo. Mr. McOmber: at her memo? Mr. White: and when I got her memo that's when he went to look at the original document as well as amendment #2. Mr. McOmber asked did her memo include these particular questions about the jurisdictional issue. Mr. White answered in the end, yes. Mr. McOmber asked what specifically did it say. Mr. White answered not being the author he can't give it verbatim but basically she thought we didn't have jurisdiction because of it wasn't in compliance with the original plan nor amendment #2. Mr. McOmber asked so she raised this question for the first time anywhere in that memo. Mr. White answered when she was looking at the COAH. Mr. McOmber asked what's the date of when she was looking at the COAH and what was the date of that memo. Mr. White answered September 9th. Mr. McOmber stated September 9th, so Mr. Chairman just in fairness in addition to he's sure its included as an enclosure but and referenced in close with Mr. White's letter we'd also request not only Mr. White's letter but Ms. McManus' memo as well and that's all without the benefit of these documents he doesn't have any other questions at this point. He has some things to say but not necessarily any questions.

Chairman Widdis asked where are we now. Mr. DeNoia stated we have 2 options – we can either allow the summary as its gone forward and determine that these were internal work product documents that are privileged that we don't have to share or we can…Chairman Widdis stated he doesn't know which ones, doesn't know the difference between the 2…Mr. DeNoia asked the difference between the 2 memos? Chairman Widdis stated he knew what the 2 memos were; can the Applicant see the memos or can't see the memos – he doesn't have any guidance. Mr. DeNoia stated he thinks that's for the Board to determine.

Mr. McOmber stated if he may, if the Board is not going to…they came here tonight for memorialization resolution approving their application from some 2 months ago. If the Board was not going to do that and is going to hold off on that action based on information which was provided originally September 9th to Mr. White and subsequently to Mr. White has now provided to the Board. In fundamental fairness he thinks they have a right to see exactly on what basis the Board was not going to approve their application. He can't imagine not letting them see the information upon which you were basing your decision to not memorialize that what you've already done which was to approve the application. So he'd love to understand that concept. He doesn't even understand that's a choice.

Chairman Widdis said ok, that's why he's asking.

Mr. DeNoia commented that his feeling was that whether its tonight or whether through another mechanism, they will see these memos and he is sure that this was not the last time they will be dealing with this topic. He believes that the memos have been properly summarized by Mr. White. He doesn't think there's anything in there inconsistent. It's basically a determination in essence that there is a deviation from both the original plan and the second amendment to the Reuse Plan and it states why it states that opinion and his suggestion is that we make that available because he believes that Mr. McOmber is accurate in saying they should be entitled to see. Chairman Widdis stated he agrees. Mr. Whitson commented he agreed too. Mr. DeNoia said we should discuss whether anyone on the Board has any problem with that – this is a Board decision, not his decision but that was his opinion that certainly they should be entitled to see that which we're basing an extraordinary opinion like this one.

Mr. Whitson stated he agreed they should have it.

Chairman Widdis stated there's 2 documents, just for the purpose of the record, ok, Maser Engineering to Jeanne Smith date…I guess its Preliminary and Final Major Site Plan, AcuteCare and its dated October 9, 2015 and the second memo which was from Elizabeth McManus to Borough of Oceanport Mayor and Council and its Elizabeth McManus its stated AcuteCare Proposal Consistency with Fort Monmouth Reuse Development Plan dated September 9, 2015 and these are authored by Elizabeth McManus.

Mr. DeNoia added that a lot of these questions seem to be addressed category to Elizabeth McManus who was unavailable this evening and he thinks they should be entitled to formulate their questions and she should be here to have an opportunity to respond to those at a meeting, at a public meeting – none of which could happen tonight. And if anybody has an opinion to the contrary cause this is a Board decision – this was an internal memo from our Professional to the Board based on a request from the Board but he reflected in fundamental fairness that would be his recommendation to make it available unless someone has a thought to the contrary.

Chairman Widdis asked if everybody else good with this.

Mr. Fichter answered good with it. Mr. Kahle yes. Mr. Sullivan answered yes, he was thinking of abstaining. Chairman Widdis answered that may be a good idea – Mr. Sullivan's would be abstaining as his son was a partner in the Clark Caton Hintz. Mr. DeNoia stated but was in no way connected with this particular review or application and what is being said was his son was a planner in the same firm although unconnected and not part of this application with Elizabeth McManus. Mr. McOmber answered he understands. Mr. DeNoia continued that Mr. Sullivan wants the Board to know that and wants the Applicant to know that and is willing to recuse himself in terms of whether or not you should get the memo or not but he doesn't believe Mr. McOmber has any objection to that.

Chairman Widdis stated for the record that Mr. Sullivan has abstained in other matters related to the same planning matter. That being said they will be forthcoming with those 2 documents.

Mr. McOmber answered he appreciates that.

Chairman Widdis stated how that happens he's not sure. Mr. DeNoia commented that they can get them from Ms. Smith and equally importantly if there's anything that Mr. McOmber would like to comment about or share with us tonight, they are happy to listen.

Mr. McOmber stated he did have a statement and a couple points he'd like to make but before he get, he promises that; he has some things he needs to say.

Mr. DeNoia stated keep in mind that the Board was willing to listen to your statements, he thinks that this really more likely should be an opportunity to ask a question or understand Mr. White's position. He thinks clearly Mr. McOmber disagrees with his conclusion and making an antithetical statement he doesn't think at this point is anything but premature.

Mr. McOmber stated he understands, he thinks he does have some things that he needs to put on the record just because and understand even before he gets into it that this even, we don't believe, with all due respect to Mr. White and Ms. McManus, they think they are flatly wrong but even if they're right, understand that at this late date, given what's transpired, given the amount of time and money and effort that's been put into this application to have this issue come up now and be told in essence that the application may very well on Friday afternoon, that the application may be deemed void *ab anicio* because of jurisdictional issue some 5 or 6 months after it was filed – that's of some, certainly aggravating to the Applicant but more importantly they don't, for some reasons he would like to get on the record because unfortunately it may end up being something where a record is important. He thinks its important that he says some things although he'll try to limit some things he was going to say because he thinks now he had some questions for Ms. McManus – she's not here. Before he gets into that statement and some of the points he'd like to make he would appreciate the Board, there was some, raised the issue of the deck and include the deck, you'll remember, Mr. Widdis he doesn't believe was there, but Mr. Bennett he believes or perhaps some other, somebody else in the planning and zoning department felt that they had applied to put a small deck on the back of unit, Phase I for the use of some of their client's there, because they were before the Board already it was suggested that they just include that deck as part of the application. Understanding that this application may be moving off to a new and elongated and precarious direction, they were hoping that they could get some kind of dispensation or approval from the Board to separate that deck out, they'll go their own route with the deck, probably go to the planning and zoning or construction department and look for an administrative review but he would really not rather have the deck be part of this process because he doesn't think the deck will ever get, it's going to be some time. He doesn't know how that mechanism works – it was never part of the initial application – they only brought it before the Board because it was suggested in the interest of transparency that they put the deck in there. He would like some, if he could, leeway from the Board to maybe that remove that as part of the application because he doesn't think this will be resolved quickly – maybe it will, maybe he's wrong but they need the deck on the back of the building for the use of the patrons and the clients of that facility.

Mr. Whitson asked was it legal to separate it.

Mr. DeNoia responded that he thinks there needs to be a discussion as to the mechanism as to how to even do that because it was part of an application and after the fact bifurcate out a portion of that, he…

Mr. McOmber interjected that the Board agreed to make it a part after the fact anyway because just because why don't you include it all because they applied for the deck while they were in the middle of the process but now this process has changed.

Mr. DeNoia continued that he thinks they have to talk about what procedural mechanism they would use to potentially get there. He doesn't know if the Board, its conceptually adversary – he thinks at this point how it happened and why it happened was one big application and he doesn't necessarily have a problem with the Board wanting to consider accommodating that but they need to discuss the ability as to how to do that and what mechanism was available to take a portion of an application, bifurcate it while the other part is still in…and they could have that discussion…

Chairman Widdis stated he would think that they'd have to submit something of what they're doing.

Mr. McOmber stated he could write a request - they did it by way of a letter – he could do it by way of a letter.

Chairman Widdis suggested that he would have to go to Mr. White and Mr. DeNoia, looking, documenting what you're looking, some kind of schedule so they can look at what they're doing.

Mr. McOmber said ok. They have presented to the Board what they wanted to do with the deck, but…

Chairman Widdis stated he thinks they should do it again, make a request, just like you've asked.

Mr. DeNoia suggested that they submit something to himself and Mr. White and asked to refresh his recollection did the deck require variances.

Mr. White answered no.

Mr. DeNoia continued that if it doesn't require variances they could possibly even…

Mr. McOmber stated that's what they were going to do go back to the building department and pretend it like it's a stand-alone and this was something, again, this was just something that was suggested and said hey, we're here anyway, let's just throw it on there.

Chairman Widdis asked is it part of the site approval.

Mr. McOmber stated that's what they were thinking, they'll submit it – that building is occupied, there are clients in there and it would be nice if they had that area.

Mr. DeNoia stated determine what it was he would like the Board to consider and then address it to himself and Mr. White, and they will certainly address their concerns.

Mr. McOmber then continued asking that he be allowed to make a few points and then he'll promise it won't go more than a couple minutes but he does want to summarize kind of where they were, what they did and how they got here and understand this was a shock to them, they fully expected to walk in here today with a memorialization resolution and so for the Applicant, who, he'll explain some of what's going on, relied on that approval. This is causing a great bit of difficulty. And the other point he would make, and he'll say it again later, you know to the extent there are questions about you know the Reuse Plan and any amendments thereto he would strongly suggest to the Board's Professionals and hopefully you know if there was an opportunity at a subsequent meeting that they'll have more input from FMERA and from their Professionals that they would, not knowing exactly what's in the letter and the memo, but he has a strong suspicion they're going to disagree very strongly with the conclusions frankly of Mr. White and Ms. McManus. So again, let me get through this quickly, but wants to say this for the record: It was back on March 9, 2015 that his client applied and filed with FMERA its mandatory conceptual review and approval for Phase II. Phase II's use was described as follows, which is almost identical to what was presented before the Board. 85 one-bedroom apartments, applicants will be preferred if they are 55 age and older, amenities for the apartments, laundry facility, lobby, 61,868 square feet, was exactly the same plan that was confirmed as recently as today in a phone call with Bruce Steadman and Paul Philips.

Mr. Whitson asked was it 85 or 82.

Mr. McOmber responded 82, he begs their pardon. AcuteCare also agreed to ensure the affordable housing units were constructed to comply with the Fair Housing Act, there was a parking variance. By letter dated April 7, FMERA approved the application for the design exception request and the bulk area request subject to Oceanport Board approving the design exception request. The uses of the building encompassed with Phase II are approved by FMERA. FMERA has the sole authority for the approval of these uses. There's absolutely no question about that. It's right in the FMERA regulations. The Board *may not* obviate the approval of FMERA for the uses of the building envisioned in this Phase. The authority of the Board to grant bulk and area variances set forth in 19:31(C)3.21, we all know that reg. The FMERA use regulations supersede the Master Plan, the zoning and land use ordinances and the regulations of Oceanport. Unassailable truth. In due course they filed their Preliminary and Final Site Plan, they filed it, it was denied by the Zoning Officer, it was deemed complete and the first public hearing was scheduled May 26. They had 2 hearings and he believes it was on August 14, 2015 that it was approved and they were going to be subject to the preparation of a memorialization resolution. The resolution was delayed for several months. They were told the Board wishes to review the minutes of the various meetings to ensure that the memorialization resolution was a 100% accurate. They were told nothing as he's said about this action even though apparently Ms. McManus raised questions back on September 9th but they were told nothing about this entire process being void *ab initio* until Friday at 3:30 and as they just found out today they were not permitted to see the letter until just now which they certainly do appreciate. He has to say this on the record, not long after their approval by this Board of Phase II, Unity Place of Monmouth occupied a portion of Phase I. Representatives of the Borough including the Mayor, indicated that they were not satisfied with the use of a portion of Phase I and the Borough Attorney expressed to me personally his objections on 3 occasions that Unity was not welcome in the Borough and that it was not, a variety of comments made that there were going to be problems between AcuteCare and Oceanport. They sent several letters demonstrating to the Borough that in fact the use was totally approved and offered to visit with the Borough Council to make sure that all of their concerns were addressed and that these issues were resolved. The Borough Attorney Mr. Arnette told us they were *not* invited to the Borough Council, they were *not* interested in hearing from them and they really didn't believe their explanation. And then Friday they got this call that this whole process was in fact void *ab initio.* He doesn't, its stretches any kind of belief, reasonable belief, that those two issues are unrelated. But again, that's not in any way an attack on Mr. Bennett or Mr. White – their reputations are sterling. But certainly the timing of this and the very *public* posture that the Borough is taken against Unity and against AcuteCare raising at least some questions that at the end of a 6 month process, 3 days before the memorialization resolution they now have this sudden jurisdictional issue which apparently came out of the blue. It's the position of AcuteCare as follows, and he wants to be very clear, the Board, he believes, has a limited amount of time after an application is deemed complete to render an approval. He thinks they are way beyond that time. Under 40:55(D)46. So number 1, he's going to argue that its too late for the Borough to take action, and any other action other than to approve the resolution of memorialization. Number 2, he thinks that if the Borough of Oceanport had an issue with the findings of FMERA and the uses for Phase II, he thinks there's some question of whether the Borough had an obligation to the challenge the decision of FMERA within 45 days. The Borough did not do so. Again, he has not seen the exact angle of attack in the memo and the letter, but so that may be an issue. They don't believe the Borough has *any* jurisdiction to reverse the findings *or even question* the finding, even question the finding of FMERA that the apartment use encompassed was appropriate within Phase II application. There's no authority of this Planning Board to question what FMERA approves with the use. *None.* And frankly, why he appreciates Ms. McManus' opinion and Mr. White's opinion, it is of no import. Which was stressed and confirmed as late as *today* with Mr. DeNoia, *on the phone*, by Mr. Philips who is the Planner for FMERA and Mr. Steadman. They, meaning AcuteCare, in the process of obtaining *funding* expended for the completion of this Phase, so while he understands and appreciates that the Board doesn't want to act rashly tonight, he agrees with that, they have some materials to look at. Please understand that the delay that they are experiencing is going to be substantial, adverse and irreparable damage to his client. They are in the middle of securing funding, financing. This is jeopardizing this entire process – that is damages. Pure and simple. He thinks if the Borough, again, and the Planning Board proceeds down this road, he thinks unfortunately, they're going to be in a position where he doesn't see any other option, very unfortunate, cause they do not want to file a suit against the Board, they don't want to go down that road, but they don't see any other option and delay, justice delayed is justice denied. *Delay* is injuring his client every day it goes on. So, again, they think that should the Board choose to go down this path, it will compel them to seek not only relief under the Municipal Land Use Law but of also of the regulations of FMERA, maybe the Fair Housing Act, ADA, Civil Rights Act, who knows. But certainly they will be in court and that's a shame because they're all going to be expending substantial fees and costs and there's just no need for it. Again, this is not a case where he thinks the Board's action, or he should say, the Borough's action was inadvertent or where there's an intention, it appears at least in light of everything going around that there could be some purposeful or dilatory tactics going on here on behalf of the Borough. He finally would wonder, is the Mayor, did he recuse himself as a member of FMERA tonight? Cause that's what he said, at least partially.

Mr. DeNoia responded that he believed he recused himself tonight in participating in this AcuteCare issue this evening because he's a member, and voting member with the FMERA situation. And doesn't think it has anything to do with anything other than tonight and AcuteCare.

Mr. McOmber continued that the point was just that previously he had not recused himself as part of any of these conversations and just wanted to be clear as to why tonight was different from any other night.

Mr. DeNoia stated because he thinks in his opinion that there may be either an antithetical position or as you suggested this may be addressed in another forum and he doesn't want to participate in something in a dual capacity that could undermine the fairness of moving this thing forward.

Mr. McOmber continued that he has some other things to say but thinks he's said enough but he would stress to the Board that every day that goes on that they don't resolve this it was doing an extreme amount of damage to his client and so while he understands that the Board wants to sit back and think about it and digest the information, he would really like to resolve this as quickly as they can one way or the other. He would *highly* suggest to the Board's Professionals that they reach out to FMERA and speak to FMERA cause they're basically interpreting FMERA's plan for FMERA and FMERA has already interpreted their plan and its already approved the use and its going to one way or the other whether it be through a judicial intervention or in some other way, again, if everything they've told him today is true, they're going to come in and say, wait a minute, we've approved this use, you are *way outside* your authority, what, you are usurping FMERA's authority, what are you doing, you were there for technical review and for Site Plan approval, not for use. Mr. McOmber continued that Ms. McManus may be right, he doesn't know, he's not a Planner, but he knows what FMERA thinks and he knows whose authority this decision, under whose authority it lies. Any more than his opinion doesn't matter, he doesn't think her opinion to FMERA is particularly relevant. He will also endeavor to provide, talk to FMERA and try to get things in writing to suggest to the Board that this may not be, while there may be good questions raised by the Professionals, this may not, ultimately that's FMERA's call, they don't want to go down this row. He appreciates, Mr. Chairman, understand where they are and where they thought they were going to be, this is a shock to have this at this stage of the game.

Mr. DeNoia stated that he thinks it important that he make a couple of clarifying…Mr. McOmber – rebuttal…Mr. DeNoia answered, no, not rebuttal, #1 – the meeting that a potential first opportunity for this memorialization was going to be tonight, and it's important to understand that there were previous dialogues, there was certain information coming from the Applicant's attorney that came rather late and everyone was in agreement that tonight would be the target date for that particular resolution which has changed based on these memos. But it was not as if within that 45 days the Applicant wasn't fully aware that that resolution wasn't something forthcoming and basically agreed to that and had no issue with that. #2 – this Board has nothing to do with nor, up until relatively recently did he ever hear the term Trinity Court or whatever you were referring to. All of those issues as to what was going on in terms of political undercurrent, this Board was not privy to nor had a particular part of.

Chairman Widdis commented he didn't know who Trinity Court was.

Mr. DeNoia commented nor did he and the other thing…

Mr. McOmber interjected its Unity – as if to prove their point.

Mr. DeNoia continued that the other thing was, that there was a potential that there was a motion adverse to this situation without full input from Ms. McManus, from FMERA, from anybody could have been made tonight and entertained tonight and voted on tonight and it appears that the Applicant completely agrees that it makes perfect sense to not make a knee-jerk reaction without input from Ms. McManus, without them being able to review the memos, without the Professionals being able to talk, so to suggest that there are delays from tonight based upon being dilatory or the need, damages stemming from not having a reaction tonight, he believes that the Board was acting prudently by giving an opportunity for all the facts to be exposed before decision is made. He thinks it's important to understand that if *anything* were to happen tonight it appears that the Board was inclined to consider this application or this motion that there was no jurisdiction which then would have created bigger problems. He thinks there's no dilatoriness, there was more an opportunity to allow for a full understanding of the facts, allowing Ms. McManus to be here if necessary, allowing input from their Planner at FMERA, allowing the Professionals to talk and when the Board looks for guidance – you indicated you're an attorney, he's an attorney, they both agree that if jurisdiction is an issue that the concept of something being void *ab initio* was inherent that without jurisdiction nothing that a Board does has any moment. That's not the issue. We agree on the legal issue if in fact that is the case. They disagree on the underlying facts and how we got here and whether or not the particular application was a deviation from the original Reuse Plan and what the Professionals opinion was on this. Whether it takes another meeting or another two meetings to resolve that, he agrees that everything will be done in due haste to try to come to a quick and fair resolution of this but the fact that its not happening tonight, it appears, unless he's hearing to the contrary, something that you voluntarily participated in not happening tonight as no one feels they're prepared to make a knee-jerk reaction tonight.

Mr. McOmber responded he doesn't see how the Board could even act on it tonight – Ms. McManus isn't even there tonight to be asked any questions and he's not able to cross-examine her. So the Board couldn't act even if they wanted to.

Mr. DeNoia stated that was his point so…

Mr. McOmber interjected the fact that she's *not* here, the fact that there was a memo floating around since September 9th, which raised these questions, the fact that they didn't know anything about until Friday at 3:30 – understand where they are coming from.

Mr. DeNoia stated we understand that but what we're saying is you agree that tonight is not the appropriate time. We're in agreement that tonight is not an opportunity to do something.

Mr. McOmber stated that what he thinks would have served everyone well has before this even came to the Board, these issues come to Counsel, maybe if FMERA had been consulted, maybe Mr. Philips had been consulted by your…none of this happened. This was a shock to everyone.

Mr. DeNoia stated they are hearing tonight what was done by Mr. White. Ms. McManus was not here, the memo he was referring to was promulgated and received on Friday, October 9th so it's not like they had the memo for a month, it was sent out on Friday and many of the Board members just recently saw it.

Mr. McOmber continued he wants to be clear – he's not suggesting the Planning Board that there was a politic…what he's saying is the timing of it – and you may be the only one who hasn't heard of Unity Place, this Board, and what's going on around the town but certainly certain members of the Board have been very public that they are unhappy with AcuteCare and all he's saying is the timing of this…

Mr. Kleiberg asked was he saying that somebody on this Board said that.

Mr. McOmber responded he didn't say it…is the Mayor on the Board.

Mr. Whitson stated he's not here right now.

Mr. McOmber replied he may not be here right now but he was part of this application. He sat in on this application. He brought Ms. McManus in without warning to the second hearing.

Chairman Widdis stated that for him to state the members of the Board…

Mr. McOmber interjected he's not saying the members sitting…he didn't mean these members. What he was saying was this was extraordinary.

Chairman Widdis stated that was why they are not voting and said let's cut to the chase. We are where we are at this particular time. The next move is your move and thinks you'll want to respond to the letters. We all agree to that so let's just build some time lines in so we know where you're going and get to being fair and reasonable and get it done…we're just talking here, arguing and that's not right for anybody – you or us.

Mr. McOmber stated he understands and that he was sorry…just understand where they are coming from.

Chairman Widdis stated don't be sorry, let's just see the timeline and get it done.

Mr. McOmber stated in terms of the timeline, once he has the letters, he can…

Chairman Widdis answered he'll have the letters shortly, there's no question about it.

Mr. McOmber stated and then again, they'll have to take a look at what they say and evaluate with his client what they're going to do next and he'll certainly speak to Mr. DeNoia.

Mr. DeNoia added that they could also evaluate what to do with the deck topic.

Mr. McOmber responded they would be doing that as that's something they would appreciate the Board's help with and again, he's hoping they can still head this off and resolve this.

Chairman Widdis asked Ms. Smith if she could email tomorrow to Mr. McOmber which Ms. Smith stated yes, but did they want paper copies tonight. Chairman Widdis asked he would like a paper trail that it was given to him.

Mr. McOmber asked does the Board meet again in 2 weeks. Ms. Smith answered yes, October 27^{th}.

Mr. McOmber asked before they go down any particular road, they'll try to provide information to Mr. DeNoia as much as he can in terms of the law and…

Mr. DeNoia commented there's meeting at the end of October, first meeting in November, they have no idea what the agendas are, see how busy those particular nights are.

Mr. McOmber requested time in the meeting in October to see if they could resolve this and it may be that we can't.

Mr. Whitson asked shouldn't we check for Ms. McManus' schedule.

Chairman Widdis stated they have to get, they need Ms. McManus.

Mr. DeNoia stated he suggested there's 2 meetings simply because worst case, they should be able to accommodate and everybody do what they need to do based on everyone's schedule, no later than the first meeting in November.

Chairman Widdis stated they would need Ms. McManus' to be here.

Mr. DeNoia continued they would need Ms. McManus to be here and maybe they can even talk about the deck if they aren't prepared to deal with the whole topic. They are not being adversary in, we'll be reasonable in basically reacting to anything he presents for him to consider.

Mr. McOmber stated that he was hopeful that with some information he could present with Ms. McManus, with Mr. DeNoia, Mr. White, this can be resolved even before that.

Chairman Widdis stated its going to have to come back, there's no question.

Mr. McOmber stated its going to have to come back but he's hopeful maybe when it comes back that there's been enough clarity around it that all the Professionals can agree that here's what the law is and here's what's fact. He'll get the information and in terms of when they come back as soon as they come back would be best in terms of everybody.

Mayor Mahon and Councilman Gallo resumed their places on the dais at 8:26 p.m.

NEW BUSINESS:

7. PB2015-16 Pedersen, Soren & Marianne
   60 Gooseneck Point Road
   Block 73, Lot 9
   Request for Bulk Variances

Mr. DeNoia provided some guidance as to what the Applicant should demonstrate to the Board concerning positive and negative impacts of the proposed work.

The following persons were sworn in for the record: Soren and Marianne Pedersen, Applicant and Owner.

Mr. DeNoia further advised that service of notice had been reviewed and was in order and the Board accepted jurisdiction.

Mr. Pedersen testified that there house and property had been impacted by Super Storm Sandy which had led to several improvements on the property and were currently seeking relief for lot coverage as they would like to install a swimming pool which would increase their lot coverage.

Chairman Widdis asked to review Mr. White's letter. Mr. DeNoia asked Mr. White to confirm the numbers to which Mr. White advised existing lot coverage was 31.9% and proposed was 36.4% where 25% permitted. Chairman Widdis asked the Applicant to address Mr. White's first general comment. Mr. Pedersen answered yes, they were seeking a variance because of the lot coverage. Mr. DeNoia pointed out that there were 3 variances – one for their shed. There was discussion as to why the shed although existing - needed a variance for setback from the side yard line.

Mrs. Pedersen then testified that their architect, when raising their house, had made sure that all runoff had been sent to pipes that delivered out to the street and that dry wells had also been installed to ensure there was no runoff and no impacts to the neighbors, positive feedback from the neighbors and that the reason they were seeking the pool was for her use for physical therapy as well as recreation.

Chairman Widdis asked what was the size of the proposed pool – referring to their Plan prepared by Matt Cronin, Architect dated September 2, 2014, last revised June 1, 2015, Mr. Pedersen advised it was approximately 14'x28' pool with flat bottom with one end very shallow, would be in-ground. Chairman Widdis asked about the shed in the corner and was told it was existing and buffered from the neighbors by evergreens and was there when they bought the house in 2003 and was where they planned to put the pool's equipment.

Chairman Widdis asked what was the elevation of the pool. Mr. Pedersen answered about 6, one end was 7.5 and the other 8.

Chairman Widdis asked Mr. White if he had any questions.

Mr. White asked the Applicant when they elevated the house did they elevate the shed and was told yes. Mr. DeNoia asked Mr. White if he had any comments on whether there was any runoff or drainage. Mr. White responded he was not aware of any structure or piping based on the plan submitted.

Chairman Widdis called to Mr. Pedersen's attention Mr. White's item #4 requiring a grading plan be submitted. Mr. White added that Mr. Cronin's plan did not provide the necessary information and a new grading plan was necessary.

Mr. Whitson asked if the pool would be fenced and was told yes. Mr. Whitson asked if they planned to install any lighting that would impact the neighbors and was told no additional lights.

Mr. Kahle asked if pool would be heated and was told yes. Mr. Kahle asked the equipment will go in the shed and was told yes.

Mr. Fichter stated his comment was addressed as long as a grading plan was submitted acceptable to Mr. White and that runoff away from neighbors.

Mr. Kleiberg stated that the heater for the pool could not go in the shed and was told it would not – would be on the outside. Mr. Kleiberg cautioned that there also needed to be certain clearance from the shrubs and was told they would comply.

Chairman Widdis commented that it was very important that they stress the need to not have lighting impact neighbors and asked them to be aware of that.

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.

Mr. Sullivan made a motion to approve the application for variances for impervious coverage, setbacks for existing shed, specific conditions requiring new drainage plan and no additional outside lighting which was seconded by Mr. Whitson. The motion received the following roll call:

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

Ms. Smith stated the motion carried.

8. PB2015-17 Portman, Robert
   29 Shore Road
   Block 73, Lot 4.01
   Request for Bulk Variance for Lot Width

Robert Portman, Owner and Applicant and Jennfier Portman, Owner were sworn in for the record. Mr. DeNoia advised that service of notice had been reviewed and was in order and the Board accepted jurisdiction.

Mr. Portman explained the application was to construct new home to replace dwelling that was significantly damaged during Super Storm Sandy, described the relief being requested was a variance for minimum lot width – an existing condition. Mr. Portman then referred to document A submitted to the Board, read the zoning requirements and what was proposed for bulk requirements; house to be built has smaller footprint that previous dwelling, reviewed the lot coverage of 28% which currently was over the allowable 25%, his proposal was for 9.7% thereby reducing runoff significantly; seeking a hardship variance due to the exceptional narrowness of the property and without the variance the property would be unusable and unable to build a house; current property conditions were an eyesore and detriment to the neighborhood and would be improving the neighborhood character; testified that the hardship was not self-created and was an existing condition.

Mr. DeNoia asked in summary the only variance he was seeking was for the pre-existing lot width which currently exists and there was no way for him to correct and was told yes. Mr. DeNoia asked if there was property on both sides of him. Mr. Portman testified that all the properties on Shore Road were non-conforming in terms of width and therefore unable to purchase land from neighbors to make the lot conforming as it would create a greater non-conformance for the adjacent lot and both lots were already improved with houses.

Mr. Portman then began to address the comments presented by Mr. White's review letter on the request for a grading plan. Chairman Widdis asked him to first begin by describing the house. Mr. Portman described the proposed house a shown on S-2 – the footprint, the deck, above ground pool, all conforms in every way except for the lot width.

Mr. Fichter asked about the roof and was told it was a flat roof. Mr. Fichter asked if there would be an occupancy up there and was told no and no access. Mr. Portman stated the building height was 29'.

Mr. Portman continued testimony by describing the grading plan, the property was quite low, bringing in about 3' of fill on the foundation which would be graded to the street; the property to the left had retaining walls and therefore grading on his lot would be to the driveway to the street; described a natural swale with the property on the right and would grade to that swale and the water would run to the street. Mr. Portman added that the road was in bad shape and believes the town had plans to do something with the road, perhaps raise it and what he was trying to do in terms of grading.

Mr. White asked Mr. Portman looking at the grades the architect prepared it was difficult to ascertain in the rear yard where the grade runs with a couple of spot shots – there wasn't a lot of grading information other than around the building which was 8 and looks raising at least 3'. Chairman Widdis asked what it had to be raised to which Mr. White answered a minimum of 12.4'. Mr. Portman commented that the base flood elevation was 8. Mr. White corrected and said no, right now it is 10 until the pending maps are adopted. Mr. Portman answered he was at 14' so he was covered either way and was told correct.

Mr. Fichter stated he had a question about building height and asked Mr. Portman about his testimony that he would bringing up the grade a little bit anticipating that the road would come up. Mr. Portman answered the grade but the house was not going up, not bringing in fill and then building.

Mr. Fichter stated he was asking because the right elevation on A-1 comes up to 29' building height and if the road was raised everything would come back in. Mr. Portman responded that if they raised the road he could have gone up higher. Mr. Fichter said he doesn't have a problem, the building height shown was 29' from the crown of the road; ground floor; but if going up to do grading around. Mr. Portman said he was not changing that. Mr. Fichter asked where does the water go that's in the garage and Mr. Portman responded it stays in the garage and would go out the driveway when the tide goes down.

Mr. White commented that he couldn't tell where the water was going as there was very few spot shots and has 3 spot shots along the westerly property line elevation 6, spot shot on each corner of the house elevation 8.

Chairman Widdis advised Mr. Portman that what's being said is that the grading plan was insufficient. Mr. Portman testified that there was a retaining wall around the garage…Mr. White said with no elevation on it…Mr. Portman answered it has elevation 4. There was continued discussion on the adequacy of the elevations provided, water drainage into the garage and how to address if the road was raised and the limits on building height, it was also discussed whether to increase the elevation and give a variance for the building height which the Applicant was receptive to if there were no delays; Ms. Smith confirmed that notice did provide for the Board to grant any other variance needed as determined by the Board. After discussion it was decided to expand the application to provide relief for building height to 32.89' and the need for a new grading plan and that it would be required as part of the construction permit. Mr. White expressed concern that the grading plan be done after the footing and foundation as the grade may change. Mr. Portman asked if that would delay his process and was told no, not if he provided a grading plan acceptable to Mr. White.

Mr. Portman continued with testimony to address the comment concerning average front yard setbacks, referred to the certification from the surveyor of the average setbacks and the submitted document D which was a Google aerial shot. Mr. White advised the Board that they should rely on the data provide by the surveyor. There was discussion on where the proposed house was located in relation to the average setbacks, the base flood elevation and the need to obtain NJDEP determination concerning the applicability of the Flood Hazard Area, Mr. Portman's opinion that he qualified for a Permit by Rule; read Document E – his letter to the DEP seeking if the Permit by Rule and General Permit #7 applied to his project; an email response from the DEP and the terms to meet Permit by Rule. Mr. White asked Mr. Portman to read IV. of the DEP's email which Mr. Portman read that as long as the building was not expanded or relocated close to any regulated water or within a flood zone. Mr. White reiterated "not expanded closer to any regulated water" and pointed out Mr. Portman's testimony that the existing house was 86.5' from the property line and the proposed house to be 75' and therefore he was not in compliance with Permit by Rule. Mr. Portman argued that because he was working within the same footprint and was actually a smaller footprint. There was further discussion on the issue of whether it was necessary and any approval would be conditioned upon obtaining any necessary approvals from the DEP.

Chairman Widdis asked for questions from the Board.

Mr. Savarese stated he agreed with Mr. White and then questioned whether another variance was needed because of the average alignment in the front yard and whether the house should be shifted back and then CAFRA wouldn't have to be involved. Mr. Portman stated he had no desire to move the house and argued that he was behind the 150' line.

Mr. Kleiberg said he's seen houses stopped for this before so that's why he's concerned…Mr. Portman interjected that he was *behind* the 150' line…Mr. Kleiberg answered that he was asking the Board's Engineer not him. Mr. White responded that it's being shown outside the CAFRA limit.

Mr. Fichter expressed that in terms of CAFRA and flood hazard and DEP's jurisdiction it was a simple condition to seek from the DEP jurisdictional determination which was low cost and quick and would decide if it was regulated or not. Mr. Portman commented it's not that quick – 60-90 days and was told no – it was only about 30 days.

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

Chairman Widdis commented that the Board doesn't have jurisdiction on DEP matters and wanted the Applicant to be clear of that. Mr. DeNoia further commented on the Board's role for bulk variance and not DEP issues and then asked Mr. White to express what he believed the conditions should be for any approval.

Mr. White advised copies of boundary and topographic surveys, revised grading plan, revised plans demonstrating the new height and clarification on flood hazard regulations by letter from DEP of jurisdictional determination.

Mr. Fichter made a motion to approve the application subject to the conditions outlined by Mr. White which was seconded by Mr. Savarese. The motion received the following roll call:

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

Ms. Smith stated the motion carried.

RESOLUTIONS:

9. PB2015-16: Drabeck, Lawrence. 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. Kleiberg and received the following roll call:

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

Ms. Smith stated the motion carried.

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

Cullin Wible, 67 Wolf Hill Avenue, stated that he would be making comments about AcuteCare and gave Mayor Mahon and Councilman Gallo the opportunity to step out as they had recused earlier, both of whom exited the meeting at 9:36 p.m. Mr. Wible gave a statement concerning the treatment earlier, tone he heard from the new neighbor down the road, threats for litigation, that he had wanted his comments to be heard while they were still here, that he intends to return when they do and bring friends with him and asked that the Planning Board provide the public an opportunity to comment at that time; requested that the Board publish the lengthy resolution for the public's benefit – was told that resolution was from the Phase I, not for the current matter; Mr. Wible further commented on the chaos of information and how it happened, cautioned that future approvals be looked at carefully and try to avoid surprises in the future. Mr. Wible then commented on the FMERA plan, the housing number units and that the Planning Board perform due diligence before future decision rendered.

Roseanne Letson, 37 Morris Place, expressed amazement at the statements made by Mr. McOmber, threats made, the "throwing in" of a deck in the interest of transparency which should have been anyway, the remarks by FMERA and their statement that their use plan superseded the Borough; her belief that Oceanport can have influence over FMERA, opined how would Mr. McOmber like it if a drug rehab moved into his backyard; she's been reading the minutes of the meetings she's missed and she believes that the Planning Board has done an admirable job and doesn't want the Board to be frightened by any threat of law suits; wanted them to know that she and others were behind them and they are very supportive of the Board and urged them to not be intimidated.

Karen Long, 32 Revere Drive, asked the Board to give her more information on the Unity house and the attorney as she has not been able to attend the meetings until recently. Chairman Widdis answered that they could not answer her questions and that she should go to the Council as the Board had no idea what it was until recently. Ms. Long expressed concern at the proposals being shoved at them. Chairman Widdis advised that they had already had Phase I approved and Phase II was pending. Ms. Long asked how that would impact Oceanport and was told that was not something they could answer. There was additional discussion on the matter and what had happened, the role of the Board and the current question regarding the use and was yet to be decided.

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 9:52 p.m. on a motion by Mr. Kleiberg which was seconded by Mr. Savarese and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary