

TOWNSHIP OF OCEAN
PLANNING BOARD
REGULAR MEETING
December 2, 2010

Meeting began at 7:30 PM

The meeting of the Township of Ocean's Planning Board was held on the above date and time. The meeting was called to order.

Pledge of Allegiance

STATEMENT: Pursuant to the provisions of the New Jersey Open Public Meetings Act, sending copies of the notice of the meeting properly provided adequate notice of the meeting to the Press of Atlantic City and the Asbury Park Press. Notice was posted on the bulletin board in the Administration Building.

ROLL CALL

Members Present: Anepete, Avellino, Eckert, Sneddon, Sweeney, Tredy, VonSchmidt, Bynoe, James

Members Absent: Knowles, Lachawiec

Professionals Present: Steve Yost, Attorney, Wayne McVicar, Engineer, Scott Taylor, Landscape Architect

Chairman Anepete asked for a motion to take action on the minutes of the Regular Meeting of November 4, 2010. Mr. Avellino made the motion to approve the minutes. Mr. Sneddon seconded the motion. Roll Call: (aye) Avellino, Sneddon, Eckert, Sweeney, Tredy, Bynoe, James. Abstain: Anepete.

Chairman Anepete asked for a motion to take action on the voucher list. Mr. Avellino made the motion to approve the vouchers. Mr. Eckert seconded the motion. Roll Call: (aye) Avellino, Eckert, Sneddon, Sweeney, Tredy, Bynoe, James, Anepete. Abstain: VonSchmidt.

Correspondence is available in the board office for anyone wishing to view.

BOARD COMMENTS

In the interest of allowing the most time possible for the applicants on the agenda, Chairman Anepete asked the professionals to hold their discussion topics until next month.

OLD BUSINESS

Resolution 22-10-PB, Township of Ocean Minor Subdivision, Block 6 & 7, Lots 4.01 & 1, Wells Mills Road, Docket No. 03-09-PB. Chairman Anepete asked for a motion to take action on this Resolution. Mr. Avellino made a motion to approve the Resolution. Mr. Eckert seconded the motion. Roll call: (aye) Avellino, Eckert, Sneddon, Sweeney, Tredy, Bynoe, Anepete.

Resolution 23-10-PB, Green Minor Subdivision, Block 186, Lot 5, 85 Illinois Avenue, Docket No. 05-10-PB. Chairman Anepete asked for a motion to take action on this Resolution. Mr. Tredy made a motion to approve the Resolution. Mr. Avellino seconded the motion. Roll call: (aye) Tredy, Avellino, Eckert, Sneddon, Sweeney, Bynoe, James.

OLD BUSINESS

Seeing None.

NEW BUSINESS

MSC Enterprises, Amended Final Major Subdivision, Block 57, Lot 13(Lots 13.01-13.06), Morey Place Road, Docket No. 06-10-PB, CARRIED from November 4, 2010 meeting.

Mr. Robert Shea of RC Shea & Associates approached and spoke. Two witnesses will be addressing certain issues within the confines of the engineer's report from Mr. McVicar and also which would substantiate the two items that we are requesting to be waived by the board. As an overview, Mr. Rush, Engineer will testify as to the history and also some of the technical aspects of it. The original application was approved back in 2005. It has a tortured history as certain conditions that were attached to that Resolution of approval that were ultimately changed. The approval was for a 6-lot subdivision, contained a variety of conditions in the Resolution of approval. One of which related to the installation of a roadway up and down the entire Morey Place area. Also some references to water and sewer as well. As a result of discussions with both the applicant, the board there was a Prerogative Writ Action that was filed. Another application came back before the board and another Resolution of approval was adopted by the board which essentially did several things. First of all, it weighed the obligation of the applicant to put roadways up and down Morey Place Road. In addition to that, it turned over the issue of water and sewer to the MUA. There were some other conditions that were set forth in there as well relating to light posts and conformance with other ordinance requirements that are typical of those types of approvals. But essentially, there is also a notation in there that the applicant would pay \$75,000 to the cost and maintenance and development as they alleged reasonable and necessary cost relating to the installation of the roadway. Obviously things have changed substantially since 2006 both economically and otherwise. First item really has nothing to do per say with the economy but the reality is that there were a series of conversations that my client had with representatives of the town in around 2009. And as a result of those conversations there were determinations that she was under the impression were made relative to the lighting scheme that was originally approved by the board related to the original ordinance as I understand it approved a particular type of light that was part of the ordinance in 2006, I think it was a King Luminaire as it was termed. Effectively it was a problem created because the JCP&L did not warrant and approve a King Luminaire light. I was just provided very kindly by your counsel a report to the Planning Board which evidentially refers to some conversations that we will be getting into with Mayor Kraft and with representatives of JCP&L. But the board should be aware in reviewing the report that the references to the light that is placed in the report by Mr. Timpinaro relates to a totally different light then what was part of the original ordinance that was approved and the original resolution that was approved for this application. King Luminaire is different then the light that Mr. Timpinaro refers to in his report. So

again I wanted to make sure the board would be aware of that during the course of our presentation. The King Luminaire light is not warranted by JCP&L. The light that is referenced by Mr. Timpinaro evidentially is warranted but is also not part of the ordinance requirements that were set forth in 2006. My client feels that she was received a tacit approval from the township to install and have in fact been installed lights that are used throughout the township. I believe you will be hearing testimony that 70% of the lights probably in this township are similar to the lights that were installed by the applicant on this particular roadway and I understand it there's not many other lights other than the lights that were installed by her on that roadway. As far as the spirit of the intent certainly of the ordinance has been met. In addition to that the evaluation and the cost as Mr. Rush will get into is a much better deal so to speak for the township because of the cost of maintaining such a light is a lot less than what the ordinance provision would have been. The second topic that we are going to be requesting is the issue of waiving the \$75,000 requirement. There are a couple of arguments that I will be making both from a practical point of view and also from a legal point of view. Mr. Rush will be addressing from an engineering point of view as to the need for it and as to the rationale for it based upon the ordinance that was in effect in 2006 and whether or not there were any ordinances that would have addressed or allowed for the imposition of that cost. Even if an applicant agrees there has to be some kind of rational nexus between the ordinance that is in place and an understanding or agreement per se that an applicant will pay for whether it be a roadway offsite tract improvement or otherwise. Essentially we are here for two items tonight, the light poles and the waiver of the \$75,000 which was set forth in the 06 resolution.

Mr. Rush was called as a witness and approached. Mr. Rush was sworn in by Mr. Yost. His credentials were presented and accepted by the Chairman. Mr. Rush testified the biggest issue was the paving of Morey Place Road which was a requirement in the 05 Resolution as well as the installation of public water and sewer. They were main issues in the 2005 Resolution. It became apparent in the next year that the paving of the road would be impossible because of CAFRA limitations and it also became apparent that the MUA was not going to be able to deliver water or sewer to the site. That led to the applicant coming in for the amended approval which was granted in 2006.

Mr. Yost marked Resolution 07-06-PB into evidence as A-1. Mr. Shea stated that the original resolution that was adopted in 05 called for an obligation on behalf of the applicant to pave the entire Morey Place Road. Mr. Rush agreed. There were changes in the 06 resolution. Mr. Shea then read item #2 on page 4 of Resolution 07-06-PB into the record. It was contemplated within the 06 resolution that the \$75,000 would be attributable to payment of costs that were outside of the scope or beyond the property lines of the subdivision. Mr. Rush agreed. Mr. Rush reviewed the ordinances of Waretown. Mr. Rush's view is that there is no ordinance for off-site improvements. Mr. Shea asked if there was any kind of provision within the ordinance of Waretown from 06 to present that sets forth a formula that could be rationally used to determine the off-site tract improvement of this nature and come up with a figure that would have introduced the \$75,000. Mr. Rush answered that he did not see any mechanism in what he read. Mr. Rush also did not see anything in the ordinance that relates to the paying to the township equal installments just prior to and as a condition of the issuance of certificate of occupancy for building lots.

Mr. Shea asked Mr. Rush what is his understanding of the Planning Board's ability to charge an applicant for off-site tract improvements. Mr. Rush answered it has to tie directly to the improvements that you may be extending. As far as long term effects of what you do, I haven't seen that elsewhere. Mr. Shea asked if Mr. Rush saw in the 2006 or present ordinances any mechanism that would remotely be able to be utilized to come up with this calculation of \$75,000 to (as in the resolution) defray the cost of maintenance or improvement of Morey Place Road from and including property east of 532.

Mr. Rush answered that he didn't see anything like that. Mr. Shea then spoke about the ornamental light posts. Mr. Rush spoke with the applicant regarding the history of the light fixtures, what was specified and how we ended up with what we ended up with today. As I read the approval in 06, it referred light posts to special specifications and standards in the applicable ordinance. As I understand it, the only light post specified at that time was what they called King Luminaire which as Mr. Shea said subsequently lead to discovery that that particular fixture is not warranted or maintained by JCP&L so it would not make sense to put them up for the town's future care. I couldn't find exactly where it came from but it was subsequently in the resolution that they should use the Acorn Style Post Luminaire. As I saw the reference it was approved by the Township Committee for installations. Mr. Rush stated that he did not see that in the ordinance, he may have missed it, but he did not see it, which led me to believe that it came from the Township Committee which led to a lot of the confusion here tonight. The applicant went to the township officials and got the approval for the light that was put in.

Mr. Tredy asked if there was documentation on these approvals.

Mr. Shea stated that there were emails he will be submitting into evidence.

Mr. Rush continued the requirement for the Acorn was in the resolution and then ultimately the applicant went outside the Planning Board so to speak which led us to being here tonight to get approval from the township officials.

Mr. Tredy asked under what authority a Township Committee would have to override a resolution of the Planning Board. There is no authority to do that.

Mr. Shea said the reason we are here is to request a waiver from that and certainly explain so the board can take into consideration the history behind how these lights got there and without pointing the blame at anybody, the fact that the matter is the lights were installed, there was apparently substantial discussion and substantial misunderstanding between the applicant, the board and the council. We are here tonight explaining to the board why it should grant the waiver, we are here for a waiver and we feel there is certainly justification for it. Your counsel will I'm sure tell you that requesting a design waiver from a Planning Board is not a variance, there is a lesser standard and under the applicable Land Use Statutes the standards would be whether or not the spirit and the intent of the ordinance would be met by waiving it.

Mr. McVicar stated that you indicated that the King Luminaire is not maintained by JCP&L. Mr. Rush said he read that. The acorn fixture that is on the original subdivision approval that fixture is that fixture still maintained by JCP&L? Mr. Rush answered yes it is. Mr. McVicar: Along with lantern style that has been installed. Mr. Rush answered yes they are.

Mr. Shea will be providing information that Mr. Rush is indicating he read further in the application. Mr. Rush will be available for questioning after the presentation is finished.

Mr. Shea stated that the original resolution of approval in 06 approved a series of lights that were not designated as the Acorn Style lights. The ordinance at that time provided something other than Acorn Style. Mr. Rush stated as I read it, the King Luminaire was the one specified in the ordinance back then. Mr. Shea continued the King Luminaire light as I understand it was the light that was not maintained by JCP&L. Somehow an Acorn Style light was placed within a resolution. Was that particular style of light an approved light for the ordinance? Mr. Rush said he didn't see it and he may have misunderstood it but the way it was referenced in Mr. McVicar's report it was a fixture which had

been approved by the Township Committee for other installations in the township. I'm not sure if that meant it was in the ordinance, because I didn't see it, it was sort of inclined to me that it was another commonly used fixture.

Chairman Anepete stated for Mr. Rush's information that he thinks what that meant was there are examples of it all over town that could have been looked at and seen what our standards were. Mr. Rush answered coincidentally the light that was put in is also very commonly used. Chairman Anepete answered not in our town.

The light post installed was the Colonial Post Luminaire. Mr. Rush had looked at the specifications for this style light. The performance of the two fixtures in terms of lighting is very similar; there is not a significant difference. The one that was installed is maybe four or five percent cheaper to run per year and when all is said and done it is a question of aesthetics. Chairman Anepete asked about the quality and if that was considered equal by Mr. Rush. Mr. Rush answered it's a more expensive light. The Colonial Post Lights would be warranted by JCP&L. It is a commonly used light fixture by JCP&L. Chairman Anepete again stated, but not in our town, it is not our standard. Mr. Rush agreed to Mr. Shea's statement that there would be no substantial detriment to the Zone Plan, the Master Plan of Waretown or have any substantial impact upon the community or the adjacent property if the waiver was granted. Mr. Rush feels in his opinion the cost of disturbance to replace would not be matched by the gain to the Zone Ordinance or the development of the area along Morey Place Road. It would be within the terms of reason to approve the waiver at this juncture since the lights are in. Mr. Rush sees no rational nexus between the ordinance that was in place at the time of the 06 resolution and arriving at the figure of \$75,000. Mr. Rush sees nothing in the ordinance that supports the formula listed in Mr. McVicar's letter. Mr. Rush sees nothing in the ordinance that would justify that formula used by Mr. McVicar regarding the upkeep and maintenance of the gravel considering the impact the proposed development will have on the roadway. Mr. Rush does not have any way to calculate any fiscal impact without some methodology to determine it. Mr. Shea spoke to Mr. Rush that he is comfortable with the fact that the original resolution appears to be ambiguous as to which light should or should not have been put in. Mr. Rush answered yes because he didn't see the ornate Acorn as a specified light. The King Luminaire light was specified in the ordinance. Mr. Rush, from an engineering perspective, doesn't feel there would be any harm created by the lights that are in there now. It would cause disturbance to the site and unnecessary expense on the applicant.

At this time, Resolution 16-05-PB was marked A-2 in evidence by Mr. Yost. PB-1 was marked into evidence by Mr. Yost as Mr. McVicar's letter.

Chairman Anepete asked if there were any questions for Mr. Rush by the board.

Mr. Tredy went back to his previous question of Mr. Rush which was what was he referring to when he said he "read" things. Mr. Rush stated that the applicant has the paperwork and she comes forward she have it. Mr. Tredy asked Mr. Rush if he felt his statement of there being no detrimental impact for the township and the fact that the township will not receive the \$75,000 to maintain the road would not be considered detrimental. Mr. Rush answered that he didn't see a mechanism in the ordinance that would allow for the payment of that money. Chairman Anepete added that the applicant agreed to make that payment. Mr. Shea spoke that it is their position that an applicant can't agree to something that is legally invalid and \$75,000 was thrown out initially by several member of the Planning Board in 05 and there seems to be no basis for it whatsoever. There has to be a basis for establishment of off-site tract improvement for it to fly. Whether an applicant agrees to it or not, there has to be some kind of rational nexus between the number evaluation as to where it is going. There has to be also a

mechanism by which the township can receive that money and then where that money goes. Chairman Anepete recapped that we would have determined how our rational was arrived at for the \$75,000 and why it would be a rational thing to expect.

Chairman Anepete went back to the lighting. Chairman Anepete stated the design standard in town that we use has a concrete base and the pole standard is bolted to that. The poles that were installed are just put into the ground; there is no foundation for them, only a hollow tube of fiberglass pushed into the dirt. Our design standard is more wind resistant, hurricanes, high winds etc... Mr. Rush added the other poles meet JCP&L's standards for hurricane winds and stability.

PB-2 (memorandum report to Planning Board members) was marked into evidence Mr. Yost. This memorandum reflects some of the inquiry as to how this discrepancy developed which was given to Mr. Shea before the meeting tonight by Mr. Yost. Mr. Shea had issues with this matter even being discussed with the board. It was outside of the scope of an application. It involves discussion with two board members meeting with the Mayor where the applicant was not present. It is hearsay at best and really should not be remotely considered as part of this application. Otherwise I would put the board on notice that Chairman Anepete and Mr. Sneddon would potentially be witnesses in the case which they may as a result of that not be able to hear the application. Mayor Kraft potentially is a witness. If the board was so inclined to utilize this in their deliberation process we have absolutely no idea as to what the substance of that discussion was. If the board wants to bring people in and have them testify then I think it's certainly fair game. Mr. Yost asked if the applicant is objecting to Chairman Anepete and Mr. Sneddon sitting on this application. Mr. Shea answered that at this point and time, as long as this particular report does not go into evidence I have no problems. If they do, I think the substance of what their discussions were with the Mayor could potentially slant their determination and very frankly I raise the issue now so that it doesn't go any farther and the board doesn't further consider something that literally should not be considered. Each application should rest on its own merit and should rest on the information presented by the applicant and a determination should be made. Mr. Shea agreed that the formal rules of evidence do not apply to this but at the same time I think that issues of prejudice certainly do apply especially where I do not have the opportunity of cross examining people who have given statements in here. If the board was so inclined to rely upon the information contained in the report that is where I have an issue. Mr. Yost replied that he understands. The report was provided to Mr. Shea because quite frankly Mr. Yost anticipated a possible issue about the letter and the Mayor's signature coming up. I don't know to what extent any of the discussion will be relied upon. That is why it was provided to you because we thought it would be fair to the applicant so if that rose it would not surprise the applicant. In terms of relying on hearsay, the Chairman may determine that we have to bring in Mr. Kraft. We have to take it as it comes. I understand your objection in terms that you may think that there is some prejudice from some of this and obviously hearsay is un-cross examinable and to that extent the courts don't allot a lot of weight to that. Mr. Shea wanted his position to be on the record that if the board was so inclined in whatever way shape or form to rely upon this document to arrive at its decision, I think it is reversible. The board would be depending on evidence that is not part of the applicant's presentation and not part of the record and purely hearsay and based upon conversations that Mr. Sneddon and Chairman Anepete had with two individuals who is not here tonight who I can't have an opportunity to cross-examine, I would only just advise the board of that. Mr. Yost at this point stated to just mark it as identification.

Chairman Anepete showed a catalog of JCP&L lighting fixtures that are available that can be purchased and will be maintained by JCP&L. He would like to offer this catalog as evidence because these lights can still be purchased, installed and maintained and are currently being maintained by

JCP&L. Mr. Shea raised an objection that the board chairman is doing independent research outside of the scope of this hearing to determine whether or not prior to an expert testifying that he is correct or not. If there an issue to a particular pole that is now maintainable, it is our position and it goes back to the original 2006 Resolution, not so much as to what is available and warranted now but what was approved and available in 2006. Chairman Anepete contended that they were also available at that time. Mr. Shea indicates that Chairman Anepete is indicating that that is the case. If the professionals want to present that as part of their affirmative proof, and documentation to that affect, Mr. Rush would be more than happy to take a look at it.

Mr. McVicar asked the light fixture shown on the approved subdivision development plan which fixture is that? Mr. Rush was shown a copy of the plans and spoke that they were in the Ornate Acorn fixture. Mr. McVicar spoke that we have documentation that it is maintained by JCP&L. That is maintained as well as the Lantern Style fixture. Mr. McVicar was recapping Mr. Rush's testimony that the King Luminaire is referenced by ordinance. Mr. McVicar asked so when it came time to install the fixtures that rather than looking at the approved plans, you went to that particular luminaire? Mr. Rush stated yes but now he is getting outside of where he was involved. Mr. McVicar asked Mr. Rush, as an engineer, if a fixture that the ordinance reference that is not maintained by JCP&L would you go back to the development plans and take a look at the picture and see if JCP&L had that fixture? Mr. Rush stated that would be one path to take. Mr. McVicar asked of the two fixtures, the Ornate Acorn and the Lantern (which was installed) which one looks like the picture in the approved drawings? Mr. Rush agrees that that is on the plan, but I'm saying the path the applicant ended up having to take differed. I agree that's how maybe I would have done it. Mr. McVicar stated these development plans I signed off as the board engineer – they are approved for construction. These approved construction plans have that picture on it. One would expect that that's the picture that is expected to be installed. One would expect that if you couldn't install that fixture that you'd have come back before the board and say "you can't install that fixture; we'd like to install an alternate". Mr. Rush stated I understand that that is the normal process. Mr. Taylor took it a step further that the detail on the approved plans is generic. It doesn't provide for a manufacturer. It simply says Ornate Acorn Style Post Top Luminaire, 70 watt, high pressure sodium. It doesn't say it has to be King; it doesn't have to say any manufacturer. There would actually have been flexibility for the developer to use any number of Ornate Acorn lights at that time. Mr. Taylor asked Mr. Rush if the applicant consulted with him before the change was contemplated. Mr. Rush answered no. Mr. Taylor asked if Mr. Rush researched at the time when these were installed whether or not there were any Acorn offered by JCP&L. Mr. Rush stated that he was not part of the project when those decisions were being made. Mr. Taylor spoke to Mr. Rush saying he is researching now saying that the prior ordinance, the specified unit is no longer identified by the utility company it is no longer maintained. Mr. Rush replied yes. Mr. Taylor asked if it was maintained in 2009 when these were installed. Mr. Rush replied no. It was not on their accepted list at that time. That is the research that was given to Mr. Rush and he read the reports that said this. Mr. Taylor: The developer could have installed an Ornamental Acorn that was fully maintained by the utility. Mr. Rush stated he believed that to be the case. Mr. Taylor: So they could have put an Acorn in. Mr. Rush: I wasn't part of the process. Based on what I know at this point in time having researched what went on and what happened I believe that was a path. Mr. Taylor: So they could have done that and been in full conformance. Do you think what they have installed out there is desirable aesthetically to have a varied combination of Acorn fixtures with Town and Country fixtures? Mr. Rush: On the same street? You are asking an engineer about aesthetics, not my forte. It depends on variables, it depends on the setting. It is possible it could work in other ways.

Mr. McVicar asked if Mr. Rush felt it was within the board's jurisdiction to require the applicant to pave the road from 532 to the frontage of the property. Mr. Rush stated that he believes the board has

the authority to do that. Mr. McVicar: So would it not be in the board's authority to then with an amended resolution or second resolution take that off the table of paying it in lieu of a contribution of \$75,000 regardless of how that was determined if the applicant agreed to it? Mr. Rush stated that is legal stuff.

Mr. Yost asked if Mr. Rush had the opportunity to review any of the minutes from the board meetings from when the original resolutions were passed. Mr. Rush answered no. Mr. Yost stated so you aren't privy to any of the discussion as to how the \$75,000 was arrived at? Mr. Rush had no specific information. Mr. Yost stated you can't tell us if it was in connection with some kind of subsidy in lieu of the agreement to install the road? Mr. Rush stated I can see how it could have been in the 05 Resolution that something could have been negotiated but then I'm an engineer, not a lawyer. Mr. Yost stated so without reviewing the minutes from those hearings you really don't have information as to how that number came about. Mr. Rush answered no.

Mr. McVicar spoke if the town is going through this process now to maintain the road would the development of six additional houses add to the required maintenance by the town? Mr. Rush answered probably yes.

In a question from Mr. Tredy to Mr. Yost, Mr. Yost gave a brief explanation on Mr. Shea's hearsay objection to the report from the subcommittee. Formal rules of evidence don't apply but the problem is how much weight can you give to something unless you can cross-examine an individual. What we can do is if the applicant had a relationship with any of these people, the board could ask the applicant to bring that person in or Chairman Anepete could subpoena or ask Mr. Kraft to come in and testify or we could request or subpoena someone from JCP&L to come in. Mr. Tredy stated the reason he brought up was because it has already been brought up and distributed and read. We have to open this up in its entirety and get these people in so that testimony can be made otherwise the fact that we even read this would be used against us. Mr. Yost added that document was generated about a year ago before this application was ever here. The board has to make decisions based on the evidence that is presented. Mr. Yost stated if the board feels it is important to get into the substance of this document, then the best way is to bring in those witnesses so Mr. Shea has an opportunity to bring out and develop his points. Mr. Tredy stated that the board thought it was quite important back in January so it would probably be as important in December. So as to give the applicant a fair opportunity, I think we should use this and require the individuals that are mentioned in here to appear before us.

The presentation continued with Mr. Shea following up with questions to Mr. Rush that were asked by Mr. Taylor. Mr. Rush has been involved with job where features such as light poles or placement of manholes, etc... We met with the township engineer and moved them – referring to field changes. Mr. Taylor stated that the applicant was told by our office and I understand by the Township Engineer as well that that was not an acceptable substitution. Mr. Taylor asked Mr. Rush that you indicated that moving a light post would be an acceptable field change. Would changing the style of light fixture where a specific discussion in a resolution identified that light fixture. Mr. Rush answered he never had that circumstance in the past so I can't answer that. Mr. Taylor asked if Mr. Rush ever designed subdivisions for lighting design. Mr. Rush answered yes he has designed subdivision but someone he works with does the actual landscaping and lighting. Mr. Taylor asked if he signs those plans. Mr. Rush answered yes I do. Mr. Taylor: How many do you think you have done in your career? Mr. Rush answered 400. Mr. Taylor asked if he'd ever used more than one type of fixture on a specific street. Mr. Rush answered not that I recall.

Mr. Shea followed up with Mr. Rush again. Mr. Rush didn't see any specific formulas or methods but there was nothing in the ordinance that specifically spelled out how to Mr. Shea asked this is a calculation that is generated by Mr. McVicar and what his estimates would be regarding maintenance. Mr. Rush agreed that is how he read it. Mr. Shea: There appears to be no justification for using that particular formula, not saying its unreasonable just there is no justification for it. Mr. Rush stated not that I have found.

Mr. Shea read NJSA40:55D-51 statute into the record. Mr. Shea then asked Mr. Rush based on his understanding of the application and intended purpose of the statute have you drawn any particular conclusions as to whether or not the applicant would be entitled to those waivers based upon impracticality of placing those particular poles in at this point in time and certainly any undue hardship.

At this time (8:41 PM) the fire whistle went off so a short recess was taken. The board reconvened at 8:57 PM.

Mr. Rush explained why he felt this applicant meets the burden of proof under the former quoted statute. While it is certainly feasible to knock down and put in new fixtures, in my opinion, the net cost which is disturbance to the property, disturbance to the ground, the expense of doing that and to take down a light fixture that meets JCP&L standards, the benefit is the aesthetics. In my opinion the net gain is outweighed by the net effect of the cost of disturbance.

Chairman Anepete commented that our position on the aesthetics which you said as an engineer you aren't really qualified to determine, we are looking more at standardization and conformity with the other fixtures that are currently installed and we have used as our standard throughout the town and intend to continue to use. That what weighs in our consideration of why they should be in compliance with the municipal standards, just for the record. Mr. Shea added that the reason we are here is to ask for a waiver from that conformity as permitted by statute.

Ms. Michelle Garofalo approached and was sworn in by Mr. Yost. Ms. Garofalo stated that the confusion here was not to nickel and dime the town and put something in that was cheaper, the confusion came from purely miscommunication from township officials. When I was ready to put the light fixtures in, of course, I was waiting for the water to be brought down from the township which was a hardship on me, especially in economic times waiting two years for the water to come down to find out the water cannot come down and will not come down. Now I am ready to proceed with the development and wait for my money back that I gave the town that I had to go to court and burden more hardships and more money to get my original agreement of my money back from the town. Two years waiting, two years can't do anything, now I'm ready to proceed with the subdivision. Mr. Shea asked when this was. Ms. Garofalo answered in 2009 when I received a phone call from Mr. Miller that the water will not be going in. At that point I decided to proceed with well and septic and was agreed upon with the town and we moved forward. I'm ready to put the lights in and I asked Alaimo Associates to please give me a letter for JCP&L so I can proceed. I received my letter of approval to proceed and that is proper protocol where you go to the engineer and they give you a letter accepting the lights for the road. Mr. Shea asked if she had a copy of that letter. Ms. Garofalo answered yes. It was then marked into evidence as A-3 2/27/09. Ms. Garofalo read the letter into the record to JCP&L from Martin Miller. Ms. Garofalo testified that the light stated in Mr. Miller's letter is not the light that is on her plan. This is a light that Mr. Miller sent to install and sent it to JCP&L. This is the light that is in the ordinance (detail and cut-outs were sent to Ms. Garofalo) King Luminaire fixture Model K199 California Style black pole, 13' Cleveland, decorative fluted fiberglass pole. This was

not the pole that was on her plan. As a result of getting that letter, she spoke to Mr. Miller who said it was in the ordinance. She then called the township and got a copy of the ordinance. A-4 was marked into evidence as the Township Ordinance. Attached to Mr. Miller's letter was a cut-sheet that he provided and that cut-sheet echoes the ordinance. That light that he discusses in the acceptance letter is not the actual light that was part of the original site plan. As a result of that, thereafter, I then contacted Ken Mosca and told Ken that Mr. Salazar from JCP&L told her that the King Luminaire is not supplied by them; they do not warrant and maintain it. Per Ms. Garofalo Mr. Mosca stated why are we putting that on anyway to which Ms. Garofalo replied I don't know I have the Acorn lighting on the site plan. Ken then said he would speak to the Mayor. Email from Ken Mosca to Ms. Garofalo dated March 20, 2009 was marked as A-5 in evidence by Mr. Yost. Mr. Shea read the email into the record. Also marked into evidence is A-6 which is a cobra light cut-out marked by Mr. Yost. This email stated that Mayor Kraft is okay with the two cobra lights on top of the poles instead of ornamental and he was waiting for a reply from Mr. Reilly. Ms. Garofalo then called Martin Miller and said how can I put two lights on a pole when I have to put six lights in. Then Ms. Garofalo receives an approval letter for the correct (Ornate Acorn Style Post Top Luminaire) light fixture on the site plan. That letter is dated May 26, 2009 from Martin Miller to German Salazar of JCP&L and was marked as A-7 into evidence by Mr. Yost. Mr. Shea read this letter into the record. After this, I had conversations with Mr. Miller, Ken Mosca and myself. Fax from Martin Miller to Ken Mosca is marked as A-8 in evidence by Mr. Yost. This is a 6/23/09 fax from Martin Miller to Ken Mosca. Ms. Garofalo said it was clear to her that the ordinance said one thing, my site plan says another, there is an issue here and I was letting the officials lead the way. Ms. Garofalo said this fax is giving her her options which are: JCP&L L&R, King Luminaire (which JCP&L does not warrant), Ornamental Acorn – approved plan light – whatever that meant and the Colonial Light which is installed now. At that point Ken Mosca called me into a meeting into his office which Diane Ambrosio was there as well. We went on a conference call with a woman named Stephanie who was Rob Timpinaro's boss. The conversation was about what was the best savings for the town to pay for lights, and the conclusion came to be out those five choices the Colonial Post Standard Luminaire which is part of the 5 choices we had – would be the best savings for the town for the wattage. Ken said he had conversations with many members that why light up such a rural neighborhood. It's a country setting, let's go with the 50 watt, we'll save money throughout years and times. That was the end of the conversation. A week later Ken informed me that the Mayor has approved that light fixture and to proceed with installing that fixture. At this time A-9 was marked into evidence by Mr. Yost. A-9 is a July 30, 2009 letter signed by Robert Kraft to Maria Sessa of JCP&L. The letter was described and was read into the record by Mr. Shea. Ms. Garofalo continued... after receiving this letter, I contacted Ken Mosca and said what does this mean? Mr. Mosca said proceed with installing those lights. They are approved. I thought this was my approval to move forward. To the best of Ms. Garofalo's knowledge JCP&L had received the approval by the township to proceed with the work. The lights were installed by JCP&L which Ms. Garofalo stated that they have to get the township to sign off on it before they can put something in. Ms. Garofalo hired JCP&L to get the proper paperwork and install the lights. When I went in for the bond reduction I was contacted by someone else from Alaimo and asked how come the lights were not taken off the bond reduction. Then I get a ticket in the mail from Laurie Clune. The township was notified when they were going in by JCP&L. It is Ms. Garofalo's thinking that if she did not request the bond reduction then she would not be before the Planning Board. I thought it was a field change.

Mr. Tredy asked Ms. Garofalo if during the emails and correspondence that were going back and forth prior to getting the letter from the Mayor, did you have in your employ an engineer who was guiding you through this process. Ms. Garofalo replied no, my engineer moved. Mr. Tredy added that perhaps if you had an engineer he would have told you that you were required to follow the resolution that was

approved by the Planning Board. Ms. Garofalo spoke again about the letter from the mayor and all the people that were courtesy copied and she again spoke about this being a field change.

At this time Mr. Tredy asked about other emails that preceded the letter from the mayor regarding the lights which told Ms. Garofalo no that she could not make a change until she came back before the Planning Board. Mr. Shea spoke to Mr. Tredy regarding having previous knowledge of these emails. Mr. Tredy said he feels these other emails should also be entered into evidence. Mr. Shea gave the opinion that Mr. Tredy has prejudged the application and perhaps should be disqualified. Mr. Shea spoke that if the board is so inclined to enter emails that have taken place then so be it you can certainly do that. Mr. Tredy said that is what he was offering. Chairman Anepete responded that all the information that all board members are privy to are because the applicant has been before us several times. In fact, we have a resolution agreeing that she would put in the lighting that we are referring to tonight to get a waiver on. It is impossible for these members not to have knowledge of what has transpired in the past. This is information that we all had been exposed to in the previous presentations before this board. So we are not talking about delving in and reviewing new information that you are not privy to. This information is common. The applicant has of course seen these memos because she was in fact addressed by them. Chairman Anepete then asked her if she was ever told that she had to come back before the Planning Board prior to this approval by Mr. Kraft who does not have the authority to approve. Did any of the people that you entered into evidence here as responding to you like Mr. Miller, the Zoning Officer Laurie Clune, Ms. Ambrosio – did anyone tell you that it would be required that you come back to the Planning Board for relief because in fact we were the only ones in fact who have the authority to do so? Ms. Garofalo stated Mr. Miller had mentioned that to me. First she referred back to Mr. Tredy's question that yes there were lots of emails. I didn't print hundreds of emails that went back and forth. I just brought the most important ones. As far as the Chairman's question, yes they were unsure of what light, if I had to go to the Planning Board, if it was a field change, everybody had a different opinion. Mr. Miller said at one point said it was a simple field change then he said you had to go to the Planning Board. Laurie did not know, and then she looked it up and said you have to go to the Planning Board, then Ken said you don't have to go to the Planning Board, it's not in the ordinance. This went around for many months until I got that letter. That letter I acted on. Mr. Shea said as indicated there have been some issues on both sides of the fence. That is the reason we are before this board. Based upon my discussions with her, I indicated to her the way to resolve this is to get before the board and ask for a waiver. Mr. Shea then spoke again about estoppel.

Mr. Yost spoke that the chronology is very important. It is part as to what happened in what order. It is hard to anticipate what documents we need to look at but I want to place on the record that certainly anything that is evidentially and relied on and considered by the board we are going to make sure you get a copy of. I think your client probably has copies of those.

Mr. Shea spoke that he has no objection to board members reviewing information that is on the record. If it is not on the record, it doesn't exist. As a result of this letter, somehow magically JCP&L received permits to install these lights, was paid after the installation of the lights and the lights are on. Something went askew and that is why we are before the board trying to rectify this issue that exists and the confusion that surrounds this issue. Mr. Shea then addresses Ms. Garofalo again stating the culmination was the July 10, 2009 letter. After that the lights were installed by JCP&L, they went in, nobody said anything to me, I proceeded. The violation was received by Ms. Clune. Ms. Garofalo spoke that she has been a hardship to me financially over a light fixture that I really honestly thought the mayor had the authority to proceed with. I just think it's misunderstanding all over.

Chairman Anepete spoke that the Planning Board is who you come before. A resolution is written that you have agreed to and signed off on. Only this board can give you relief or a waiver from any of the covenants contained therein. In the future, don't go to anyone else, the Planning Board is the only one that can authorize those changes. Ms. Garofalo stated that she did not know that and she thought this was a field change.

Mr. Avellino asked if Mr. Butensky stated this to her? Ms. Garofalo said to me that he is unsure if this is a field change or a municipal Planning Board change. But when the letter came, he said well I guess they made up their mind and it was a field change. Mr. Avellino asked about Mr. Miller and Ms. Garofalo stated that Mr. Miller was also unsure if it was a Planning Board or field change. Then he came back before that letter was sent and said you got to go back before the Planning Board. But then I got the letter and Ken said you don't have to go back to the Planning Board. So many mixed conversations.

Mr. Shea spoke about the \$75,000. It is my understand that going back into history with this, back in 2005 there was a requirement for you to install roadways up and down the entire Morey Place Road. Ms. Garofalo said yes. Mr. Shea: As a result you were also represented by Mr. Williams at that point in time and I understand that after that resolution of approval was adopted there was a Prerogative Writ action that was filed. Ms. Garofalo replied yes. Mr. Shea: And part of that lawsuit involved also issues related to water and sewer and actually the roadway. There was a subsequent application that was made to the board to relieve you of that responsibility that being the paving of the roadway and there were certainly discussions regarding the \$75,000 that was ultimately placed as an item within the resolution of 2006 that has been marked as A-1. Ms. Garofalo stated that is correct. Mr. Shea: Could you give the board the benefit of the best of your knowledge how that \$75,000 was arrived at it at all? Ms. Garofalo stated the only conversation that was taken place was that Mayor VanPelt had visions to pave the road himself and he was going to do it at a later time and in lieu of the paving he would ask for money. It was discussed several times with him during the Planning Board and with him closed doors. Ms. Garofalo is aware of no formula used to determine this number. Ms. Garofalo said it started at \$20,000 with estimates to pave the road was \$20,000 to \$25,000 and where we came up with \$75,000 was thrown out during the Planning Board.

Mr. Tredy asked if the \$75,000 didn't the engineer or attorney have any input to you as to whether or not you should agree to this or not? Ms. Garofalo answered no. Mr. Tredy stated but you agreed to it. Ms. Garofalo said I thought it was proper way to do business. I thought you were going to pave the road and I thought there was a formula in place that came up with this number that justified this number. In October 2009 I received a phone call from Ken Mosca saying that they took a bid from Childers to pave the road. The bid is favorable, it was about \$23,000. I am going to proceed to Martin Miller to pave the road. Martin Miller was then contacted and said the road would not be paved. There are too many permits, it triggers CAFRA. The township will not be involved in paving the road. So Ms. Garofalo thought what was the \$75,000 for? Where did they come up with \$75,000? Mr. Tredy asked if it was ever mentioned to her about the maintenance. Ms. Garofalo replied that it was mentioned to me that they would maintain the potholes until they paved the road. I thought I was giving \$75,000 to pave the road.

Mr. Avellino spoke that your lawyer and your engineer knew. Mr. Shea stated that she has a new lawyer and I am asking the board as to where the formula is now and how that was arrived at. There appears to be no rational nexus. It is based upon representations that the township had made regarding their intentions to pave that roadway which obviously has never happened nor as I understand it never will as a result of CAFRA.

Chairman Anepete asked Mr. McVicar if he had any recollection of how that formula was determined. Mr. McVicar stated that we didn't do that calculation. It was presented by the applicant in lieu of paving the road, they proposed \$75,000. It would have been a requirement of the applicant to pave the road from 532 up to the end of their property.

Mr. Tredy: The applicant came up with this number? Mr. McVicar answered that's my recollection.

Chairman Anepete spoke that the paving of the road would have been an expense the applicant would have incurred. Mr. McVicar said that is correct. Chairman Anepete continued that that expense I presume was much more than \$75,000 if it had to be done. Mr. McVicar could prepare a calculation although he was not prepared to do that tonight but there is a specific formula for calculating the road based upon the construction and we know the value of the asphalt and preparation. There is the hidden cost of the permits that would be required to get the approvals from the state in order to do that but I can give you construction costs. My recollection is the \$75,000 was not an unreasonable number at the time.

Chairman Anepete explained to Ms. Garofalo that we are saying you already had an expense that you intended to incur. Ms. Garofalo stated that the \$75,000 came from Mayor VanPelt. Mr. Shea added that the \$75,000 was based upon improving the entire roadway which is our position we go back to ancient history and the board just can't do that. You can't require an applicant to pave an entire roadway outside of the scope of their application. To address the number, Ms. Garofalo's testimony is that the number that was discussed was with the assumption that the township was going to bear the burden of updating that road which has not happened and to the best of our knowledge cannot feasibly happen because of the regulations. Essentially she is being requested to pay for something that literally will never happen and is improper for this board to impose a fee upon an applicant that has no intentions of completing the improvement that is anticipated as part of this application.

Chairman Anepete spoke that it is my understanding that the developer had already agreed to a paving of a portion of the road which would incur expenses on their part. Evidentially they had agreed to in lieu of doing that, \$75,000. The number evidentially according to Mr. McVicar came from the applicant not from the Planning Board. The applicant testifies that Mayor VanPelt suggested that number to you (Ms. Garofalo – yes) and you agreed to it (Ms. Garofalo – I thought he had a calculation and this is how much it cost but now no one is paving the road). I think it was pretty clear that the road wasn't being paved at that time (Ms. Garofalo – not at all...it was always going to be paved).

Mr. James left the meeting at 9:40 P.M.

At this time, Mr. Yost marked into evidence minutes from the original meetings.

- J-1 February 7, 2005 Special Meeting minutes
- J-2 April 7, 2005 minutes
- J-3 February 2, 2006 minutes

A motion was made to open to the public by Mr. Tredy, seconded by Mr. Eckert. Roll call: (aye) Tredy, Eckert, Avellino, Sneddon, Sweeney, VonSchmidt, Bynoe, Anepete.

PUBLIC COMMENT OPEN

Mr. Shawn Denning, 145 Morey Place Road approached and was sworn in by Mr. Yost. Mr. Denning read into the record a letter he had written which was a formal objection to any changes of the plans and approvals concerning Morey Place Road. He feels he has been negatively impacted by the project. The required lights will provide a noticeably more attractive appearance. The current lights are misaligned haphazard and they aim in all different directions. The roadway is badly worn. There are only 5 houses on the road currently. The current road is unable to support the traffic from these five families. To allow the road usage to more than double without improvement would be unsustainable. The Road Department has been maintaining the road and it has never been worse. There has never been an option of not improving the road. Mr. Denning is requesting that his board become involved in this project as the roadway needs to be tapered or crowned with drain swales installed to prevent the road from wearing out again. The incorrect street lights need to be replaced with the correct lights. There should be seven lights installed and there are only six, only three are working. The second three have never been turned on. The site work needs to be finished. Mr. Denning's house was built in 1992 and he objected to the original approvals. He supports the development and the project, but he does not support the terms and criteria to the development. He doesn't feel the road is able to support without being improved for development. Mr. Denning doesn't feel that there was ever a discussion that the road would not be improved. He feels the confusion came from who is going to improve the road. It is his understanding that the \$75,000 was so the township would bear the burden of getting the road improved and that would enable the applicant to move forward with the project rather than be delayed with the CAFRA permits. That was his understanding. Mr. Denning has been maintaining the road for the first 10 years he lived there. He could not obtain his C.O. for his house until all the work on the road was done.

Mr. Shea produced a deed restriction and read it into the record for Mr. Denning's property. A brief discussion regarding the contents of the deed restriction took place between Mr. Denning and Mr. Shea. The deed was marked A-10 and admitted into evidence.

Mr. Shawn Denning, Jr., 92 Morey Place Road approached and was sworn in by Mr. Yost. Mr. Denning read a letter he wrote into the record. Mr. Denning owns one of the lots in question, Block 57, Lot 13.06. The agreed upon standards need to be followed. The current condition of the road is hazardous. The developer's agreement requires drain swales which are not in place. The old road has not been restored to grass and dirt. As a lot owner, I am not apposed to paying the \$12,500 provided the road is improved. The only improvement thus far is the relocation, which has really only been widened. Mr. Denning would like the township to apply for the CAFRA permits and begin the process of paving the road. This board must hold the developer to the agreement set forth in previous resolutions. Mr. Denning has in his contract for his lot that it specifies he shall not be responsible for the street lights or the addition of any street lights.

Mr. Shawn Denning Sr. approached again and spoke regarding his son's contract and the purchase of his son's property.

A motion was made to close to the public by Mr. Avellino, seconded by Mrs. Sweeney. Roll call: (aye) Avellino, Sweeney, Eckert, Sneddon, Tredy, VonSchmidt, Bynoe, Anepete.

PUBLIC COMMENT CLOSED

Mr. Yost stated that we have some housekeeping to talk about. Obviously some issues were raised here. We have an estoppel issue which has been developed by the applicant and I think the board

should consider what other testimony they think they need to hear from any other parties in order to evaluate the status of what has been testified to here tonight. Mr. Yost asked if Mr. Shea had any requests of anybody specifically.

Mr. Tredy stated that in my mind there were a couple of contradictions in regard to the \$75,000 and as to how it took place. Mr. Tredy would like the board to see have time between now and next month to review any of the documents or testimony that we have on record that indicates exactly how that took place.

Chairman Anepete stated that the evidence that was admitted by the applicant, the board has not had time to review or and peruse. They need time to look those over. We will copy each of these exhibits to each board member so they have time to review them.

Mr. Tredy added that there are other things also. Mr. Tredy felt that although Mr. Shea was quick to mention that certain things were hearsay evidence, we were given a lot of hearsay as far as statements made by the Engineer, Mr. Miller, in regards to the lighting.

Mr. Yost stated I think we can get past that if we have a consensus of who we need to hear from. I agree with you.

Mr. Tredy: There was also the fact that I made mention of previous emails. I'd like those emails gathered up and submitted into evidence so that the applicant's attorney cannot say that we are the only ones that know about it.

Mr. Yost stated it is his intention to coordinate with Mr. Shea to try to get a stable record that we can move forward with next time and I think the sequence is important, the chronology is very important. If Ms. Garofalo testified to a number of emails where she was told she couldn't do it and then she testified to this letter which told her that she could do it. I don't think we need to necessarily put in 75 emails that say she can't do it. We need to take a look at the emails and whatever I have I will make sure that Mr. Shea gets in advance. If its something that I think we need to put in the record and that I may ask her a question about.

Mr. Shea clarified that the letter we keep referring about that was sent to Ms. Garofalo was actually sent from the Mayor to Maria Sessa of JCP&L. Mr. Yost agreed.

Mr. Tredy would also like to know because everyone read memorandum that this be made part of the record and keep it open and above board so it can't be said that we have information that was gathered outside. Chairman Anepete stated that that was already marked. Mr. Yost stated that it was marked for identification. I think the better evidence I propose that to the extent the board wants to explore or thinks they need to explore what's in that letter we should make an effort to hear from the principals rather than rely on that and that removes the problem.

Chairman Anepete stated that we perhaps need to subpoena those people who we referred to earlier and that would be specifically, should we name them now?

Mr. Shea was then asked by Mr. Yost and Chairman Anepete if there is anyone they would like to see come before the board. Mr. Shea stated that one of the key issues is obviously the letter that was entered into evidence, signed by Mayor Kraft. It's a letter that was on official letterhead. If there is an allegation of fraud, maybe that is something that not only the board should be aware of but the Ocean

County Prosecutor's office might be aware of as well. He was copied to 7 or 8 of your Township Officials as well as my client and she relied upon that letter to install, at her expense, a significant amount of poles that cost a significant amount of money that now is causing her a significant amount of money to prove something that she thought she had approval for before. There lies the estoppel issue and very frankly a possible claim against the township and those representatives who might have made a decision that was against their interests. So we certainly echo the board's sentiments.

Chairman Anepete: Obviously Bob Kraft is one of the people we will be asking to come before us. Mr. Mosca perhaps?

Mr. Yost stated that you can ask people to come too. Sometimes people don't like coming under a subpoena. We do have subpoena power. You may want to ask them first and then if they don't agree to come, issue the subpoena. I don't know what the board's pleasure is.

Mr. Tredy stated Mr. Miller will come at our request.

Chairman Anepete: I think those are three of the principals in this discussion and in the memo's that are quoted. I am seeing Mr. Mosca, Mr. Miller and Mr. Kraft.

Mr. Tredy suggested the only other one would be from JCP&L. Chairman Anepete stated that he spoke to Mr. Timpinaro, to confirm Mr. Kraft's comments.

Ms. Garofalo stated that Ken asked me to come into his office, the witness is Diane Ambrosio. She sat there for the conversation. It was a conference call on speaker with the woman in charge of this district, she patched in Rob at certain points in the conversation. Diane was there present, Ken was present, Maria was present, and Rob was taken off the call at one point to do a job or something.

Mr. Yost confirmed that this was Maria Sessa. Ms. Garofalo replied "yes".

Mr. Shea stated perhaps at this time you may want to also bring in those individuals who approved from the Township Building Department that approved those particular poles and whatever permits were necessary to install those poles. I would assume there had to be some kind of permitting process that JCP&L had to go through and it is usually very very involved. They usually just don't stick poles in the ground without approvals. I would think those permits would be relevant as well.

Mr. Yost said he would like to think about that one because I don't know if that necessarily moves the ball in terms of the estoppel. Mr. Yost stated that he and Mr. Shea can talk about that. Mr. Shea said we can certainly request that information from the Building Department.

Mr. Avellino stated that the permits to put the light in would have been in the packet that they had. That is the only thing that....

Ms. Garofalo stated I have a copy of the packet. We have permission from the town to proceed and have permits to go forward. Mr. Avellino asked from whom? Ms. Garofalo stated I would believe the Building Department.

Mr. Yost stated again that within the next week or so he and Mr. Shea should talk so we are straight on what we want to do in terms of what we want to elicit. We don't need to bring in people that are unnecessary.

Chairman Anepete stated that our next meeting is January 6th, 2011.

Mr. Yost said we had also talked about brief – we have a couple issues here you want to wait on that? Mr. Shea stated we pretty much know what the issues are – the estoppel issue, we can certainly talk about but we're going to have to depending upon what comes out as a result of what comes out as a result of some of this dialog there be additional information that might be necessary to be placed...

Mr. Yost: If we hear other testimony it's possible the briefs could be different in some regard but on the other hand if you take testimony and then we are still at the point where briefing it could retract the sessions.

Mr. Shea stated we can certainly provide you with some of our rationale for the arguments. Mr. Yost said I hear, I think we both see what the legal issue is. We have two of them which have to do with the ordinance, the argument that the ordinance doesn't set forth a rational basis for the figure that was agreed to by the applicant, and I see that as one issue. The other one is the estoppel argument.

Chairman Anepete stated that the Planning Board is in agreement I assume you asking for a continuance. Mr. Yost stated that they have to consent to it and give us a time extension.

Mr. Shea agreed to the time extension and so the record is clear, there was a public hearing was closed I think just so the record is clean and that the public will have the opportunity to speak at the next public session. I believe there was a motion to close to public session, there would be another public session at the next available hearing but the public hearing really should be kept open.

Mr. Yost answered that the intention of the board was just for this evening in terms of allowing the application.

Mr. Sneddon made a motion that we continue this application to next month. Mr. Bynoe seconded the motion. Roll call: (aye) Sneddon, Bynoe, Avellino, Eckert, Sweeney, Tredy, VonSchmidt, Anepete.

Chairman Anepete stated that the application will be carried until January 6th, the next meeting if that is enough time for us to accumulate and acquire witnesses and so forth. Mr. Yost added that we make every effort to do that and hopefully we can.

Mr. Shea thanked the board and Chairman thanked Mr. Shea for his presentation.

Let the record reflect that no one in the audience wanted to speak during public comment so the board did not enter into a public comment session.

Resolution 24-10 authorizing the Township of Ocean's Planning Board to retire into Closed Session for the purpose of discussing matters of pending or possible litigation.

A motion was made to enter into closed session by Mrs. Sweeney and seconded by Mr. Avellino. Roll call: (aye) Sweeney, Avellino, Eckert, Sneddon, Tredy, VonSchmidt, Bynoe, Anepete.

A motion to adjourn was made by Ms. Sweeney, seconded by Mr. Sneddon. All in favor: (aye).

Meeting ended at 11:04 P.M.

Respectfully submitted,

Beth O'Connor
Planning Board Secretary