

**MONMOUTH COUNTY IMPROVEMENT AUTHORITY
REGULAR MEETING MINUTES
SEPTEMBER 12, 2019**

Meeting called to order at 9:00 by Chairman Gatto.

PLEDGE OF ALLEGIANCE

OPENING STATEMENT

This meeting is being held in compliance with the provisions of Chapter 231, P.L. 1975 known as the Open Public Meetings Act. Notice of this meeting was furnished in the County newspaper and posted in the Hall of Records.

ROLL CALL

Commissioners Nicastro, Barham, Melnick, Buontempo and Gatto were in attendance. Also in attendance were John Draikiwicz, Douglas Bacher, Dennis Collins, Amanda DelBene, Heather Litzebauer, CFO Craig Marshal and Marion Masnick. Also in attendance were members of FMERA.

Chairman Gatto suggested going out of order on the agenda and starting with the FMERA project.

Douglas Bacher – We were at LFB yesterday. It was a routine meeting. We got approval to do the next set of Notes. We actually had kudos from one of the members of the board liking our innovative financing technique. It was approved and everything is fine.

John Draikiwicz – Bruce gave a nice short presentation and giving an overview of the facility and as Doug stated the positive recognition of the financing structure was well appreciated by us.

Chairman – To summarize where we are. Basically we have been working over the summer. The FMERA loan comes due some time in November. John has been working on the Bond Agreement with representatives of FMERA and Dennis has been working with a process that he will expound on as to how we will move forward in to the new loan. I know there is a question from FMERA's representatives. As the commissioners will recall, at the last meeting there was a request regarding EDA. I thought we had it worked out but subsequent to that meeting FMERA requested additional relief, for lack of a better adjective, so that will be a topic today unless it has been worked out.

Dennis Collins – To summarize – there are 3 topics. Two of which we need to discuss today. You are renewing your Loan Agreement and you're negotiating terms and conditions of the Loan Agreement which is John's bailiwick. With respect to the EDA loan that all the commissioners were aware of we had reached a point where there was a request for Rich to write a letter

regarding release of half of the proposed \$5 million for their operating expenses and we would discuss what would be the circumstances of the second draw that exceeded what we both agreed so that's something we have to talk as commissioners. Finally, as an attached to the Loan Agreement is the reporting mechanism that we have been working together (myself and David Nuse) on the status of each individual project. We're going to attach that to the Loan Agreement as an Exhibit and that's going to be our reporting vehicle for the commissioners on an on-going basis. David and I are not complete with it but we are getting close and it's a matter of agreeing on what's chronological and what's not. That's not something that we have to go into much today. We're going to have that done in a week or two.

Chairman – With regard to the status/reporting requirements are the commissioners amenable to some type of condition that FMERA will satisfy Dennis and come back to us? Answer – yes. That kind of takes care of that issue. Do you want to add anything else?

John Draikiwicz – If I may. There is a little update on the Loan Agreement. In 2016/2017 we had a Loan Agreement that contained certain provisions which were similar between 16 and 17. Due to the discussions that we've had this summer there some additions that were made to the Loan Agreement – basically 5 of them – and one of them we just talked about which is the real estate information that we're going to include as a form. That was satisfactory to everyone. We added in a new condition regarding meetings that will be held on a regular basis. That particular provision was also to everyone's satisfaction. We also added in financial report provisions. Previously those financial reporting elements solely went to the County. We added basically the same element but this time also going to the Authority. Those three items were nicely accepted by FMERA and they are now in the Loan Agreement. There are 3 additional items in the Loan Agreement as well. One dealt with the repayment. The Authority has a little bit of a precedent vs other loans that FMERA may have and there's a slight modification to that to make it more accurate which was that before the EDA loans could be prepaid, the Authority loan would be prepaid. I think we have an agreement with that one. The two that are still open which are up for discussion which is a sentence we had regarding additional debt. Additional debt cannot be issued without the consent of the Authority (MCIA) and the second one is the second drawdown of the \$2.5 million out of the \$5 million EDA loan which is anticipated to be in 2020. That one would also need the consent of the MCIA. Those last two items are the ones that are open for discussion. From FMERA's perspective they would like to have some modifications to that language that we can discuss.

Chairman – What I would suggest, if there is no objection, whoever wants to speak for FMERA you can come up and speak.

Robert Tuteur, Esq., (Eckert, Seaman, Cherin & Mellott) we serve as Special Counsel to FMERA. John has accurately summarized what I would consider the “open issues” as to the draft of the Loan Agreement. They really relate to 2 items. The Authority's request to have a consent right as to the draw of the second \$2.5 million of the second EDA loan and the Authority wanting an absolute consent right – I think is the way I would describe it. If FMERA were to borrow an additional money not that it necessarily intends to but if it got to that point in time. As to the latter point, in my discussions with our client it is not unwilling to agree to the Authority having a consent right but has requested and I've requested through John that they have language

that have language that says consent not to be unreasonably withheld. In my view there would have to be a dialogue between the parties as to securing your consent but the language of the document would say something like FMERA would not borrow additional money without the consent of the Authority which consent would not be unreasonably withheld. That's as to the second one. As to the first issue, \$2.5 additional draw on the EDA loan. My understanding is that all of the projections and financial information that FMERA has provided to the Authority shows that it anticipates that additional \$2.5 million is going to have to be drawn either in January or February of 2020. Essentially the only way it wouldn't be is if sales all materialize in a certain way. That being the case and because it will be essential for that money for FMERA to operate, it's belief is that consent is unwarranted in that context as to that additional draw. I think, John, those are the only two issues that are open. As to the issue that John described about the Authority having a superior position to other debt, I think we've agreed and I think our client is amenable that they will not voluntarily prepay any other debt to the extent that they have payment obligations to the EDA. I think the Authority has been both the existing EDA documents as well as the commitment for the new loan. There are payment obligations.

Chairman – Just so I'm not confused. We're basically talking about that contingency or that requirement is basically the EDA loans are tied to Phase I or are they tied also to Phase II.

Draikiwicz – Both. The first one was Phase II and the second is Phase I.

Chairman – OK, can you restate that. As it affects Phase II which is our concern.

Tuteur – The language which was proposed in the Loan Agreement would have put have FMERA in the following position. If it paid the EDA it would be in default of the Authority and if it didn't pay the EDA it would be in default of the EDA. That's the situation I don't think anybody here would like because it doesn't help.

Chairman – Are you amenable to that John.

Draikiwicz – Yes.

Chairman – John is amenable to that so that takes care of that issue. Going back if I understood you – you haven't been in the discussion so you're at a slight disadvantage. It sounds like the one condition you're asking for relief is on the repayment is the term reasonable consent.

Tuteur – on any additional borrowings beyond the EDA loans the Authority would have a consent right which it could not unreasonably withhold. So you'd have the chance to make your analysis if you thought it was reasonable to withhold your consent you could.

Chairman – I don't want to get in to semantics with this board because we're a volunteer board and I think we've demonstrated to FMERA that we've been amenable to meeting whenever anyone needs a meeting. There are certain things that we've requested from FMERA that they've either provided or as we spoke earlier Dennis is in the process of getting to the point where we're comfortable. I don't know to sit here and argue over reasonable. We stand as an independent Authority to Monmouth County so to the effect that affects the citizens and rate payers we have a

fiduciary responsibility to them and I think ergo we have a fiduciary responsibility to see that you're successful. As an independent Authority, we don't want you to fail. We don't want you to not succeed. To the extent that financial conditions warrant I think it's almost a given that this board is reasonable. That we don't have – we're not a political organization where if we change or this or that. So I don't know that's even worth, respectfully, consideration.

Tuteur – Well, that's our client's request as I've communicated to your counsel and I've communicated the position to the board. I'm not in a position to agree or disagree with your comment. That's an issue I'll have to discuss with our client.

Commissioner Barham – What would you consider a reasonable standard that this board would impose upon you that makes you a little squeamish at having that clause not in there.

Tuteur – Let's assume, and this is kind of trying to react to your question, Mr. Nuse has been providing the requested information that he's worked out with your solicitor and it shows anticipated closing on whatever days, months or whatever and he shows cash flows based upon those closings and for one reason or another the closings are delayed only in terms of the date on which they close, not that they are delayed because the transaction failed or fell through, and FMERA comes to the Authority and says we're going to have to bridge our operations another 3 4 or 5 months because these closings that were going to take place in April of 2020 (making up the dates) are doing to happen in August. The board looks at that and says you know we're not going to agree. To me that would be unreasonable because the facts indicate a reasonable possibility that the loans are going to be paid. It's a timing issue. If, however, FMERA came to you and said all these closings have fallen through. They failed. The buyers have all waked away and now we need to go all out all over again and bid it out and get buyers and it's going to be a year or two delay and we need to borrow more money. I think that would give you a much higher reason and, a justifiable reason, for arguing not approving.

Chairman – to that point, and I say this positively not negatively, that's why we're here today. For the last 2 years let's say of no fault of FMERA, in Phase II there's been basically no closing, no pay downs. Again, in a positive sense I know there are 2 or 3 that are pending at the end of this year. Again, I go back to my point – we've been reasonable so why is there any reason to doubt that we wouldn't be reasonable. I think we're are moving in to a way more positive situation to communication through wherever the position is of FMERA – this might be the wrong word – they're getting to Phase II, Phase I has proceeded nicely. They've made representations that our professionals as well as me sitting at meetings are able to understand. Kara's not here, but the presentation that Kara made at the last meeting. I think you're raising an issue that's moot at this point. If we wanted to raise the issue of reasonableness or we were being unreasonable I'm pretty sure we wouldn't be here today.

Draikiwicz – I didn't think about what I chatted with you. One of the things regarding that ability as to consent would be if there were certain terms in the new loan that we didn't like. If we just unreasonably consented it probably could put provisions in not to our satisfaction. That new loan we have no idea where that might be – the existing FMERA loan with the EDA. It could be a different loan with somebody who we don't even know who it is and without the ability to really review the document and also to insert terms more proper from our perspective we could lose a

little bit of control if we stick that phrase in in terms of a little more discussion with FMERA as to what could be good in terms of terminology.

Chairman – I suggest you consult with your client.

Tuteur – Let me clarify something so that it's clear. I'm not standing here suggesting that this Authority has acted unreasonably. I want that on the record. Obviously, certain of the expectations have changed and nobody on this side of the aisle so to speak questions your lines of questioning. I want it to be clear. We're not suggesting you have acted unreasonably we are merely trying to protect ourselves for some unknown contingency.

Commissioner Barham – As are we.

Chairman – to the second point then regarding the pending, I guess, EDA loan. There was - I'll use the word agreement – there was an understanding and we submitted a letter at the request of FMERA to the EDA again without getting in to detail – at some point that understanding changed and we were requested to reconsider and that's one of the reasons you guys are here today. Dennis I'll let you explain it in legal terms – you've already explained. It was a request for \$5 million prior to this loan.

Collins – The EDA loan came about and we pushed it off at our request so we could resolve the issues as we move forward. They did receive a commitment from EDA in August and we're still centered around the fact that they had requested that we consent to a \$2.5 million distribution which we hadn't had a meeting on and then the second \$2.5 million, at least by memo that we received from FMERA, they indicated that they were willing to discuss the consent issue not to be unreasonably withheld in a Loan Agreement. Now I understand maybe counsel was not involved in that authorship of that memo but that's the rub.

Chairman – At the last meeting you said they needed to give us consent. Your request is that there be no consent on the pending EDA loan. Is that the phraseology?

Tuteur – No. Let me describe my conversations with Mr. Draikiwicz albeit conversations between 2 lawyers. My understanding was that the Authority was not objecting to the initial \$2.5 million draw of the second EDA loan. The question was whether or not the Authority would have a right to consent to the second \$2.5 million. Do I misunderstand or

Draikiwicz – That's correct.

Collins – The Chairman did not write a letter to that effect with respect to the consent issue he didn't have the authority.

Tuteur – That's fine. I just want to make sure we're talking about the same thing.

Chairman – I think it ties back to the first point. Going forward, any additional money including the second that you'll probably take in January per your representation, January or February, that would need our consent to get that.

Tuteur – That as I said earlier is what the Authority objects to

Chairman – Your Authority. So the question to my board is that's where we left off. Is there anything else you want us to consider why we shouldn't stay with that original position.

Tuteur – Well, as I said to your lawyer I think every document that's been provided to you by FMERA indicates that they're going to draw on this \$2.5 million. If the Authority is comfortable with the representation and information which FMERA has provided to you in terms of operations and how they're going to operate including the \$2.5 million that they anticipate drawing in January or February of 2020, then I would submit that you shouldn't have a consent right on it and don't need a consent right on it.

Chairman – Saying we do need or don't need a consent?

Tuteur – You do not because arguably you're comfortable with the information you've been provided.

Chairman – Any questions from the commissioners for Mr. Tuteur.

Commissioner Barham – I have a few comments to make. It's the duty of this board to protect (inaudible) things around the County. Number one is I think we now, Andy and I were talking before we have \$140 million worth of loans going on in the next application – part and parcel to this board and the Freeholders loaning that money out to other entities is predicated on our AAA rating. That's what makes our loans so advantageous to municipalities and whoever it may be. The amount of money you folks have \$24 million plus at this point in time if you were to default on that loan you would devastate the AAA rating for Monmouth County, thereby devastating all the other entities that take advantage of the AAA rating. We're looking at your agency over there and by all rights it seems you're moving along but you're not moving along at the pace originally anticipated. I don't know why these closings are taking so long. I can understand at the beginning of the game and you folks have been at this a long time but why are closings taking so long when you've been through a learning curve of what the problems were with the previous closings and not anticipating those and making those corrections so closings move along faster. That I have a problem with and I'd like to get some answers to that. I think the overall umbrella of this agency reporting to the Freeholders and certainly the board members can speak for themselves, we are very suspicious of in the event your loan would ever default what it would do to the County reputation. A rating that we have enjoyed long before I was Director of the Board of Freeholders. It goes back to Harry Larrison and we are not willing to put that on the chopping block for anybody. So the frustration on this end is that you are not moving along at a quick enough pace and the more you borrow millions and millions of dollars we have a problem with that. We also have a problem with you are in excellent times now to sell this property and get rid of it because values are at a higher level rate than they will be if you go in to another downturn in this economy like 2007 or the case may be where you're not going to be able to get that value for that property and it's just going to delay this thing much, much further out. It's just going to make your costs go up and up and up. I don't see a way out. We're like any other bank or lending agency. We want to see things moving along faster and we don't see that. That's our concern.

Commissioner Melnick – I would just like make a comment. The AAA rating of this County is almost the only reason that this board can exist in order to provide the lower interest rate to the various localities. I think that based on the record I don't see why we should lower our standards and require less of you than we think is important based on the record and the performance up to now. I don't think reasonable is asking for than we need because I think we have been reasonable. I'm not comfortable adding reasonable and if you add reasonable I'm not a lawyer so I don't know how that gets appealed so on and so forth or how the dialogue works. But, you're adding reasonable might even delay the decision because we'll be going back and forth. I think we have to set high standards because this County is AAA and we would expect you to perform accordingly. Leave it at that.

Commissioner Buontempo – A few of us were up here when we first approved the loan 3 years ago and it was my interpretation at the time that this property was a gem and highly attractive to citizens and it was going to be developed very quickly and the County would get their money back pretty quickly. That's the only reason I agreed to it. I am involved in a local town as well so I agree with what my counterpart commissioners have said about the AAA rating. In retrospect sitting here I would have put financial penalties in the contract if you did not adhere to certain milestones (financial penalties). We're negotiating trivial things right now in my mind. I think what the commissioner said reasonable I support 100% because if I rewound the clock and had to do this again the only way I'd approve it is if there were financial penalties in there that would motivate you to move quicker because I don't understand as Commissioner Barham said, why this is taking long and I'm not saying there are valid reasons, but sitting as a commissioner and representing the AAA rating, I don't want to be on the board if that AAA is jeopardized. 1005 in agreement with the way this board is currently positioning itself right now.

Commissioner Barham – One other thing that we have discussed from time to time is we don't want to be the bearer of bad news or the bad guy or perceived bad guy and not working with you folks who work hard every day to try and accomplish your goal which is to dispose of property in the most profitable and economic manner. One of the things that this board, again myself and my colleagues can state their position, would make us feel more comfortable is if you were to go to EDA and have them co-sign the loan so if you were to have problems EDA would be on the hook and not Monmouth County – Not the Monmouth County Freeholders and not the Monmouth County AAA rating. I see you shaking your head no. I don't know if that's been discussed. That's fine. But, if you're asking me as the banker so to speak to put \$24 million with little or no positions to go back to, I think that is what's unreasonable.

Chairman – If I could. I think at this point at the meetings that we've had there was an original, if you will, commitment if that's the right adjective between the Freeholders and FMERA to provide a financing opportunity through 2021. To take in to account the comments in general of the commissioners and to the credit of FMERA we have requested, let's use the term more stringent reporting/better communication, and I think it's to their advantage and I think, without speaking for FMERA, they are appreciative of that line. To your point about the EDA, I think as to timing in general and this isn't meant to be threatening it's just as an overall, and you can agree or disagree, come 2021 or whenever that day is 5 years from when it started, there's going to have to be a realization whether it's because of the County Guaranty Mr. Barham represents or

it takes “too long” as some of the other commissioners represented, a whole philosophical look at this that if we’re still at \$24 million which I don’t anticipate – guys it’s been 5 years the original was \$32 and we’re still at \$24 – if that was the scenario which I don’t think as we sit here that’s the intended scenario. That’s going to be a problem and I think everybody understand that on both sides. But, I don’t think on both sides that right now we’ve started to move past that realization. Maybe when we started the process – at least for me and I’ll speak for myself – that was probably a 90% certainty. I’m maybe at 75% certainty now. If these 2 deals close in October or towards the end of the year – I don’t want to put a time frame on them – we’re probably moving to 50, 60 70 or more of a comfort level. So to try to address your concerns but not to make their case it’s definitely been a concern. It’s definitely been impressed upon the professionals. I think it’s been impressed on the Freeholders. My concern is representing this board to those points so they’ve heard this, it isn’t the first time. Not to take their spot, I just want to fill you guys in on 3 or 4 hour meetings that you have been saved from.

Commissioner Barham – Our position be unreasonable or not work with you but I hope you understand our concerns.

Chairman – I think what I’d like to do at this point unless anyone has any other comments. This is a public meeting do you have anything you want to add for us to consider.

Bruce Steadman, Exec. Dir. FMERA – The comments that you’ve made are certainly appreciated and understood. There’s nobody here on our team, our team of 10 people plus our board members, trying to take advantage or do anything nefarious or underhanded. The fact of the matter is that we deal with some of the best outside law firms in the state plus we have the AG’s office as our law firm and these closings just take forever. Any time you put a shovel in the ground you find a hole full of spaghetti of pipes going this way and that way and the Army just kept adding stuff. The Army didn’t believe in gravity and so that’s why there’s 18 pump stations. Normally your sewer runs from high to low. Well, in the Army’s world it runs wherever the Colonel at the time decided he wanted it to run. So there’s 18 different pump stations on the main post. That’s just one example.

Chairman – I don’t want to cut you short but the point is we’re just a financial body as I’ve explained to you. We’re just looking at a loan like a bank. No one is judging, and I’ve tried to make that point, that your guys haven’t acted in good faith, there haven’t been reasons why. Maybe I didn’t express it eloquently enough. Over the last 3 months we’ve had a better understanding of why there’s been no pay down. I think I’m willing to give FMERA the benefit of the doubt. All the issues that you’re going to state because I’ve heard you state them before.

Steadman – Just trying to answer this gentleman’s question.

Chairman – We’re just trying to stay on track with the financial agreement, that’s why we’re here. I would hope that we have moved past the past and look forward. To that point I’m willing to represent to Mr. Barham and I’m confident that he’ll accept from me that we’ve hashed those issues out in meeting and to the point that I’m comfortable Mr. Barham can be comfortable that whatever happened in the past you’re making an attempt to address our concerns as it goes to the timings of the closings. I think Mr. Collins can represent that because he’s done a lot of work

with Mr. Nuse in trying to quantify that to paper. Again, I would just suggest – I was hoping we'd have that updated spread sheet we looked at last time. I have my old one which I didn't get a chance to share because I thought we would have the newer version. I saw the spread sheet. It's extremely detailed. It goes closing by closing. You can say whatever you want but I wish you would keep your comments to the financial 3 points that we've raised- the 2 issues and the bond loan agreement.

Steadman – OK I will. Again I was trying to respond to the comments that were made.

Commissioner Barham – to that extent if you want to talk about this stuff individually in private we can do that then we can move this meeting along. I'd like to hear your story.

Steadman – I'm a little confused then as to what to respond to

Chairman – You guys can meet afterward and get the back story.

Steadman – With all due respect comments were made on the record and so I was trying to answer those. Not trying to be negative, trying to be responsive. I won't go any further with that. What I did report yesterday was approximately 75% of the fort is engaged in one project or another. There are 18 different closings that have made – so far we've got some 30 different projects that are operating and 75% of the fort is engaged. There's only two main large parcels that haven't been put out to bid. We expect those will be out in the next 3 to 6 months. So overall the timing and the progress is frankly about 2 years ahead of what might have been anticipated 6 or 7 years ago when we actually started on this. To this gentleman's comment some of the projects that the total build out so far on the projects that we have on board are over \$700 million. That includes CommVault, Lennar, Somerset, R. J. Barnabas, RPM and

Chairman – is that Phase I or Phase II

Steadman – It's a combination. I'm trying to respond to this gentleman's comment. Overall we think the build out at the end of the day is going to be \$1.5 to \$2 billion which will yield to the County \$2 to \$3 million in additional tax revenue every year. These are substantial numbers which are derived from the spread sheets that we're talking about.

Chairman – I'm just passing around the spread sheet that I had from the last meeting. I was anticipating updated spread sheets. They're at a disadvantage. They haven't even seen the spread sheet.

Steadman – With respect to the current EDA loan vs the 2 tranches of \$2.5. Our feeling is since as Mr. Tuteur suggested, we're intending to draw down the second \$2.5 in January or February. So essentially we're just asking for your approval now because it's going to happen. We're going to need that money to continue to operate over the next several months. Then the question of unreasonable vs. reasonable. You're right. You have been reasonable to date and we're you will continue to be.. You've all signed many documents in your lives and I'm sure everybody in the room has. In my experience any document that requires somebody else's approval for something almost always that language includes not to be unreasonably withheld. So I'm the one who's

really driving that particular issue just because I think it makes sense to keep us all the same way we're operating today. If you guys aren't here in two years when we're looking to borrow more money so your own personal feeling are extracted then we're dealing with a whole new set of people. Likewise if we're all not here there's a whole new group of people you're going to be dealing with. The point was not to question your reasonableness or your fairness, I was just essentially protecting both sides going forward. Unless there are other questions that's really all the comments I would make. Thank you very much.

Brian Brown, Attorney General's Office – I'd like apologize for shaking my head before. It wasn't saying that request is being denied to your point. It hasn't been raised it. It was just – I didn't expect this meeting to go quite this way. Frankly I was just a little bit disappointed that we were now talking about the EDA getting involved as a co-signer. There's a few points I want to make. First, what Bruce was saying about reasonableness. I mean public entities can act reasonably. That's true for the state and any public entity in New Jersey. When the state gets a request like that, an outside party about one of its contracts, it's a pretty immediate yes. It's not something that we would ever dicker over language wise and I think to Bruce's point it's really about continuity. We have different bodies that we are talking about and then as for the second draw, and this is kind of from what I was looking at based on the information that's been provided on both sides is that my understanding is that this second draw was already included in all of the financial information that your entity used to underwrite this loan. Meaning it's on schedule.

Chairman – Excuse me one second. Actually, that's the problem here. I really don't want to go backwards but the original loan documents going back to day one never anticipated nor was it ever discussed that there would be subordinate loans. Correct?

Draikiwicz – We never anticipated there would be any EDA loans at all.

Chairman – At some point 2 years in or whatever the time frame, there was a consent requested from the Freeholders which was given through either the Freeholders or a representative of the Freeholders and never came to light to this board until approximately May or June of this year. Am I correct on my side? So to state that the subordinate financing wherever it came from was never and the earliest this board became aware was the spring of this year.

Brown – I was not aware of that distinction and I understand that's an interesting problem that occurred. I can tell you that.

Chairman Nicastro – I have a question. You're on the team, why didn't you know.

Brown – I absolutely knew.

Chairman Nicastro – I understood you weren't aware of the facts.

Brown – I wasn't aware that this entity wasn't aware of the consent request that the County approved. I didn't know that disconnect happened.

Chairman – we only became aware of the subordinate financing until the spring. That's the point I'm making. Whether he knew or didn't know is not relevant to me, it's relevant that we know.

Brown – Absolutely, no disagreement. Just to clarify what I was referring to is the current approval I believe the recommendation was it the Local Finance Board. What I'm saying is in this approval that's about to happen, my understanding was that the Note was being approved to be rolled over. That MCIA and the County had a look under the hood of FMERA's financials. All I'm saying is the look included the drawn down.

Chairman – Did you have my August letter?

Brown – Yes,

Chairman – so I don't want to argue that. How could you come to that conclusion. That letter was fairly clear. That's why we're here today because you're objecting to the letter. I didn't just make that up. That was a result of the meeting. That EDA issue was a separate issue that we tried to address. You actually wanted to take your draw in July or August or June whenever it was and then we originally sent a letter to EDA the day before you were supposed to go get a commitment or whatever was going to happen and then you respectfully asked to postpone – you asked the EDA to postpone action or whatever the terminology would be. Subsequently was that letter from us to say this should have been wrapped up prior to this. The fact that we've gotten this far along, it's coming at the same time as the Loan Agreement.

Brown – I'm sorry. I'm not exactly saying you should have known this or this should have been resolved. What I'm saying is we have all the facts now. We know that this draw is going to be likely necessary in January or February.

Chairman – We fully anticipate that. That's why we asking the Consent Agreement. We just want to make sure things stay on track because we anticipate whether you anticipated it or not that you didn't ask for \$5 million just for the fun of it. You asked because you're going to need it. You've also represented for the benefit of my colleagues that your cash burn when we spoke – it may have changed – since we spoke originally is \$400,000/month. You don't have to be a genius but we can do the math. $\$400,000 \times 12 \text{ month}$ is \$4.8 million. Obviously that's where the \$5 million figure came from.

Brown – Right. So I guess to reframe this request was FMERA is really asking for is for consent for that second draw down.

Chairman – It's understood.

Draikiwicz – I've learned over a long period of time, things change over time. The numbers that were presented yes do show that the \$2.5 million basically half way through to February of next year. It's possible that the sales accelerate as was mentioned. If they didn't close earlier than expected and there is sufficient funds we would like to take a look at to see whether or actually you do need the funds at that point in time because if things accelerated then it would an ability for the consent of the Authority not to be provided if things were really in a positive way. Even

though those projections are what they are, things change and based upon the history of the last 3 years for having banked the Authority/County (the Authority in this instance) taking another look 6 months later is all that's being requested. Another look at the numbers in 6 months from now so they can see if anything changed. I think that's an important time frame to think about.

Collins – I would just add Counsel as you're discussing with your client we all understand that as a government authority we have to act reasonable and that's a duty imposed upon this board which is why they are discharging their obligation. The issue is though do you incorporate into a document a test that is already required by law of them and in a private environment the lender does not consent to language to says they have to not withhold their consent. So in the type of transaction we entered into if we act like a private lender the language is much more difficult to negotiate into an agreement by the lender. The principal is due in 2 years. That needs to be a factor in the decision we make but that's why they're taking that position in language.

Brown – I totally understand that things might accelerate but I mean it pains me to say this that is highly unlikely. We're looking at the facts that have occurred. We don't want to anticipate good things happening we want to plan for the worse. 6 months of runway and given the infrastructure projects that need to close in order to make revenue. FMERA is in an unfortunate position – it needs to spend money to make money very often,

Tuteur – If I could clarify or amplify one thing. I think we're talking about consent but in the context of what we're talking about it's really consent in 2 different places. Even assuming that your position is valid in terms of a right to consent or a requirement to consent the subsequent financing, in the context of the fact as Mr. Brown just indicated FMERA has told you essentially they are going to have to draw on this money – it seems to me, and I've not said this and I don't think anyone around here has said it this morning, if this board is going to approve the roll over then you don't want to do anything that's going to affect your ability to operate for the next year. Because if you're worried about the AAA bond rating that's the fastest way to have a problem because this FMERA runs out of money. So again, I want to emphasize I really think there is a distinction for your consideration between whether you have a consent on the \$2.5 million or if you have a consent on future borrowing. Even if your position were valid on both, given the facts that's what really before you, I think, is your approving moving forward with this roll over. They have to operate for the next year and they're telling you they need the money to operate. So, I respectfully submit there's a distinction between the two issues.

Chairman – Thank you. Anybody else? (none). So on this matter, my recommendation to the board though we can debate it further – I think there are 3 issues. The EDA loan, the EDA loan for \$5 million which I don't think we have an objection to them getting \$2.5 million now but that we request consent on the second draw down and I'll reference my letter of August 7th. My opinion is that letter should stand. That was the consensus of the board at the last meeting. As far as the two loan provisions that seem to be at odds I would suggest also that we defer to Mr. Draikiwicz and leave the language in and we're running out of time that's why we started back in the spring to get to this point – you can definitely appeal to the freeholders – they're the ones that have to issue the Guaranty if they choose to modify the language so be it but I think from this board that's where I would be at but I would welcome any input from the commissioners.

Barham – the question that I had asked before – I don't know if it's possible maybe you folks could try and see if the EDA would either take out loan out and give you the loan for \$24 million and we're out of the picture if that's what the freeholders would want. The second option would be is just let them be the guaranty of our loan. Have you ever asked that question because that certainly would make a big difference not only to this board but to the freeholder board.

Brown – That question is completely received and believe me it's something that FMERA will investigate to conclusion. But, to you point, we are on a very tight timeline right now and the likely hood of that being approved given the government entity board cycle is – I'm not going to say it because I can't speak for another entity – but's it's almost mathematically impossible.

Barham – Could the question be asked and we can get a thumbs up or down yeah we can work on that. That would help too.

Brown – I can just tell you EDA is my client as well. They can't give you – the board would have to approve it.

Chairman – I can't speak for the freeholders but I don't know that the freeholders, at this time, would be amenable to that. I'm not saying that the freeholders may or may not and I'm not speaking for the freeholders but in my opinion may not be amenable in 2 years or a year but at this time I don't think that's something that would entertain.

Brown – Respectfully, if this board asks a question on that time line I think you would agree that it's not possible for this board was in a position to answer

Barham – We'd have an answer for you n a week (laughter)

Chairman – We have to be done by 10:30 because there's a budget meeting at 11:00. I'm not rushing you but I'm trying to get to where we have to get to.

Barham – We get to a crossroads here and everything seems to work out fine and everyone's happy after we're done I still would like the conversation with EDA to start about them being the Guarantor to the County's loans.

Brown – The last thing I'll say has nothing to do with the financing – if I appear to be personally interested in this client – my father worked at Fort Monmouth for a number of years. He was a plumber. I was on that base a lot as a kid. He was on call checking the pumps for the sewerage system which is horrible. (several people talking). This is based on very layman's personal knowledge. The Army did whatever they wanted and this board got it as is. Just to the point of projects taking a long time when due diligence occurs things get found.

Chairman – If there are any comments or contradictions to what I said? It's my understanding there are 3 issues that we need to address in a motion.

- In regard to the EDA loan that is pending since the summer that my original letter of August 7 stands.

- There are 2 issues regarding reasonableness and consent or reasonable consent in John's language that FMERA objects to or is asking for some type of relief, it's my recommendation that we stay with the language as it's drawn that we get past this hurdle.
- The next hurdle would be to get to the freeholders where we need to get their loan guaranty. That's why it's not a one week process. That would be my recommendation this board.

What I am really asking for is this boards comments so we can move on and get you an answer.

Tuteur – Can I ask for a clarification. Are you asking your board to make a decision that imposes conditions on your moving forward?

Chairman – What I'm asking is that I need to get to these resolutions that are on the agenda. They are approving your loan. So I guess what I'm saying is we are going to approve the loan as submitted to us with the two unreasonable (sorry to keep using that word) two points that you object to. With no disrespect or disregarding your representation to us and we

Tuteur – So I'd like to just state for the record before you as you make your decisions. Our client has communicated with me in terms of the going forward loans your position is acceptable but for the record without regard to how you decide they are not willing to agree on the issue of the second draw.

Chairman – on the first issue you're saying that you're amendable to this board accepting the way the documents are drawn now by John.

Tuteur – The client is amenable to a provision in the documents that would say as to any additional borrowings beyond the second EDA loan to be clear that the Authority would have a right to consent.

Chairman – And that's what you've drawn, correct John?

Draikiwicz – Yes.

Tuteur – as to the first issue on the \$2.5 million

Chairman – Which is the only issue left.

Tuteur – That's correct. For all the reasons that I have articulated, and that Mr. Steadman and Mr. Brown have articulated, I am advised by our client that they are not willing to agree to that from their point of view. I'm not trying to influence your decision nor am I trying to be threatening I'm merely wanted to report where we are in case it helps in terms of your own discussions.

Chairman – My suggestion would be to try and schedule a meeting in December or February. I will try to put this issue to bed to make you more comfortable. We can schedule a meeting right

now, a tentative meeting for either December or January and we can figure out where we are by then. To Mr. Draikiwicz's points you may have had 2 or 3 closings or you might say this is where we're at. Maybe you need \$1.5 million or the whole \$2.5. We can go on and on. You don't have to agree. Go on your own. I'm saying you're asking me to withdraw the letter. If this board votes we're not withdrawing the letter so do whatever you have to do.

Tuteur – I'm not asking you to withdraw the letter. I'm merely asking you as a board – you're counsel has drafted language presumably based on your input collectively the letter and other considerations – I'm merely asking that the language be modified on that additional \$2.5 million.

Chairman – so Dennis, how do you want to proceed?

Counsel – I don't want you to make a motion as to your consensus of opinion. You're going to deal with the resolution authorizing the Note. You're going to authorize the Note in its present form. That's what it appears to me.

Chairman – and, that's what's on the agenda.

Counsel – That process will still go forward to a point where – John help me with timing - that process will continue moving forward. You should have – I'm sure David and I will work on that spread sheet before that meeting in October.

Chairman – The resolutions that are on are going to be subject to you and David working things out. Which I don't have a problem with right now because I think we're 90% there. So we're going to move forward with the rest of the agenda like they weren't here because all the issues have been resolved except for this \$5 million loan. They're asking for reconsideration of my letter of August 7th on behalf of this board. So how do you want me to poll this board or to respond to their request?

Counsel – If you get the consensus of the board that you want the consent in the EDA agreement.

Chairman – No, that's not the issue. Regarding my letter of August 7th that was written on behalf of this board is there someone that wants to move for reconsideration? If no one moves it's going to die and we're going to move on. Does anybody want to move for reconsideration based on the representation from FMERA this morning? Seeing none the letter stands the way it is and you will proceed however you want to proceed accordingly as it relates to the \$5 million EDA loan. As far as the rest of the matter can we just go the agenda and vote because nothing's changed.

Counsel – Correct.

Chairman – Except for the one when we get to the Loan Agreement it's been subject to Mr. Collins being satisfied with the material presented by Mr. Nuse. We all agree it shouldn't be an issue.

Tuteur – Chairman says I'm giving you literally 2 minutes. At 10:00 we're voting.

Tuteur – The Loan Agreement in its present form doesn't reflect the discussions that Mr. Draikiwicz and I had and agreed to.

Chairman – What's missing?

Tuteur – Well, the business about voluntary pre-payment, not voluntary pre-payment, the business about not paying any other loans. That paragraph in its present form needs to be revised based on our discussions. I think you understand and are in agreement.

Draikiwicz – That's fine. I plan on getting a revised draft of the Loan Agreement out incorporating the minor tweaks that you and I chatted about including the one on repayment.

Tuteur – I just want to make sure the authority understands.

Chairman – When we get to the resolution he's going to say the resolution is subject to and if he doesn't you can interrupt. For the record regarding the EDA loan there was no motion the letter stands as written on August 7th. Next up is going to be #7

FAMERA

Chairman – John, do you want to make any comments before we vote on these resolutions?

Counsel – Actually Mr. Chairman, let me (Collins) The resolution will include a direction to Mr. Draikiwicz to revise the Loan Agreement to reflect the agreed upon issues that were discussed this morning otherwise it remains in its present form.

Draikiwicz – Nothing further.

Motion by Commissioner Buontempo, seconded by Commissioner Melnick to adopt Resolution 19-45, "Governmental Loan Project Note (Fort Monmouth Economic Revitalization Project)

ROLL CALL

Commissioners Nicastro, Barham, Melnick, Buontempo and Chairman Gatto voted in the affirmative

Motion by Commissioner Buontempo, seconded by Commissioner Melnick to adopt Resolution 1946, "Delegation Resolution for (Monmouth County Guaranteed) Fort Monmouth Economic Revitalization Project.

ROLL CALL

Commissioners Nicastro, Barham, Melnick, Buontempo and Chairman Gatto voted in the affirmative

MISCELLANEOUS BILLS

Motion by Commissioner Buontempo, seconded by Commissioner Melnick to adopt Resolution 19-42, "Payment of Miscellaneous Bills in the amount of \$1,503.21."

ROLL CALL

Commissioners Nicastro, Barham, Melnick, Buontempo and Chairman Gatto voted in the affirmative.

BUDGET

Motion by Commissioner Barham, seconded by Commissioner Buontempo to adopt Resolution 19-43, "Adoption of Monmouth County Improvemetrn Authority Budget for 2019-2020."

ROLL CALL

Commissioners Nicastro, Barham, Melnick, Buontempo and Chairman Gatto voted in the affirmative

MINUTES

Motion by Commissioner Melnick, seconded by Commissioner Barham to accept the Regular Meeting Minutes and Executive Meeting Minutes of August 1, 2019.

ROLL CALL

Commissioners Nicastro, Barham, Melnick, Buontempo and Chairman Gatto voted in the affirmative.

MANASQUAN SCHOOL DISTGRICT LETTER

Chairman asked if there was any discussion on the letter. No objection from the board to the letter.

BOND COUNSEL

No further report

FINANCIAL ADVISOR

Douglas Bacher said there are 3 financings in the works. FMERA, Equipment Lease and Pooled Loan for approximately \$144 million. These are for late November and December.

UNDERWRITER

Amanda DelBene discussed the current market, low interest and high demand with low supply.

GENERAL COUNSEL

No further report.

PUBLIC PORTION

None

ADJOURNMENT

Motion by Commissioner Melnick, seconded by Commissioner Buontempo to adjourn at 10:05am. All in favor.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marion Masnick".

Marion Masnick, Secretary