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

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

OLD BUSINESS:

1. PB2014-07 Parent, Kimberly **CARRIED from February 10, 2015**
   23 Branch Avenue
   Block 139, Lot 44

Chairman Widdis advised the public that the Parent application had requested to be carried to the April 28, 2015 meeting with no new notice required to which there were no objections by the Board.

NEW BUSINESS:

2. PB2015-04 Schecher, Gene & Pamela
   26 Itaska Place
   Block 56, Lot 9

Chairman Widdis recused himself due to relationship to a property owner within 200’ list. Vice Chairman Whitson assumed the chair.

William White, Board Engineer and Planner, was sworn in.

Mr. DeNoia stated for the record that notice had been reviewed, was in order and the Board had jurisdiction.

Gene Schecher, Applicant and property owner, was sworn in. Mr. Schecher explained for the Board that his property had been impacted by Super Storm Sandy, the history of past storm damage and the necessity to elevate the home. Mr. Schecher testified that the patio area at the rear of the house was no longer of use and that they had essentially constructed an elevated deck in the footprint of the former patio which didn’t fall within the bulk requirements and that he was seeking relief by variance for the rear yard setback. Mr. Schecher added that they had gotten a building permit and everything was done on the house and final approval subject to the approval of the Board.

Vice Chairman Whitson asked for questions from the Board.

Mr. Johnson stated that he had no problem with the deck but asked the Applicant he was issued a building permit to which Mr. Schecher answered yes. Mr. Johnson said so they realized it wasn’t non-conforming.

Vice Chairman Whitson asked Mr. White for his comments.

Mr. White asked if the stockade fence shown on the survey dated October 1, 2014 was still there and was told yes.

Mr. White pointed out that it was a solid fence 6' high in the front yard where 4' high and 50% open was permitted and asked the Applicant to justify to the Board the need for the non-conformance which would require a variance from the Board or something would have to be done to make it conforming.

Vice Chairman Whitson asked the Applicant for his response.

Mr. Schecher responded that they hadn't decided what to do with it, that they had a live fence in front of it which were skip lurals which were destroyed in Sandy and had been replaced. Mr. Schecher testified that he had no problem taking down the fence and putting up a wire fence as the privacy was already there from the landscaping

Vice Chairman Whitson advised he would have to make a decision as part of this application as it was another non-conformity that had to be addressed.

Mr. White added for the Board's information that the fence was not in the site triangle and was not a problem to the driving application.

Mr. Johnson asked but he can add it to the application to be addressed tonight and was told yes. There was discussion on the options that Applicant had. Afterwards, Mr. Schecher requested that the Board add to his application a request for variance relief for the existing non-conforming fence. Mr. DeNoia asked if the deck was already constructed and would stay the same it was in the same footprint and was told yes.

Mr. Whitson asked if he knew the dimensions of the deck. Mr. Schecher answered he did not. Mr. White added that the survey submitted was not to scale so he was not able to take from the plan. It was discussed that approved plan was on file in the Building Department and should be obtained from them in order to put in the resolution.

Mr. White also requested a full sized survey with sign and sealed for the application file.

Mr. Kahle asked about the shed. Mr. White advised that the shed was a pre-existing structure with 2.55' from property line where 5' required in that zone. Mr. Schecher requested that a variance for that be also added to the application to which there were no objections by the Board.

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

Mr. Johnson made a motion to approve the application which was seconded by Mr. Kleiberg and received the following roll call:

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

Ms. Smith stated the motion carried

Chairman Widdis resumed the chair and called for the next applicant to come forward.

3. PB2015-05 Denholtz, Steven
   189 Monmouth Boulevard
   Block 72, Lot 2

A-1 Set of 6 Photographs of Property taken by Kennedy Consulting Engineers, LLC
A-2 Boundary & Topographical Survey Map prepared by Yorkanis & White, Inc., dated November 20, 2014
A-3 Residential Development Plan, 4 Sheets, prepared by Kennedy Consulting Engineers, LLC dated January 19, 2015, last revised January 28, 2015
A-4 Alignment Exhibit prepared by Kennedy Consulting Engineers, LLC dated February 12, 2015.
A-5 Updated Version of A-4 Alignment Exhibit prepared by Kennedy Consulting Engineers, LLC dated February 12, 2015, last revised March 10, 2015.
A-6 Colored Rendering of Proposed New House
A-7 Architectural Rendering of Proposed New House
A-8 Set of Architectural Plans, 3 Sheets, prepared by Kaplan Gaunt DeSantis Architects, dated January 28, 2015.

Michael Irene, Attorney for the Applicant and Contract Purchaser, introduced himself and asked if notice had been approved. Mr. DeNoia stated for the record that notice had been reviewed, was in order and the Board had jurisdiction.

Mr. Irene began the presentation with an introduction of the Applicants, a description of the property and Super Storm Sandy damaged house before calling his first professional.

James Kennedy, Professional Engineer and Planner, was sworn in and having been qualified by the Board previously was accepted as an expert in fields of engineering and planning.

Mr. Irene presented a collective set of 6 photographs which were marked as Exhibit A-1. Mr. Kennedy provided descriptions for each of the photographs which included perspectives of the front of the existing home and driveway, the rear of the house from the pool deck towards the neighbor to the west, the rear of property from pool deck to water, driveway looking west and driveway looking towards road.

Mr. Irene presented and described three additional documents which were marked as Exhibit A-2, A-3 and A-4.

Mr. Kennedy testified that Exhibit A-4 had actually been updated as a result of comments by Mr. White's review to include the distances from the depth of the water which update was marked as Exhibit A-5. Mr. Kennedy continued testimony with a description of the surrounding neighborhood, the existing conditions at the site, the challenge of measuring and calculating the prevailing setbacks due to the location of the lot to the surrounding lots and the extensive wetlands on the site leading up to the water and its impact on the average setback which they were seeking relief from for the average of 169' where 103.6' to the deck was proposed which was an improvement of the existing condition.

Mr. Kennedy displayed another document which was a colored rendering of a previously submitted document and was marked as Exhibit A-6. Mr. Kennedy referring to Exhibit A-6 oriented the Board to the location and that the exhibit shows the existing gravel driveway to remain in its same condition except for the fact that it was being slightly decreased as the existing conditions had an impervious coverage issue and the change eliminated an existing 27.2% non-conformity for impervious coverage. Mr. Kennedy stated that the applicant was proposing to construct a home in a slightly smaller footprint as the existing, the existing pool to remain, and that the plan proposes to increase the single side yard setback from the existing 7.5' to the proposed 11.4' with total side yard setbacks from the existing 30' to the proposed 31.4' where 35' required but increased the combined side yard setback thereby improving the existing non-conformity.

Mr. Irene introduced the Architect's rendering of the proposed house which was marked as Exhibit A-7 and depicts the non-conforming wall with the ballastry/guard rail on top of a 30" wall that goes down to existing grade. Mr. Kennedy stated that there was a proposed retaining wall adjacent to the attached garage which was proposed to be elevated where the zone requires 10' setback for retaining walls but for the deficient side yard setbacks, the wall was proposed to be set back 8' from the western property sideline in order to avoid disturbance of grading and stormwater drainage impacts to the neighbors. Additionally based on Mr. White's letter they had changed the pitch of the roof and the first floor elevation to 12.4' to comply with the Borough's flood ordinance.

Mr. Irene summarized the proposed improvements either improve or eliminate deviations from the bulk requirements with the exception of the new variance for the retaining wall to which Mr. Kennedy affirmed. Mr. Irene stated the existing condition that they cannot impact was with regard to the lot width deviation which constrains the development on the site. Mr. Kennedy testified that the lot width was 86.9' measured across Monmouth Boulevard which was required to be a 150' in the zone. Mr. Irene asked but the site exceeds the requirements for lot area to which Mr. Kennedy answered due to the depth of the lot, yes. Mr. Irene stated that they called out the existing non-conforming lot width for the developed lot as needing a variance but asked Mr. Kennedy to address it as if it were an undeveloped undersized lot and were there any land available for acquisition to improve the width of the lot. Mr. Kennedy answered no because they have developed property to the west that any reduction in their lot area would make those lots non-conforming; to the east the lot has jurisdictional wetlands that exist along the common property line as shown on the aerial was restricted by the wetlands and was also short on lot width.

Mr. Irene asked Mr. Kennedy to expound on the impact of the wetlands. Mr. Kennedy testified that the project was designed to avoid impacts to the wetlands in order to comply with DEP requirements for disturbance of wetlands, buffers and transition areas and the constraints of the lot due to those restrictions. Mr. Kennedy also provided testimony as to the applicant's investigation towards elevating the existing house but it was determined that due to the masonry structure elevating was not feasible for that structure. Mr. Kennedy also reviewed considerations for revising the driveway location and the garage location and the negative impacts of both.

Mr. Irene then transitioned to testimony from the planning perspective. Chairman Widdis interrupted and asked if they would first address the engineer's review letter. Mr. Kennedy ran through the engineer's letter and addressed each of the engineer's comments and how the application had been revised to address some issues and that they would comply with the additional items including the retaining wall and the importance of the visual rail on top of the wall, the crawl space venting which would be provided as required, venting of the garage, the rear yard fencing for the pool per the code.

Chairman Widdis asked how did the wetlands line affect the pool. Mr. Kennedy answered because the pool preceded the wetlands act it could remain.

Mr. Johnson asked if they needed a CAFRA permit. Mr. Kennedy answered yes for the house and part of the bulkhead and dock.

Mr. Fichter asked Mr. Kennedy to point out the several flood zones shown across the property. Mr. Kennedy responded by review of the effective and the preliminary maps but the plan shows both because the DEP required both to be shown. Mr. Fichter was curious wouldn't it make sense to raise the garage a little bit more. Mr. Kennedy answered they could but it would impact the retaining wall as it was no longer compliant for a guard, however, a tenth to get the garage to 9' they could certainly look at that so they would look at nominal grading to adjust that.

Mr. Kleiberg asked where they would be putting the condensing units. Mr. Kennedy answered that he thought it would make sense to be put in the inset behind the garage which was away from the neighbors. Mr. Kleiberg asked if there were plans to move the pool equipment and was told yes. Mr. Kleiberg asked if they would be using the existing water and sewer and was told yes.

Mayor Mahon asked questions about increasing the side yard setback, the area for the equipment and if there had been any thought of moving that area around to the back. Mr. Kennedy stated they could depending on if CAFRA would permit; Mayor Mahon also asked about on the Lutz survey the area adjacent to the east side of the property – marked "area of confusion" and asked what that was. Mr. Kennedy explained that was due to conflict by the surveyor when performing the deed retracing sometimes the deeds do not match and there was some question as to who owned that portion of property. Mayor Mahon asked about the testimony that there wouldn't be anything done on the County road in front of the property but it was his understanding that the natural gas connection would be in the roadway and would need a disconnect. Mr. Kennedy answered that may be the case then it would be the responsibility of NJ Natural Gas to obtain same.

Councilman Gallo asked about the height of the roof and how they were reducing the roofline by 5.9' and was told yes, the architect was accomplishing that. Councilman Gallo asked about the driveway Mr. Kennedy described the changes made to the driveway and the impacts to the lot coverage and that they were actually taking out the arc and the building footprint was also smaller allowing them to eliminate the lot coverage deviation.

Chairman Widdis asked questions about the storage area for outdoor accessories. There was discussion on where the pool equipment would be located.

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

Mr. Irene introduced the architect's set of plans which were marked as Exhibit A-8.

Edmund H. Gaunt, Jr., Professional Architect, was sworn in, presented his qualifications and was qualified by the Board as an expert in architecture.

Mr. Irene asked questions of Mr. Gaunt concerning the height of the house and the addressing of the engineer's comments. Mr. Gaunt testified as to the number of major revisions to the plans to address the wetlands issues, the footprint of the proposed house being smaller than the existing house and garage, the total area of each floor, the area of the garage and the rendering of the front façade of the structure.

Mr. White pointed out for the Board's clarification that the centerline elevation in front of the property was 4.77' and therefore would be limited to a ridge elevation of 39.77' – elevation, not height.

Chairman Widdis asked for questions from the Board.

Mr. Kahle commented that the difficulty would be where to put all the equipment.

Mayor Mahon asked about the elevations depicted on the plan and the testimony that the slope of the roof had been changed to comply. Mr. Irene qualified that they had changed the plan to conform without the need for a height variance based on Mr. White's review letter. There was discussion on whether the appearance of the house was more impacted than the change in the slope and would it be better to go with the original slope if that were more appealing. Afterwards, Mr. Irene stated that their notice included the catch all phrase for any and all other variances and respectfully requested that the Board allow the Applicant to include a variance for the height reflected by Mr. White's letter with the original plan if the Board sees fit to grant that and if not they had no issue in complying. Mr. White reviewed that the original plan was for a first floor elevation of 11' and needed to be changed to 12.4' which would push the height to 37.53' where 35' allowed thereby needing relief for the height.

Mr. Kleiberg had questions about the pool and condenser equipment, no generator. Mr. Gaunt stated that the pool equipment could be below the upper deck as it did not need to be elevated.

Mr. Fichter asked about the first floor being 12' and 2nd floor being 10' was there any way to address roof and ceiling slope to minimize the height variance. Chairman Widdis answered that he didn't feel that was necessary for that amount in the height as it was so far set back off the road.

Mr. Savarese commented that they should probably make the height 38' to give some leeway which the Applicant was agreeable to.

Mr. Kennedy returned after consulting with the Applicant and stated there was nothing under the upper deck and the pool equipment could actually go under that upper deck. Mr. Gaunt had also mentioned that there was a corner behind the door for the garage where the air handler could be placed. Mr. Kennedy commented why they couldn't put it anyplace further towards the water because of CAFRA. Mayor Mahon withdrew his suggestion and said it was more appropriate to keep the equipment where it was first proposed.

Mr. Kennedy then provided planning testimony as to the lot width, the exceptional narrowness of the lot which itself was grounds for a hardship, environmentally sensitive areas which provided further grounds for exceptional, the need to stay within a specific development area because of DEP requirements for those environmentally sensitive areas and that he believed the proposed improvements were positive impacts to the zone and that the improvements reducing existing non-conformities reduced the negative impacts. Mr. Kennedy addressed the positive and negative criteria concerning the side and rear yard setbacks, the retaining wall, the impervious coverage, the height and the protections for the public for flood impacts, the aesthetic improvements that were in place with the surrounding neighborhood.

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

Mr. Irene stated that they were seeking variances for the existing non-conforming lot width, the single side yard setback, the total side yard setbacks, building height 38', the front yard alignment for the average of the front yard setback and setback for the retaining wall and that new plans would be provided to reflect the new height upon verification by the Engineer. Mr. Kleiberg made a motion to approve the application for those variances which was seconded by Mayor Mahon and received the following roll call:

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

Ms. Smith stated the motion carried.

Chairman Widdis asked to take the Agenda out of order and address the resolution first to which there were no objections.

RESOLUTIONS:

4. PB2015-03 – Parker, Charles. As the Resolution was made available to the Board previously, Mr. DeNoia summarized the Resolution after which Mr. Whitson made a motion to approve the resolution which was seconded by Mayor Mahon and received the following roll call:

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

BOARD BUSINESS:

1. RPM Development 9:09:42

Mr. DeNoia advised the Board that the matter was on the agenda to potentially reconsider a motion on RPM at the request of one or more of the governing body that it be reconsidered on the basis that there were memorandums of understanding that were never executed and whether the Board felt that was critical enough to readdress and reconsider the prior determination. Mr. DeNoia recapped the previous actions of the Board on the matter including a motion to reconsider, the process for reconsideration and which members of the Board were entitled to make a motion to reconsider and asked Ms. Smith to inform whom the 5 board members were that had voted in the affirmative on the last carried motion: Mr. Whitson, Mr. Kahle, Councilman Gallo, Mr. Sullivan and Chairman Widdis. Mr. DeNoia further advised that the Board was an autonomous body that could accept or not accept input from the governing body and that should a motion be made, seconded and voted upon then the matter would be reconsidered by the full Board and then asked if one of the 5 members eligible to motion for reconsideration wished to do so.

Mr. Johnson asked why this process wasn't done for the first reconsideration. Mr. DeNoia advised it was and was initiated by Mr. Whitson. Mr. Johnson commented but Mr. Whitson voted no. Ms. Smith advised that "no" was the prevailing motion to which Mr. Johnson responded okay so the prevailing, got it.

Mr. Kleiberg stated that the first time this was voted on he voted the other way and then wasn't present for the reconsideration, but didn't RPM pull out? Mayor Mahon answered no, they did not. Mr. Kleiberg asked I thought they pulled out. Mr. Whitson answered that Kiely pulled out. Mr. Kleiberg stated he knew Kiely had pulled out but thought RPM had as well as they were not getting something that they wanted. Mr. Johnson commented that as he understood it the RPM application was still alive but it was based on certain MOUs that the town made with FMERA and that those MOUs weren't executed and that he reason why some of the members changed their votes was based on those MOUs being in place. Mr. Johnson stated that he doesn't know what makes the application better now. Mr. Kahle asked if he makes the motion does it open for discussion and was told it would need to be seconded and approved. Ms. Smith summarized the first motion to deny the application, the resulting vote, the motion to reconsider by one of the 5 that voted in the affirmative for the denial based on new information which received a second and received a majority vote for reconsideration which then resulted in a new motion that the application be approved which was seconded and received a majority vote by the Board for approval. Ms. Smith continued that new information was provided by the governing body, was requested to be placed on the agenda for the Board to reconsider and that one of the 5 that voted in the affirmative had the ability to motion for reconsideration which required a second and majority approval for discussion. Mr. Savarese asked what if there wasn't a motion. Mr. DeNoia answered then there was no motion to reconsider and it dies.

Mr. Sullivan commented that he didn't understand why it was even being discussed. Mr. DeNoia answered that because the governing body had asked that it be put on the agenda to consider whether based on the fact that the MOUs were not executed would it cause any member to reconsider their position on the final vote. Mr. Savarese asked right now they're approved and was told correct. Mr. Johnson pointed out that some of the members changed their vote due to the deal the town made with FMERA which fell through and so he doesn't understand.

Mr. Kahle made a motion to reconsider as he wanted to hear why what they were told wasn't followed through on by FMERA and why it happened and why the vote should be left the way it was told which was seconded by Mr. Sullivan. Mr. Savarese asked if he missed the 2nd meeting could he vote and was told no. Mr. Kleiberg stated then he was out also. Mr. Johnson pointed out then out is Mr. Savarese, Mr. Kleiberg and Mr. Fichter and asked Ms. Smith if she was positive about that. Ms. Smith answered yes, as they did not participate in the full hearing of the application over 2 meetings that would make them eligible to vote. Mr. Whitson asked if they listened to the tapes then they could vote? Ms. Smith answered that they could be qualified if they listen to all the hearings for the application. Mr. DeNoia added that in order to participate, which they were not obligated to do, they would need to sign a certification that they had in fact listened to the tapes. There was discussion on whether Mr. Fichter could participate as he was not on the Board at that time. Mr. DeNoia answered he is a current member and would be no different than anyone else listening to the tapes. There were questions on what happened next and that at this time the motion to reconsider was open to discussion by the full Board and was not a decision to change the vote but to discuss on whether to perform that action.

Mr. Savarese asked who from the governing body decided to take this position.

Mayor Mahon answered that the governing body as a body took no position; one member of the governing body asked a question at a public meeting of the Council's representative to this Board whether or not the Board was informed that the MOUs had not been signed and the response was that it hadn't been discussed, it wasn't an agenda item. So at the last meeting the Mayor reported this to the Board and suggested that it become an agenda item. Mayor Mahon continued that the Council has acted on no motion or vote requesting the Planning Board do anything. The Council has not acted to modify prior resolutions authorizing the Mayor to execute the said MOUs and those resolutions remain in effect. However, negotiations on the MOUs have not continued between FMERA or RPM that would modify them in such a way that could be executed in such a way in accordance with the resolution adopted by Council. Chairman Widdis asked does that mean that the MOUs have gone by the wayside? Mayor Mahon answered that as of this week, the effort to restart negotiations and schedule a meeting with FMERA and members of the governing body, and representatives in order to move forward the MOU with FMERA was anticipated to meet before the next Council meeting. Mr. Johnson asked should the Board hold off until that's found out? Chairman Widdis stated he was thinking the same thing. Mr. Johnson stated that's why we're having the discussion now because the MOUs weren't signed and if they do…Chairman Widdis asked then should the Board wait until its known where it's going based on the negotiations. Mayor Mahon answered that when the Council was asked if they should reconsider the Council's prior action authorizing the Mayor to sign the MOUs the Council chose not to take action and chose not to move them to the regular meeting for a vote to modify the resolutions and give the Mayor consent to sign the MOUs as presented and it was his opinion that the Planning Board should take no action while the matter is pending. Chairman Widdis commented that it would seem premature for the Board to take any action then and to carry it. Mr. DeNoia stated the procedural way to handle it would be to vote on it now and if find in the future the need to return to the matter at that time .Discussion ensued on the procedure and that the 2 options were to let motion die or motion be withdrawn.

Mayor Mahon continued that should the Board determine in the future that it should adopt a resolution to approve or deny the application by RPM for the officer's housing on the south post, that decision should be based on the MLUL and not on third party agreements which have no legal basis for consideration and the reason he says that is what is important that the bind that would place the Borough in legally with regard to the Applicant seeking redress – not with anything else related to Fort Monmouth.

Mr. Johnson interjected that the reason the votes were changed was for... Mr. Kahle said conditions…they did consider them as important part of the decision on the project and what was told didn't happen. Mr. DeNoia accounted that preemption is the most difficult concept that any Planning Board has to deal with it as someone else is dictating things that are normally within the purview solely of that Board. A lot of what is going on in the Fort Monmouth arena has to deal with the legislation that takes the use construction out of the control of this Board and are predetermined by FMERA. This Board has ability to deal with site and certain bulk variances but that was it. Mr. DeNoia suggested that the Board take into account this Board was not in the position to make decisions based on political realities but makes decisions based on the Municipal Land Use Law. Things such as PILOTs and tax credits may not be sustainable in a prerogative rit in front of a court of law concerning that criteria that is determined for site plan approval. Mr. DeNoia expressed concern when the preemption issue obfuscates some of the criteria such as housing tax credits, children in school systems that are more of a governing body concern become part of a denial of an approval or site plan as whatever this Board does has to be sustainable in a court of law and may be more difficult than it appears based on some of that criteria not being the normal criteria in the MLUL. Those factors and potential litigation should be considered by the Board in the overall picture.

Mr. Whitson asked if we reverse the decision we are pretty much facing an automatic law suit that's a negative and would like someone to verbalize the positive of what is gained if its reversed and while we shut down some apartments, houses, how does that help the town of Oceanport. He knows how we lose with a law suit – probably a very expensive law suit and would like someone to answer that question.

Chairman Widdis asked Mayor Mahon if he could address that. Mayor Mahon responded that what he was reporting were a matter of public record and proceeded to recount the actions of both the Council and FMERA, details of negotiations including parcels for Public Works, OEM and school district, a lease for the Firehouse for use as a police station and acquisition of the parade grounds for municipal open space and parkland. The MOU required the Borough to pay based on an appraisal, the transfer from the Army to FMERA approximately .20 cents on the dollar and also required the borough to begin policing the Ft. Monmouth project area within the boundaries of Oceanport and enter into a PILOT agreement with RPM Development and execute a loan agreement with RPM Development in an amount of $300,000 obligating affordable housing trust fund to support that development. That resolution was approved by the governing body. There was a 2nd resolution was between RPM and the Borough and obligated us to participate in a PILOT agreement which was consistent with the schedule of rent receipts and a formula that took into account the assessed value as established by our Assessor that led to a payment in lieu of taxes which amount equaled to about 75% of the amount of taxes that would have normally been paid by the applicant. The next item would obligate the affordable housing trust fund loan agreement for $300,000, create the financing and would also obligate RPM to begin paying that loan amount after the 1st ten years because their primary loan require that they be the primary for repayment and the Borough's portion would begin after that. Additional terms were the creation of a river walk, homeowner's association, property management to handle rental units. However the resolution authorizing the Mayor to sign that agreement had further stipulation that required the Mayor's signature first be on the FMERA MOU had to be executed by both parties prior to executing the agreement with RPM. In January, RPM began their funding application with the State which required they have a formal PILOT agreement in place and too have the loan commitment document for the $300,000 loan details. At the January meeting of the Council, a request was made to reconsider the 2 resolutions to remove the stipulation requiring the FMERA MOU to be executed first and allow the Borough to enter into the Agreement with RPM without that condition. The Council did not move or reach consensus to move that amending resolutions and therefore were not acted on and the resolutions for the original terms still stood. Mayor Mahon recounted the subsequent events following that inaction including FMERA's discontinuance of negotiations, property acquisition and all matters from the prior agreement that had been moving forward for the Borough including the use of buildings for DPW and OEM. Mayor Mahon advised that the Borough did enter into the lease agreement for the police department use of the firehouse and the details concerning any environmental issues in accordance with the finding of suitability to lease. Mayor Mahon continued that the only thing that prevents FMERA from signing the MOU with the Borough is because the Army has not executed a Phase II MOU that would transfer the property to the State's authority and FMERA could not enter into the MOU with the Borough because they don't own the property. Further discussion included the timing issues with the transfer of the land from the Army to FMERA, the loss of the Kiely deal and its impacts on the terms of the purchase by FMERA from the Army and the delays in the closing on same. While the Russel Hall deal fell through it did not stop FMERA's pursuit of the purchase from the Army and the FMERA Board immediately issued a new RFOTP for Russel Hall which the Borough was actively preparing to respond to as an option for replacement of Borough Hall.

Chairman Widdis asked why did some of the Council want the Board to reconsider? Mayor Mahon answered that the position the Borough finds itself in was an inability to achieve, acquire the incentives that had been offered in conjunction with the PILOT but was key to the Applicant to put their financing together and how to use that as leverage to achieve those incentives and it was also important to the Borough to get those sites reoccupied. There was additional details provided on the litigation the Borough finds itself in concerning affordable housing, the Borough's efforts to meet its responsibility, the court's decision that day on affordable housing and that at the time the Board was told about the MOUs it was a true statement and when RPM went for their funding in January was when it began to fall through because the deal with the Army still had not closed and FMERA was not able to execute the MOU at that point. Mayor Mahon concluded that based on all of that he did not believe it would be a positive impact on the Borough should the Board to reverse its decision only to have FMERA Board take preemption and approve the site anyway.

Mr. DeNoia stated that at this time the Board had 2 choices, what those choices were, that the motion could not be "carried" and if the Board chooses to reverse that there should be sufficient comments by the members to establish the reason for the reversal.

Chairman Widdis commented that he thought the motion should be withdrawn until its known how it will work out in the future.

Mr. Kleiberg asked if the motion was withdrawn and he listened to the tapes would he be able to participate in future decisions and was told yes.
Mr. Kleiberg stated that he thought it should be withdrawn.
Mr. Whitson stated he was for withdrawal.
Councilman Gallo was for withdrawal.
Mr. Johnson wanted to mention that the first time the application was turned down it was done for zoning reasons including questions about stormwater drainage that could not be answered. Mr. Kahle agreed and that when they return they should be able to answer all of that.

Afterwards, Mr. Kahle withdrew his motion.

PETITIONS FROM THE PUBLIC: Chairman Widdis opened the meeting to Petitions from the Public. As no one from the public was present Chairman Widdis closed that portion of the meeting.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 10:03 p.m. on a motion by Mr. Whitson which was seconded by Mr. Fichter and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary