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TOWNSHIP OF MILLSTONE

PLANNING BOARD

-----X
IN THE MATTER OF: : TRANSCRIPT
: OF
MILLSTONE TOWNSHIP HOUSING : PROCEEDINGS
PLAN ELEMENT AND FAIR SHARE :
PLAN MASTER PLAN DOCUMENT :
-----X

SPECIAL MEETING

- - -

TUESDAY, DECEMBER 16, 2008
WAGNER FARM PARK
4 BAIRD ROAD
MILLSTONE TOWNSHIP, NEW JERSEY
COMMENCING AT 7:00 P.M.

BOARD_MEMBERS_PRESENT:

MITCH NEWMAN, Chairman
CHRISTOPHER PEPE, Vice-Chairman
MANNY BLANCO
NANCY GRBELJA, Mayor
STEVE SICO, Councilman
DAVID KURZMAN
THOMAS PADO
MARY PINNEY
ANTHONY RUNDELLA
ROBERT BECK

ALSO_PRESENT:

DOUG FREIBERGER, ESQ., Acting Board Attorney
MATT SHAFAI, P.E., Board Engineer
RICHARD T. COPPOLA, P.P., Board Planner
PAMELA D'ANDREA, Board Secretary

- - -

ANGELA BUONANTUONO & ASSOCIATES
COURT REPORTING SERVICES
26 Algonquin Terrace
Millstone, New Jersey 08535

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E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE NO.
A-3	Letter to COAH requesting Extension of Time to Petition for Substantive Certificatin, prepared by Michael Steib, Esq., dated 12/11/08	9

1 Asbury Park Press and The Times, the Township
2 Committee, pursuant to P.L. 1975 Chapter 231
3 of the Open Public Meetings Act, the Township
4 Committee published in the paper that they
5 would be here perhaps in a quorum capacity at
6 this meeting.

7 CHAIRMAN NEWMAN: Thank you very
8 much.

9 You'll recall at our last meeting
10 we did not have a flag salute because we did
11 not have a flag. However, we have secured a
12 picture of a flag. So if you could please
13 join us in the flag salute. (Pause.)

14 Pam, I don't know who got that,
15 but thank you. And that has the pledge right
16 on it.

17 BOARD SECRETARY: Yes, it does.

18 CHAIRMAN NEWMAN: So for those of
19 us that didn't have the words down pat we were
20 saved.

21 Before we continue I did want to
22 introduce that we have a substitute -- I don't
23 mean that in any negative way -- Planning
24 Board attorney, Doug Freiburger. Thank you
25 for joining us on late notice. Mike could not

1 make this Special Meeting, so we appreciate
2 you taking time out of your schedule to sit
3 with us and make this an official meeting.

4 Next thing on our agenda is roll
5 call. Pam...

6 BOARD SECRETARY: Mr. Blanco?

7 MR. BLANCO: Here.

8 BOARD SECRETARY: Ms. Grbelja?

9 MAYOR GRBELJA: Here.

10 BOARD SECRETARY: Mr. Pepe?

11 MR. PEPE: Here.

12 BOARD SECRETARY: Mr. Sico?

13 COUNCILMAN SICO: Here.

14 BOARD SECRETARY: Mr. Kurzman?

15 MR. KURZMAN: Yes.

16 BOARD SECRETARY: Mr. Pado?

17 MR. PADO: Yes.

18 BOARD SECRETARY: Ms. Pinney?

19 MS. PINNEY: Yes.

20 BOARD SECRETARY: Mr. Weintraub

21 is absent. Chairman Newman?

22 CHAIRMAN NEWMAN: Yes.

23 BOARD SECRETARY: Mr. Beck?

24 MR. BECK: Yes.

25 BOARD SECRETARY: And Mr.

1 Rundella?

2 MR. RUNDELLA: Yes.

3 BOARD SECRETARY: Thank you.

4 CHAIRMAN NEWMAN: The first thing
5 listed on our agenda -- first, a couple of
6 things, to approve minutes, and then at the
7 end of the agenda is a New Business item. The
8 purpose of our meeting is first and foremost
9 and only to address the Master Plan. It was
10 not the intention of the board to continue
11 with typical board business. That will be
12 continued at our next meeting, which will be
13 January. So those of you that were here for
14 the approval of the minutes and the item of
15 New Business, we'll see you in January.

16 But I do want to move right ahead
17 with the purpose of our meeting which was to,
18 or which is, to extend the time for our vote
19 from our meeting of December 10th. There was
20 a delay, or we created a delay by adjourning
21 to tonight, to see if COAH, Council On
22 Affordable Housing of the State of New Jersey,
23 might consider an extension of time for the
24 submission of affordable housing plans. So
25 that was the purpose of carrying this to

1 tonight, and that's the business of the board
2 for this evening.

3 As stated at the last meeting we
4 completed the public comment or public
5 testimony portion of the meeting at our last
6 meeting. Tonight the purpose of the meeting
7 is the Board's deliberation, potentially board
8 conversation with ourselves, and with, of
9 course, our professionals, and then a motion
10 and moving towards a vote.

11 As I said at the last meeting
12 last week, and I do appreciate everyone being
13 respectful, this is an important hearing, an
14 important meeting, and we do ask you to be
15 mindful that the acoustics are not wonderful
16 here. And we do have a court reporter trying
17 to take down to create an appropriate record,
18 and, of course, we have the audio visual team
19 trying to do the same. So, please, be mindful
20 and avoid any clapping or other outbursts so
21 that a record could be absolutely accurate and
22 correct. Thank you very much.

23 Before we move ahead to a motion,
24 I did want to take a moment, at least on
25 behalf of myself and obviously anyone else on

1 the Board, to ask a couple of questions of Mr.
2 Coppola to see what's been going on, quite
3 frankly.

4 Rich, as I said at the beginning,
5 the purpose of extending us to tonight was to
6 see if COAH would grant an extension. Could
7 you please update us.

8 Was an extension granted by any
9 state agency? And what's the prospects of an
10 extension?

11 BOARD PLANNER: The first part of
12 your question is no, there has been no
13 extension granted.

14 My information is that the only
15 way an extension will be granted is either a
16 direct extension from COAH, which I think is
17 unlikely because they are not scheduled to
18 meet until the New Year, and/or an Executive
19 Order by Governor Corzine. I think that is
20 possible, but it's very iffy.

21 CHAIRMAN NEWMAN: I do note that
22 at our last meeting we had made part of our
23 motion that Mr. Steib, our Planning Board
24 attorney, would send a letter to COAH
25 requesting the extension. I know that letter

1 was sent.

2 And, Doug, I will ask you to make
3 part of the record as an exhibit Mr. Steib's
4 letters of December 11th, 2008 to Lucy
5 Vandenberg, Executive Director of COAH. And
6 the reference in that letter is Extension of
7 Time to Petition for Substantive
8 Certification, Millstone Township, Monmouth
9 County, New Jersey.

10 BOARD ATTORNEY: I will mark
11 that, I believe Mr. Steib has that marked as
12 an exhibit already. I don't have a number,
13 but as the meeting progresses I will give you
14 the number. We will mark this as part of the
15 record.

16 I have been brought up to date,
17 we're going to mark a letter of Michael B.
18 Steib, P.A., to the Council on Affordable
19 Housing, we'll mark that A-3 as part of the
20 record. And that's a letter dated December
21 11th, 2008.

22 - - -

23 (The above-mentioned document is
24 marked as A-3 for Identification and admitted
25 into Evidence.)

1

- - -

2

CHAIRMAN NEWMAN: Thank you. And

3

I guess we should all keep in mind that when

4

you're speaking try as hard as you can to

5

speak into the microphone. You really have to

6

be on top of it, which I need to do a better

7

job of.

8

Also, Rich, I'm going to just

9

keep going with some questions. If anyone

10

else wants to interject, go ahead, otherwise

11

I'm going to keep going with a list of notes

12

that I have.

13

If we vote yes tonight can we

14

request or stipulate that the plan not be

15

submitted until the last possible moment just

16

in case there is an extension?

17

BOARD PLANNER: Definitely. And

18

I think that's the prudent way to pursue it.

19

My suggestion would be on the

20

30th, just to allow the possibility for a bad

21

weather day on the 31st. But I think, if

22

there's no extension granted before then, it

23

will be...

24

CHAIRMAN NEWMAN: If we do,

25

again, we vote yes today, could we request

1 that we be given a chance to re-visit or
2 possibly amend the plan if an extension is
3 granted either before the end of the year, or
4 strangely enough just after the end of the
5 year, or if the COAH rules are changed
6 substantively at any time next year?

7 BOARD PLANNER: Absolutely. In
8 fact, language to that effect, except for the
9 extension, is in the body of your Housing Plan
10 Element and Fair Share Plan.

11 CHAIRMAN NEWMAN: Just to keep
12 going. Chris, this is my last one.

13 MR. PEPE: That's all right.

14 CHAIRMAN NEWMAN: At the last
15 meeting -- I'm trying to get the t.v. time
16 here.

17 MR. PEPE: I understand.

18 CHAIRMAN NEWMAN: At the last
19 meeting you and the mayor had mentioned that
20 you were going to continue to discuss possible
21 options and alternatives.

22 Can you tell us what has taken
23 place, and is there a different plan that we
24 have in front of us that's endorsed by the
25 Work Group?

1 MR. PEPE: You stole my thunder.

2 CHAIRMAN NEWMAN: I'm sorry.

3 BOARD PLANNER: No, there's no
4 different plan. There has been a plan, a
5 continuation really of a plan that was offered
6 by the public, if you will, Committeeman
7 Abilheira, prior to the last meeting. It was
8 discussed at the last meeting. It has been
9 somewhat embellished with some calculations
10 for income to support the plan as COAH
11 requires. And I can comment on that in a
12 moment, if you would like.

13 The COAH Work Group, however, has
14 continued -- in fact, there was a meeting as
15 recently as today, to try to set up meetings
16 in January with prospective land owners to
17 more specifically flesh out whatever options
18 may be available. That's also part of the
19 record, I think, from your last meeting.

20 There has also been a number of
21 discussions with COAH representatives.
22 Yesterday I made one of many pilgrimages down
23 to Trenton to meet with COAH reps, not
24 specific in this case to Millstone, but it did
25 include a discussion of Millstone. And that

1 was followed up today with two conference
2 calls with the COAH Work Group and Assemblyman
3 O'Scanlon, Senator Beck, COAH Assistant
4 Director Lucy Vandenberg, an attorney, Melissa
5 from COAH, Al Barlas from Senator O'Scanlon's
6 office, and one of the conversations was also
7 participated upon by Committeeman Michael
8 Kuczinski.

9 Without giving you a blow-by-blow
10 description, the bottom line is that COAH
11 overall requires plans that are submitted to
12 be realistic and viable. And by that, as Lucy
13 Vandenberg stated, you don't really take one
14 piece of the rules out of place or keep
15 them -- look at them alone. You have to
16 combine it with other requirements of the
17 rules in order to make a viable and realistic
18 plan.

19 In terms of there was discussion
20 of the previously proposed -- and discussed,
21 again, last meeting -- inclusionary approach,
22 which would have been in the RU-P Zone for
23 approximately 30 percent of that land at
24 minimum, unspecified properties and the like.
25 I went through with the board at the last

1 meeting the jeopardy to your Zone Plan of
2 adopting that.

3 But, in any case, Melissa, the
4 attorney for COAH, and I believe I'm quoting
5 this correctly, said basically that plan, if
6 it were submitted, would be turned back to the
7 town as incomplete. In other words, you need
8 more specificity.

9 In regards to the
10 non-site-specific theoretic plan for a number
11 of scattered sites that the town would say
12 they were going to acquire for individual
13 projects of 100-percent affordable housing,
14 again, the rules do state that you can be
15 unspecific but the rules are not -- they don't
16 end with that, there are layers of other
17 requirements.

18 One of those requirements is a
19 Financial Spending Plan that has to be
20 submitted by the end of this calendar year
21 under separate cover, which the town commits,
22 explains and commits how we're going to fund
23 that plan. I will get into numbers on that in
24 a moment.

25 Bottom line is that the town

1 would be held to the fire throughout the
2 10-year time period, from now until the end of
3 2018, to provide those units. And they would
4 have -- the certainty of the plan would come a
5 lot sooner than just sometime in the future.
6 It somewhat would depend upon your growth
7 activity but also the viability of the plan is
8 going to be looked at from a financial
9 viewpoint right at the get-go.

10 This is particularly true because
11 the plan that has been authored includes not
12 only 85 units of affordable family housing for
13 rent, but also takes advantage of the rental
14 bonus provisions of the rules and claims 38
15 rental bonuses. So that's a lot of the
16 overall 169 units that you're obligated. That
17 has a tendency not to back end it but to front
18 end it in terms of COAH wanting a realistic
19 plan.

20 As far as the plan that is
21 proposed, I did discuss briefly with COAH and
22 just, suffice it to say, that it's a plan that
23 would certainly be under the requirements of
24 the state plan and was one that they had at
25 least, without reviewing it, had no problem

1 with.

2 Also they did confirm, as I said
3 before, that we can get -- we have to get
4 approval from the Office of Smart Growth, and
5 also the Department of Environmental
6 Protection. And that could be coupled with a
7 request that that approval specifies that it
8 can only be on lands that have affordable
9 housing as a component. And, more
10 specifically, that those developments are in
11 an adopted Housing Plan Element that's adopted
12 by this board, not just proposed by anyone
13 else.

14 And then I can get into some
15 numbers, if you want.

16 MR. PEPE: Actually, from what I
17 gathered, there's been talk of another plan,
18 there's theoretical costs that go along, I've
19 heard numbers -- I've heard all kind of
20 different numbers. If you could get into
21 details on what you believe actual costs would
22 be?

23 It would be nice if we could have
24 comments from Mary Rose Blaze -- excuse me,
25 Donna Rose Blaze. She seems to be the official

1 person who has the real numbers. If we could
2 talk what these things actually cost, if we
3 could talk about how they would theoretically
4 be paid.

5 And we have some committee people
6 here, as well, who could maybe talk about how
7 that would fit into our budget. I don't know
8 if that's possible.

9 BOARD PLANNER: I don't think you
10 want to talk about that now, the public
11 hearing is closed. I think what you want to
12 do is maybe transmit whatever you want for
13 consideration to the Township committee.

14 MR. PEPE: Well, let's see what
15 we have.

16 BOARD PLANNER: First of all, I
17 would like to, with the permission of the
18 chair and the attorney, read into the record
19 something that Donna Rose wrote. I know she's
20 not here for cross-examination, but I did
21 speak with her, as did the COAH Work Group, in
22 detail. And then I will flesh it out a little
23 bit.

24 Would that be okay, Mr. Chairman?

25 CHAIRMAN NEWMAN: Yes, that's

1 fine.

2 BOARD PLANNER: "I have reviewed
3 the plans" -- and she's talking about the plan
4 in the book as well as the alternatives --
5 "particularly the scattered site 100-percent
6 affordable, and we strongly recommend that the
7 Planning Board consider the following: By
8 supporting the scattered site plan the
9 township obligates itself to the cost of
10 acquisition and development of the 85 units,
11 which can be upwards of \$17 million."

12 She later indicated, by the way,
13 in correspondence, actually on email, that
14 that's a minimum but she's trying to be
15 conservative here not to extend numbers beyond
16 what's possible.

17 Number two. "Units need to be
18 developed taking into consideration the unit
19 mix, handicap accessibility, prevailing wages
20 and Energy Star design standards which can be
21 sustained for a period of 30 years."

22 Three. "Scattered sites with
23 less than 12 units are difficult to manage.
24 Affordable Housing supports only 30 percent of
25 its development costs." And she said it's

1 actually 20 percent or less if you have
2 smaller developments, such as what was
3 discussed, maybe four to six units or whatever
4 per site.

5 MR. PEPE: 20 percent less than
6 the 30 percent?

7 BOARD PLANNER: No.

8 MR. PEPE: You said the number is
9 actually 20 percent?

10 BOARD PLANNER: That's correct.

11 MR. PEPE: So the number goes
12 from go 30 to 20?

13 BOARD PLANNER: Yes. "Scattered
14 sites would require substantially more expense
15 per unit to operate than a consolidated plan
16 and more likely struggle financially over the
17 course of time. Scattered Site Plans in a
18 rural community would not afford the residents
19 access to the transportation, jobs, resources
20 and so forth, and basically isolates the
21 residents."

22 Pro formas, Number 5. "Pro formas
23 detailing the cost of acquisition, development
24 and operation need to be identified. Funding
25 sources that will be used are depleted and

1 could not be relied upon. As a nonprofit
2 developer, with over 30 years experience, I
3 would not comfortably recommend a general
4 scattered site plan. I think the Route 33
5 plan is the most viable plan for Millstone
6 Township of those submitted."

7 Let me expand a little bit from a
8 meeting today and direct dialogue between
9 Donna and myself. I mentioned earlier that
10 the cost would be \$17 million. That's
11 assuming a cost for land acquisition, design
12 and development at the basis of \$200,000 per
13 unit. Her experience throughout Millstone --
14 I'm sorry, Monmouth County, is a range between
15 150,000 and 250,000. So the number could go
16 up. She does not think it would go down based
17 upon the attractiveness of Millstone and the
18 relatively high cost of land.

19 As far as the reasonableness of
20 these units ever being built from an economic
21 viewpoint, she indicated the following: The
22 rental -- the way you figure net cash flow is
23 obviously you take rental income less
24 operating expenses. She has indicated in some
25 prior emails that the operating expense per

1 unit per year would be six to \$7,000. She --
2 although some correspondence to the town have
3 indicated 600,000 figure -- she indicated that
4 would be more likely \$700,000 for the
5 scattered sites because you need more
6 transportation visits, more septic systems,
7 you have other things to maintain. So you
8 lose the efficiencies of scale.

9 She said that the net cash flow
10 will, at best, cover less than 20 percent of
11 the development costs. And that is a quote
12 that she has allowed me to say to you. That
13 means that there is a significant deficit.

14 Keep in mind that in order to get
15 funding, a part from subsidies by the Township
16 itself -- well, even funding from the
17 Township, but you're not going to fund
18 something that doesn't make any sense. But
19 the bottom line is that you would need -- you
20 would have a shortfall of some 80 percent for
21 a small number of projects that the housing
22 alliance has done. They have a little bit of
23 a slush fund. They go into all of these
24 financing deals very, very concerned and
25 careful because they would pick up some minor

1 differences.

2 MR. PEPE: Rich, in terms of
3 feasibility in relation to the plan sent to
4 the state, something like this, that has a
5 deficit like this, would they consider that
6 feasible?

7 BOARD PLANNER: No, they won't.
8 Because even your consultant, Donna Rose
9 Blaze, has indicated that they would not take
10 this on because it is not -- in the pro formas
11 they would probably not even get funding from
12 funding agencies.

13 MR. PEPE: So who would fund
14 this?

15 BOARD PLANNER: Well I guess
16 ultimately the town. You're going to be -- it
17 would be a municipally sponsored project.
18 Unless you have a not-for-profit willing to
19 build and take the risk in terms of getting
20 grants and the like, it will fall upon you.
21 You're obligated under a municipally sponsored
22 plan, not a private developer.

23 Just a couple of other things.
24 There's also this feeling that at the end of
25 30 years, you know, the units would not be

1 under the control of COAH and could somehow
2 just disappear. Donna indicated that every
3 one of the units that she is working on,
4 particularly within Millstone -- and I think
5 she said everywhere else, but I don't know
6 that -- are deed restricted in perpetuity. So
7 the Township always has the right to reapply
8 for 30 more years on their terms once the
9 30-year-minimum term that COAH specifies
10 elapses.

11 Basically, and I read her letter
12 first, you heard her conclusion that it's not
13 an economically viable plan. And it will be
14 looked at and scrutinized from an economic
15 viewpoint by COAH. And I might add, also,
16 that if you don't have a viable plan, you're
17 not buying anything. You're just, again,
18 possibly setting yourselves up for an objector
19 or a builder's remedy lawsuit.

20 One town, actually it's my
21 hometown, West Windsor Township, was sued
22 apparently yesterday on a builder's remedy
23 lawsuit even before the town submitted a
24 housing plan to COAH. And that was actually
25 discussed with COAH in one of the

1 conversations today.

2 CHAIRMAN NEWMAN: Rich, just to
3 confirm, Donna Rose Blaze is a member of the
4 COAH Work Group?

5 BOARD PLANNER: Oh, yes.

6 CHAIRMAN NEWMAN: So she's been
7 working with you and the rest of the group all
8 along?

9 BOARD PLANNER: Yes.

10 CHAIRMAN NEWMAN: So you have had
11 the benefit of her thinking during this whole
12 process?

13 BOARD PLANNER: Very much, Mr.
14 Chairman. She's instrumental. She has had a
15 tremendous amount of experience. She
16 mentioned 30 years. She's the reason you have
17 a lot of components of the plan in this plan.

18 Any time a property came up, one
19 of the first items of effort was that your
20 engineer, Matt Shafai, would do an overview of
21 the environmental carrying capacity attributes
22 of the land. And then it would go to Donna
23 and her staff to look at feasibility for
24 development. And then she would try to get a
25 not-for-profit, if necessary, or a group home

1 supervisor/operator to come in. And that's
2 how she does it. It takes a lot of time but
3 it has some certainty.

4 COAH, while -- again, in
5 conversation today -- while they have a
6 provision for non-site-specific, again it's
7 not a blanket like that per se. There are
8 qualifications that are layers of other
9 related rules that have to be achieved in
10 order for them to determine that it is a
11 realistic plan for the provision of the land.

12 CHAIRMAN NEWMAN: I feel like I'm
13 dominating these questions from the Board, but
14 I just wanted to re-ask my last question.

15 Is the plan that's before us
16 still the one recommended by the COAH Work
17 Group?

18 BOARD PLANNER: Yes, it is. And
19 it's also the one that I recommend, as your
20 consultant, for all the reasons we've
21 discussed.

22 CHAIRMAN NEWMAN: Sure, go ahead.
23 Do you have a microphone?

24 MR. PADO: Yes. Rich, can you
25 please -- I'm a little confused on one, I

1 guess, rule, if you will. The so-called lot
2 and block rule.

3 Is that still in effect? In
4 other words, we have to list the lot and block
5 on there?

6 BOARD PLANNER: Not necessarily.
7 There is a provision, as I said, that states
8 that you can have a plan for -- you could have
9 a plan that does not specify specific sites
10 for 100-percent municipally sponsored housing
11 or other avenues.

12 But that's not the end of it.
13 And I know there has been a lot of time
14 latching onto that one provision. I mentioned
15 that there are layers of COAH's rules that are
16 corollary to that.

17 Bottom line is that whatever is
18 submitted has to be found by COAH to provide a
19 realistic determination.

20 And with that in mind, if you
21 have a plan that has the vast majority of your
22 units in an unspecified fashion, as opposed to
23 saying we have 15 units, we're looking at
24 three sites, we can't specify for certain
25 which of those sites they'll be, we're still

1 in negotiations, we want to get the best deal.
2 We don't want to signal to one property owner
3 that we're going to pay whatever you want for
4 it by putting you in the plan. That's one
5 thing.

6 The other extreme, they would
7 start looking at the economic pro forma and
8 they're going to hold you to it.

9 One other thing I want to
10 mention, I discussed this, I raised it today
11 with Lucy. It actually occurred in a
12 conversation with Chairman Newman as we were
13 preparing for tonight's meeting.

14 It is interesting that COAH's
15 provision for the unspecified tracts of land
16 is really contrary to the Land Use Law. I'm
17 not speaking as an attorney here, although I
18 did speak to Mike Steib about it.

19 The bottom line is right now in
20 your plan every site that is earmarked for
21 affordable housing, for whatever the type of
22 development it is, is specified. Which means
23 every resident of Millstone Township, by
24 virtue of the public process through the
25 Master Plan, is able to know where those units

1 are going to be, what they're going to be, how
2 many units they're going to be, and the like.

3 In the theoretic plan of
4 non-specific, what you would be doing is
5 through the Master Plan designating possibly,
6 at least in the past it was discussed, up to
7 maybe 14 separate sites non-specifically
8 located. You would be saying you're going to
9 develop those with a range of housing for
10 families on each of them, but you wouldn't be
11 giving notice through your Master Plan process
12 to the residents of town where those sites
13 are, what's going to be on them.

14 And then you would presumably, if
15 COAH rules alone prevailed and everything went
16 along those lines, you would then at some
17 point adopt ordinances to implement those --
18 this rather general recommendation in your
19 Master Plan.

20 Keep in mind how you've done
21 master plans before. When you changed the
22 zoning for a lot of lands you designated the
23 RU-P Zone and other zones after your 2002
24 Master Plan was adopted, you had maps. You
25 showed them. It was very, very transparent.

1 In this case it would be not -- it would not
2 be.

3 I raised that. I was intrigued
4 by the chairman's comment. I, frankly, had
5 not thought about it before. And I asked Lucy
6 Vandenberg today on the phone what about this,
7 and her response was, and I think I'm
8 accurately quoting, "Wow, you know, we didn't
9 think of that before. We'll have to look into
10 it. We certainly don't want to
11 intentionally -- certainly don't intend to
12 contravene the Land Use Law because that's
13 what's governing this whole proceeding."

14 And, more specifically, as far as
15 the Land Use Plan Element, this is in
16 40:55D-28 of the Municipal Land Use Law,
17 Subparagraph B, states: "Showing the existing
18 and proposed location, extent and intensity of
19 development of land to be used in the future
20 for varying types of residential, commercial,"
21 on and on and on.

22 Now I'm not drawing a legal
23 conclusion but you know I'm concerned about
24 protecting the town Zone Plan against a
25 builder's remedy lawsuit or even a viable

1 objector in terms of the COAH plan that you
2 may adopt. That's just another thing.

3 And, you know, we know that the
4 rules have not been thought out entirely. We
5 know that they're being re-interpreted as we
6 speak. We know now that they have something
7 else to look at today that they haven't
8 thought about.

9 So it's just another thing for
10 the Board members to think about.

11 CHAIRMAN NEWMAN: Thanks, Rich.
12 Anyone else?

13 At this point I think -- at this
14 point I think it would be appropriate for the
15 board or a board member to consider making a
16 motion on the plan. And, of course, we would
17 then need a second. Then we would have an
18 opportunity for final board comment, and then
19 a roll-call vote.

20 I have kind of been thinking
21 about since our last meeting, if there were to
22 be a vote, that vote could have conditions or
23 stipulations.

24 UNIDENTIFIED SPEAKER: No open
25 public?

1 CHAIRMAN NEWMAN: No. We had
2 closed that at our last meeting.

3 So what I did is I had my notes
4 typed up so that I could keep myself organized
5 and put together a list of what could be
6 potential conditions or stipulations to a
7 motion.

8 Now what I'm going to do is read
9 this so that everyone can have the benefit of
10 it, even though it's going to look a little
11 impolite to read it. And I'm not suggesting
12 that a motion has to include any or all of
13 these stipulations, but it is something I
14 would like you to consider.

15 And if someone would like to make
16 a different motion, you're welcome to do so.
17 Or to accept or modify or reject any of these
18 thoughts, again, you're welcome to do so.

19 I'm going to hand out to the
20 board copies of typed-up notes that I'm going
21 to read.

22 UNIDENTIFIED SPEAKER: Make a
23 motion to open up public.

24 CHAIRMAN NEWMAN: Motions aren't
25 accepted from members of the audience, only

1 accepted from the Board.

2 So what I would suggest to the
3 board is if someone would like to consider a
4 motion, that that motion could consider
5 stipulations or conditions as follows:

6 The Planning Board is adopting
7 the Housing Plan Element and Fair Share Plan
8 under duress because COAH's rules were adopted
9 during May and were amended recently during
10 September and will be amended further to
11 implement the changes to the rules recommended
12 in legislation signed by the Governor on July
13 17th, 2008. Therefore, the rules have been,
14 and continue to be, moving targets.

15 2.) While Millstone Township has
16 been a model community in satisfying its prior
17 affordable housing obligations, COAH's rules
18 require Millstone Township to construct more
19 housing units than what is expected to be the
20 actual growth share obligation of the town.

21 3.) Nevertheless, the Millstone
22 Township Planning Board wishes to avoid the
23 possibility of a builder's remedy lawsuit
24 which would result in a town losing control of
25 its zone plan.

1 4.) Therefore, the Township of
2 Millstone Planning Board adopts the Housing
3 Element and Fair Share Plan, but does not
4 endorse the growth share projections
5 calculated by COAH for the Township.

6 5.). The approval of the Housing
7 Plan Element and Fair Share Plan does not
8 constitute an approval or an endorsement of
9 supporting public sewers, package treatment
10 plants, or sewer treatment plants in
11 Millstone. The Planning Board will only
12 endorse a proposed wastewater treatment
13 facility after it has undergone a thorough
14 review by the Township in order to ensure its
15 environmental integrity. And only if the
16 Office of Smart Growth and the New Jersey
17 Department of Environmental Protection assures
18 in writing that no other such treatment
19 facility will be approved by the Office of
20 Smart Growth or the DEP if such facility does
21 not provide for construction of affordable
22 housing as specifically included in a Fair
23 Share Plan adopted by this board.

24 Potential stipulation number 6.
25 The Planning Board continues to urge COAH to

1 grant an extension of time for municipalities,
2 including Millstone, to file their petition
3 for Substantive Certification beyond the
4 present December 31st, 2008 deadline. If an
5 extension is granted after the adoption of
6 this Resolution, the Millstone Township
7 Planning Board intends to re-examine the plan
8 and may modify the plan prior to its
9 submission to COAH.

10 7.) If an extension is not
11 granted, but COAH rules change at a later
12 date, the Millstone Township Planning Board
13 intends to re-examine the plan and may modify
14 the plan in accordance with rule changes.

15 Eight. It is the recommendation
16 of the Planning Board that this plan not be
17 submitted to COAH by the governing body until
18 December 30th, 2008, in order to provide COAH,
19 or the Governor, every opportunity to grant an
20 extension of time for Millstone to submit its
21 petition for substantive certification.

22 Those are a list of notes that I
23 had come up with based on comments that we had
24 heard from the public and our professionals in
25 the COAH Work Group.

1 If anyone would like to make a
2 motion, and you can certainly change any of
3 those, or do as you would please. Then we
4 would open for discussion on such a motion.

5 MR. BLANCO: Mr. Chairman, I make
6 that motion, to have all eight conditions put
7 into the reading or put into our resolution.

8 CHAIRMAN NEWMAN: We have a
9 motion. Is there a second?

10 MS. PINNEY: I'll second the
11 motion.

12 CHAIRMAN NEWMAN: And now if
13 there's any further discussion by any members
14 of the board on the motion?

15 MR. PEPE: You know, I want to
16 make sure that -- I guess, Doug, this sort of
17 falls on you. The residents here have been
18 emphatic about their demands for where do we
19 stand in relation to some sort of package
20 treatment plant, call it whatever you want to,
21 a water system of sorts.

22 Could there be words in here that
23 specify with continuity being taken under
24 consideration in relation to the way the rest
25 of the town is run?

1 I don't know what McDonald's and
2 Burger King have over on the other side of
3 town, and I don't expect you to know that at
4 this point, but maybe somebody else on this
5 board can reflect on that, so that we don't
6 sort of open yourselves up.

7 I think you did a pretty good
8 job, Mitch, here explaining it in relation to
9 COAH. And I feel pretty comfortable when I
10 asked this question last time about what
11 percentage or what chance does the rest of the
12 town stand of getting some sort of package
13 sewer treatment plant somewhere else in town
14 that is not related to COAH.

15 BOARD PLANNER: If I can, Mr.
16 Chairman?

17 CHAIRMAN NEWMAN: Sure.

18 BOARD PLANNER: I think what the
19 Chairman read assures you of that because it
20 requires the approval of both -- it stipulates
21 in your approved resolution.

22 In terms of going beyond as to
23 what type of facility you might approve that's
24 environmentally sound, there's a lot of
25 technologies out there and quite frankly we

1 don't know what's going to be proposed.

2 MR. PEPE: I would like to just,
3 again, try to keep it -- you know, I would
4 like to try to stick with the word continuity
5 somewhere in there.

6 The other thing I just want to
7 make clear, I know it's elementary to me but
8 maybe it's not to some of the other Board
9 members. If this plan is approved, that this
10 property would come back to us for Site Plan
11 approval, and that being said we would all get
12 an opportunity to take another bite at the
13 apple and to control...

14 BOARD PLANNER: Definitely. This
15 word continuity, by the way, again, I think --

16 MR. PEPE: Is it a good word in
17 this context?

18 BOARD PLANNER: I don't think you
19 should put anything -- I'm just recommending
20 that you don't because I think, quite frankly,
21 it will be used by whoever wants to use it.
22 It may take away the flexibility to get the
23 best design, if that comes about, through this
24 Site Plan review process by the town.

25 CHAIRMAN NEWMAN: Well I just

1 want to reread what was a very important part
2 of this that I think goes to the heart of what
3 you're saying, Chris. You might say I'm
4 saying the same thing over again, and I am,
5 but this was an important aspect to me.

6 "The approval of the Fair Share
7 Plan does not constitute an approval or an
8 endorsement of supporting public sewers,
9 package treatment plants or sewer treatment
10 plants in Millstone."

11 In effect, we're supporting the
12 Fair Share Plan that's in front of us. We're
13 not supporting a method or a scheme of sewer.

14 MR. PEPE: Doug, do you feel, do
15 you agree -- and, Mitch, I know you're an
16 attorney, I don't mean to -- but I just want
17 to make sure.

18 CHAIRMAN NEWMAN: I'm just a
19 board member tonight.

20 MR. PEPE: Doug, what do you
21 think?

22 BOARD ATTORNEY: Well, Chris,
23 basically the question is whether or not by
24 adopting this plan in the resolution that
25 we're opening the door for sewers and package

1 treatment plants?

2 MR. PEPE: People were here last
3 week and there was concern about it so I want
4 to make sure they're...

5 BOARD ATTORNEY: Well I wasn't
6 prepared to comment on this.

7 MR. PEPE: And, actually, I
8 understand that.

9 BOARD ATTORNEY: Frankly, I think
10 what we're dealing with here is only the
11 approval of the Housing Element of this plan
12 for these properties. And I don't think we're
13 opening the door as far as any other
14 applications at this time, sir.

15 MR. PEPE: Okay. And, again, I
16 know it's elementary to some people, maybe
17 it's not to everybody. Obviously this thing
18 will be coming back to everybody on this
19 board. And I mean by either approving this
20 or -- if we decide to approve it, you know,
21 everybody has to think about what that means
22 next time this comes up.

23 I don't think anybody was -- I
24 don't think anybody is happy with this.

25 CHAIRMAN NEWMAN: It goes without

1 saying, and that's why we're acting --

2 UNIDENTIFIED SPEAKER: Vote it
3 down.

4 CHAIRMAN NEWMAN: -- under some
5 level of duress, given the time constraints
6 that we have, but still trying to work --

7 UNIDENTIFIED SPEAKER: Don't
8 worry about the time constraints.

9 UNIDENTIFIED SPEAKER: Isn't COAH
10 supposed to meet tomorrow?

11 CHAIRMAN NEWMAN: Any other
12 comments or questions from anyone on the
13 board?

14 UNIDENTIFIED SPEAKER: Wasn't
15 that said last week?

16 MR. BLANCO: I have a comment.

17 CHAIRMAN NEWMAN: Sure.

18 MR. BLANCO: No one is happy
19 about this. I know I'm not.

20 UNIDENTIFIED SPEAKER: Vote no.

21 UNIDENTIFIED SPEAKER: Vote no.

22 MR. BLANCO: No. I have two
23 options here. I have an option to vote for
24 this, or I have an option for a builder's
25 remedy. And I'm here on this board to

1 represent this whole town, not just one part
2 of it.

3 I'm voting for the town and I'm
4 voting for the people of this town and this is
5 the best plan we have.

6 (Stenographer Note: Accurate
7 record was not able to be taken at this
8 portion due to public outburst with many
9 unidentified and overlapping speakers.)

10 UNIDENTIFIED SPEAKER: This is an
11 Order from the Governor giving eight towns a
12 one-year extension and we don't know that?

13 (Stenographer Note: Accurate
14 record was not able to be taken at this
15 portion due to public outburst with many
16 unidentified and overlapping speakers.)

17 CHAIRMAN NEWMAN: If we could
18 have some order to the meeting.

19 UNIDENTIFIED SPEAKER: That's
20 been on COAH's website since October.

21 UNIDENTIFIED SPEAKER: No one
22 could figure it out?

23 (Stenographer Note: Accurate
24 record was not able to be taken at this
25 portion due to public outburst with many

1 unidentified and overlapping speakers.)

2 CHAIRMAN NEWMAN: I spent two
3 seconds looking at it. It appears to apply to
4 towns in the Highlands. There was a separate
5 agreement between COAH and the Highlands
6 pursuant to an Executive Order by --

7 UNIDENTIFIED SPEAKER: That's
8 what they asked for, we didn't.

9 (Stenographer Note: Accurate
10 record was not able to be taken at this
11 portion due to public outburst with many
12 unidentified and overlapping speakers.)

13 CHAIRMAN NEWMAN: None of what is
14 being yelled is being picked up on the record.

15 BOARD PLANNER: Mr. Chairman, may
16 I? These are Highland communities, correct?
17 I haven't seen this particular resolution.

18 UNIDENTIFIED SPEAKER: It's right
19 on COAH's website.

20 CHAIRMAN NEWMAN: Could we allow
21 Mr. Coppola...

22 BOARD PLANNER: I'm just trying
23 to respond, just in case you want some facts.

24 We do represent two
25 municipalities in the Highlands. I am

1 familiar with the Resolution of Intent to
2 defer it to I believe it is next December
3 2nd --

4 UNIDENTIFIED SPEAKER: 8th.

5 BOARD PLANNER: -- 8th of next
6 year. They're only applicable to the towns in
7 the Highlands Region. That does not include
8 us, obviously. These are North Central New
9 Jersey towns. There are 81 of them. A number
10 of them have to have signed that intent
11 because they're in the so-called protection
12 area.

13 One of our towns is in the
14 protection area and did, that's Allamuchy
15 Township in Warren County. Another
16 municipality that we represent, Peapack and
17 Gladstone in Somerset County, they're in the
18 planning area, they opted not to for reasons
19 that they had.

20 The bottom line is that is a
21 separate Memorandum of Understanding. It is
22 not applicable to Millstone Township or, for
23 that matter, any of the other towns we
24 represent.

25 CHAIRMAN NEWMAN: I also would

1 like to add that I also do work in North
2 Jersey in a couple of towns that are in the
3 Highlands, and those towns had shown me a copy
4 of that so they could stop the development
5 that my company was associated with.

6 And it's something that was, as I
7 understand it, it was something that was put
8 in place because the Highlands were creating
9 no opportunity for development, and then the
10 Council on Affordable Housing was at the same
11 time looking for affordable housing pursuant
12 to its regulations, and there was a logjam.
13 And I guess the Governor got involved and said
14 to those two agencies work together, play
15 nice. And they came up with a Memorandum of
16 Agreement between the two agencies, between
17 COAH and the Highlands, that put them on hold
18 for approximately a year.

19 We're not part of the Highlands.
20 Actually, I also read, and you probably also
21 all read it, in The Asbury Park Press a couple
22 of weeks ago, there was an article -- maybe it
23 was in The Examiner -- there was an article
24 that the Pinelands is looking for the same
25 type of relief on the theory that the

1 Pinelands is also a restricted growth area.
2 And they are struggling with how come we're
3 told we have to restrict growth but COAH is
4 telling us we have to have growth for these
5 affordable homes.

6 MR. PEPE: Is our environmentally
7 sensitive designation helping in relation to
8 our lawsuit? Does that mean anything to
9 anybody?

10 BOARD PLANNER: Oh, it does
11 because of the state plan. That's part of
12 your lawsuit, definitely. But it has nothing
13 to do with that Memorandum of Understanding.

14 I might also add the reason
15 Peapack and Gladstone, in the planning area
16 which had the option of adopting the
17 resolution or not, did not, was because part
18 of the Memorandum of Understanding is that in
19 order to promote development outside of the
20 protection area on the Highlands, the
21 Highlands will have the right to raise the
22 affordable housing obligation of any
23 municipality that opts in for the extension,
24 but no more than 50 percent more than the
25 current number. Thank you.

1 CHAIRMAN NEWMAN: We did know
2 about this, or at least I can only say I know
3 about it. Obviously, Rich knows about it. It
4 certainly was available on the COAH website,
5 and it just does not include us.

6 But we have, of course, requested
7 an extension. Rich has met with COAH and
8 we'll see if we can get one.

9 UNIDENTIFIED SPEAKER: But the
10 question was, Mr. Coppola said last week that
11 there was a COAH meeting tomorrow night, can't
12 we just file a letter of extension?

13 BOARD PLANNER: You know, Mr.
14 Chairman, it's up to you.

15 CHAIRMAN NEWMAN: I know. It's
16 not a public hearing. We have got to get --

17

18 (Many unidentified public indiscernible to
19 reporter.)

20 CHAIRMAN NEWMAN: Yes, I will
21 take judicial notice that I have two ears and
22 I did hear what was just yelled out there.

23 We did talk about the fact that
24 there is, Rich mentioned to us, that there is
25 a COAH meeting tomorrow. And our letter to

1 COAH said that we wanted to hear back from
2 them today. They obviously didn't respond to
3 that.

4 If COAH grants an extension or
5 creates extensions tomorrow, we'll have the
6 benefit of that, at least in my way of
7 thinking, the way I have crafted some of these
8 potential stipulations.

9 We couldn't meet tomorrow. We
10 simply couldn't work out the logistics of
11 that. We discussed that at our last meeting.
12 So this was the meeting that we set up to
13 address this in the most reasonable fashion
14 that the board could under these time
15 constraints.

16 I know that there's a lot of
17 emotion out there. I hear it. We're trying
18 to work within the guidelines that we have.
19 We're trying to make the right decision for
20 the town, for the board, and to work with the
21 affordable housing process.

22 To the extent that amendments are
23 permitted, to the extent that rules change, to
24 the extent extensions are granted, I promise
25 you we will be the first line of advocates

1 with the Township and the COAH Work Group to
2 see that we can take advantage of that at
3 every instance.

4 MR. BLANCO: Mr. Chairman, you
5 also forgot that we also have the Township
6 Council that is supportive of the fact that
7 they want to see the best things happen to
8 this town, and they are our forefront to fight
9 COAH, to try to get the rules changed. They
10 are the ones who are initiating the lawsuit to
11 make sure things are changed.

12 And I believe in the Council. I
13 believe they have everyone's best interest at
14 heart, and they will fight for you. And when
15 they come in front of this board we will fight
16 to make sure the best happens for this town.

17 And I know everyone is upset over
18 the fact that it's by their residence. But if
19 there's a builder's remedy, it's taken out of
20 our hands and it goes into the courts, and you
21 are not going to get the best from the courts.

22 CHAIRMAN NEWMAN: Any further
23 comments from anyone on the Board before we
24 ask for a roll-call vote from Pam?

25 Seeing none, Pam, would you

1 please call the roll?

2 BOARD SECRETARY: Yes. Mr.

3 Blanco?

4 MR. BLANCO: Yes.

5 BOARD SECRETARY: Ms. Pinney?

6 MS. PINNEY: Yes.

7 BOARD SECRETARY: Ms. Grbelja?

8 MAYOR GRBEJLA: Yes.

9 BOARD SECRETARY: Mr. Pepe?

10 MR. PEPE: Under duress, yes.

11 BOARD SECRETARY: I'm sorry?

12 MR. PEPE: Yes.

13 BOARD SECRETARY: Mr. Sico?

14 COUNCILMAN SICO: Yes.

15 BOARD SECRETARY: Mr. Kurzman?

16 MR. KURZMAN: Yes.

17 UNIDENTIFIED SPEAKER: Louder.

18 Couldn't hear you.

19 MR. KURZMAN: Yes.

20 BOARD SECRETARY: Mr. Pado?

21 MR. PADO: Yes.

22 BOARD SECRETARY: Mr. Beck?

23 MR. BECK: Yes.

24 BOARD SECRETARY: And Chairman

25 Newman?

1 CHAIRMAN NEWMAN: As was said
2 under the duress of the circumstances, yes.

3 BOARD SECRETARY: Okay, thank
4 you.

5 CHAIRMAN NEWMAN: Seeing nothing
6 on the Board's agenda, is there a motion...

7 (Stenographer Note: Accurate
8 record was not able to be taken at this
9 portion due to public outburst with many
10 unidentified and overlapping speakers.)

11 CHAIRMAN NEWMAN: The meeting
12 being closed...

13 - - -

14 (Hearing concluded at 8:00 p.m.)

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1 C E R T I F I C A T E

2

3 I, ANGELA C. BUONANTUONO, a Shorthand
4 Reporter and Notary Public for the State of
5 New Jersey, certify that the foregoing is a
6 true and accurate transcript of the hearing of
7 said witness(es) who were first duly sworn by
8 me, on the date and place herein before set
9 forth.

10 I FURTHER CERTIFY that I am neither
11 attorney nor counsel for, nor related to or
12 employed by, any of the parties to the action
13 in which this hearing was taken, and further
14 that I am not a relative or employee of any
15 attorney or counsel employed in this action,
16 nor am I financially interested in this case.

17

18

19

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21

ANGELA C. BUONANTUONO
Shorthand Reporter

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25