

IN THE MATTER OF  
STAVOLA QUARRIES, LLC  
VS.  
TOWNSHIP OF TEWKSBURY  
.....  
B E F O R E:

THE TEWKSBURY TOWNSHIP COMMITTEE

WILLIAM VOYCE, Mayor

ROBERT HOFFMAN, JR.

LOUIS DIMARE

WILLIAM MENNEN

ROBERTA BRASSARD, Township Clerk

A P P E A R A N C E S:

HOWARD COHEN, ESQ.  
-and-  
RICHARD CUSHING, ESQ.  
Attorneys for the Tewksbury Township Committee

HEROLD & HAINES, ESQS.  
BY: MICHAEL OSTERMAN, ESQ.  
Attorneys for Malicks' Oldwick Farm

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1 THE MAYOR: I need a motion to open  
2 the public hearing?  
3 MR. DIMARE: I move to open up the  
4 public hearing on Ordinance 08-008.  
5 THE MAYOR: Is there a second?  
6 MR. HOFFMAN: I will second.  
7 THE MAYOR: All in favor, say aye.  
8 (Whereupon, all members responded in  
9 the affirmative.)  
10 THE MAYOR: Mr. Cohen?  
11 MR. COHEN: Yes. We have two sets of  
12 exhibits, one so the governing body can see  
13 them, and one so you can see them in the  
14 public, if you want to move around the room  
15 as necessary.  
16 Good evening, everybody, my name is  
17 Howard Cohen and I am with Parker, McKay. I  
18 am special counsel to the Township in  
19 connection with a certain litigation that was  
20 instituted by Stavola against the Township  
21 entitled Stavola Quarries, LLC vs. the  
22 Township of Tewksbury, venued in the Superior  
23 Court of New Jersey, Law Division, Hunterdon  
24 County, under Docket No. HNT-L-155-06.  
25 There was some predecessor litigation

1 to the litigation I have just described to  
2 you. The ordinance that is the subject of  
3 tonight's public hearing, Ordinance No.  
4 08-2008 arises out of a settlement of the  
5 lawsuit which I just identified to you. In  
6 that lawsuit Stavola challenges the  
7 Township's rezoning of its properties in the  
8 Village Business Highlands Piedmont District  
9 among other claims.  
10 The rezoning challenge attacked the  
11 heart of the Township's 2003 Master Plan  
12 recommendations for establishment of the  
13 Highlands District with a minimum lot size of  
14 12 acres, the Piedmont District, with a  
15 minimum lot size of five acres, and reduction  
16 in size of the mining district. These  
17 recommendations were implemented in Ordinance  
18 -- excuse me, implemented in an ordinance  
19 adopted on June 22, 2004.  
20 After extensive discovery, which is  
21 the fact finding process in a lawsuit,  
22 Stavola agreed to settle and dismiss all of  
23 its claims against the Township, subject to  
24 the terms of a settlement agreement dated  
25 March 19, 2008. The settlement agreement was

1 the subject of a hearing at which authorized  
2 representatives of Stavola and the Township  
3 appeared before the Honorable Fred Kumpf, a  
4 Judge in the Superior Court, on March 19,  
5 2008.  
6 After the terms of the settlement  
7 were summarized and the parties' agreement  
8 confirmed, the Court entered an Order finding  
9 that the settlement agreement and settlement  
10 was not against public policy. The Order  
11 provided, however, that the settlement was  
12 subject to a public hearing pursuant to a  
13 case, Whispering Woods v. Middletown  
14 Township, reported at 220 N.J. Super 161 by  
15 the Law Division in 1987; and also, a public  
16 hearing on Ordinance 08-2008.  
17 Tonight's proceeding is twofold:  
18 One, a public hearing on the settlement  
19 agreement; and two, a public hearing on  
20 proposed Ordinance 08-2008.  
21 Before summarizing for your benefit  
22 the terms of this settlement agreement and  
23 proposed Ordinance 08-2008, a brief  
24 explanation is appropriate about the  
25 necessity of a public hearing requirement

1 under the Whispering Woods decision. The  
 2 Whispering Woods decision, among other  
 3 things, concluded that a public entity such  
 4 as the Township here has the right to settle  
 5 an action in lieu of prerogative writ, which  
 6 is the nature of the lawsuit brought by  
 7 Stavola against the Township, challenging its  
 8 zoning; and the Township has the right to  
 9 settle such a suit, provided that certain  
 10 conditions are met. The conditions set forth  
 11 in Whispering Woods require that there be a  
 12 public hearing duly noticed with an  
 13 opportunity for the public to be heard; a  
 14 formal vote by the governing body, and a  
 15 resolution memorializing the action taken by  
 16 the governing body.

17 Whispering Woods, in clear and very  
 18 uncertain terms or certain terms recognizes  
 19 the general principle that the courts favor  
 20 settlements, and that that principle equally  
 21 applies to prerogative writ litigation, as  
 22 long as the public interest is not disserved  
 23 (sic) associated in connection with that  
 24 settlement.

25 Whispering Woods specifically states,

1 and I quote, "If the settlement must be made  
 2 known to the public subject to the public  
 3 voice, and voted upon in legal action, the  
 4 public interest has been served."

5 The proposed Ordinance 08-2008 arises  
 6 out of the settlement. I will summarize the  
 7 ordinance in the context of describing the  
 8 terms of the settlement.

9 Having given you the format and what  
 10 led to tonight's public hearing, let me now  
 11 summarize for your benefit the terms of the  
 12 settlement.

13 As you know, in connection with  
 14 tonight's proceedings, the settlement  
 15 agreement, the transcript of the proceedings  
 16 before Judge Kumpf on March 19, 2008, the  
 17 Order entered by Judge Kumpf on March 19,  
 18 2008, and proposed Ordinance 08-2008 were all  
 19 available for public inspection at the  
 20 Township Building prior to tonight's hearing.  
 21 And indeed, I believe we have brought extra  
 22 copies with us to the extent any of you wish  
 23 to examine any of the documents.

24 So with that as a background, let me  
 25 summarize the terms of the settlement.

1 The settlement provides the Township  
 2 Committee will introduce and hold a public  
 3 hearing on an ordinance, the form of which is  
 4 attached to the settlement agreement as  
 5 Exhibit A, which amends Section 718M  
 6 governing the mining district. Exhibit A is  
 7 proposed Ordinance 08-2008, which is part of  
 8 the subject of tonight's public hearing.

9 Proposed Ordinance 08-2008 would  
 10 amend Section 718M governing the mining  
 11 district of the development regulation  
 12 ordinance of the Township to add the  
 13 following language at the end of note one to  
 14 the table of area, yard and bulk requirements  
 15 found at Subsection 718 as follows: And I  
 16 will quote, "Buffer and setback requirements  
 17 shall be consistent with Chapter 8.30  
 18 entitled "Quarry Regulation of the Code of  
 19 the Township of Tewksbury, except if there is  
 20 a high wall condition, and defined in Chapter  
 21 8.30, a safety condition; or to facilitate  
 22 reclamation of the quarry, the buffer or  
 23 setback requirement may be reduced to 50 feet  
 24 in width, subject to the review and approval  
 25 of the township engineer."

1 In substance, the proposed Ordinance  
 2 08-2008 will permit mining up to 250 feet of  
 3 the mining district line, and within 50 feet  
 4 of a non-municipal property line.

5 One of the purposes of proposed  
 6 Ordinance 08-2008 is to facilitate  
 7 remediation of the high wall condition in the  
 8 northeastern portion of the mining district;  
 9 and to facilitate reclamation of that high  
 10 wall condition. The high wall condition is  
 11 shown on Exhibit C-2, and is shaded in darker  
 12 colors. The 50 foot buffer runs along the  
 13 northern border of the quarry, the high wall  
 14 condition is in this area (indicating), and  
 15 the ordinance will also permit mining, not  
 16 only within 50 feet of this buffer, but also  
 17 to the east of the high wall condition along  
 18 the northern portion of the quarry up to the  
 19 50 foot buffer and along the easterly  
 20 perimeter of the quarry.

21 Proposed Ordinance 08-2008 is  
 22 designed to provide consistency between the  
 23 provisions in Section 718 of the Township's  
 24 development regulation ordinance governing  
 25 the mining district, with respect to setback

9

1 and buffer requirements, and also Chapter  
 2 8.30 of the Township's code governing quarry  
 3 regulations, specifically Section  
 4 8.30.030a4b. That section includes provision  
 5 for mining up to 50 feet of the easterly  
 6 boundary of the Stavola quarry. That  
 7 easterly boundary also coincides with the  
 8 municipal boundary.

9 The settlement agreement provides  
 10 that after introduction and prior to the  
 11 public hearing with respect to Ordinance 08-  
 12 2008, that ordinance will be referred to the  
 13 Land Use Board for review under the Municipal  
 14 Land Use Law for a determination as to  
 15 whether the ordinance is consistent with the  
 16 Master Plan. The Land Use Board in fact  
 17 undertook that review at its regularly  
 18 noticed meeting on May 7, 2008, and reached a  
 19 determination that the ordinance is not  
 20 inconsistent with the Municipal Master Plan.

21 The settlement agreement further  
 22 provides in paragraphs one and two that the  
 23 settlement is subject to adoption of  
 24 Ordinance 08-2008, which I have described to  
 25 you. The settlement further provides that

10

1 Stavola will pay the Township the sum of  
 2 \$200,000 as reimbursement for a portion of  
 3 its litigation expenses upon execution of the  
 4 settlement agreement. That money under the  
 5 terms of the settlement will be held in  
 6 escrow pending adoption of Ordinance 08-2008,  
 7 and expiration of the time for appeal from  
 8 that ordinance should an appeal be taken  
 9 challenging the ordinance.

10 If Ordinance 08-2008 is invalidated  
 11 on appeal, then the settlement provides that  
 12 the money will be returned to Stavola. The  
 13 \$200,000 has in fact been placed in escrow,  
 14 and is being held by the attorneys for the  
 15 Township.

16 After adoption of Ordinance 08-2008,  
 17 assuming adoption this evening, and  
 18 expiration of the time for appeal therefrom,  
 19 the settlement provides that Stavola will  
 20 undertake arrangements for abandonment of any  
 21 claims it may have to operation or continued  
 22 operation of a concrete plant on Block 44,  
 23 Lot 24 in the township, as set forth in  
 24 paragraph four of the settlement agreement.  
 25 The settlement further provides that

11

1 after adoption of proposed Ordinance 08-2008,  
 2 and expiration of the time for appeal  
 3 therefrom, Stavola will abandon operation and  
 4 dismantle an existing asphalt plant located  
 5 on Block 1, Lot 1 in the Township of  
 6 Readington, as set forth in paragraph five of  
 7 the settlement agreement.

8 The settlement further provides that  
 9 after adoption of Ordinance 08-2008 and  
 10 expiration of the time of appeal therefrom,  
 11 Stavola shall begin stabilization followed by  
 12 reclamation of the unsafe high wall condition  
 13 along its northerly property line in the  
 14 mining district, the area shaded. That  
 15 reclamation is to be accomplished in  
 16 accordance with Exhibits B, C and D to the  
 17 settlement agreement.

18 We have brought those exhibits with  
 19 us this evening, and Andrew Holt, the  
 20 township engineer, will walk you through the  
 21 more detailed process associated with  
 22 stabilization, remediation and reclamation so  
 23 everyone has a clear understanding of what  
 24 obligation Stavola has with respect to that  
 25 particular feature of the settlement.

12

1 The stabilization, remediation and  
 2 reclamation of the high wall condition under  
 3 the terms of the settlement is required to be  
 4 completed within 60 months and performance of  
 5 the work is to be covered by a performance  
 6 bond.

7 The settlement agreement further  
 8 provides in paragraph eight that the  
 9 settlement is subject to a hearing before the  
 10 Court for a determination that it does not  
 11 violate public policy, as I explained to you  
 12 earlier. That hearing, in fact, took place  
 13 on March 19, 2008, before Judge Kumpf, and  
 14 Judge Kumpf so found there being no violation  
 15 of public policy, subject to tonight's public  
 16 hearing.

17 The settlement agreement in paragraph  
 18 nine provides that the settlement is subject  
 19 to a public hearing pursuant to *Whispering  
 20 Woods v. Middletown Township*. That is the  
 21 subject of tonight's proceeding, as I  
 22 explained to you earlier.

23 The settlement agreement provides in  
 24 paragraph 10 that it is binding upon Stavola  
 25 and the Township, their successors and

13

1 assigns, and provides that if Stavola should  
 2 sell, transfer, encumber or otherwise dispose  
 3 of its property, forming the subject of the  
 4 settlement agreement, such disposition and  
 5 any writings relating thereto are subject to  
 6 the terms of the settlement agreement.  
 7 In other words, a successor, an  
 8 assignee or someone who is subject to an  
 9 agreement with Stavola is subject to the  
 10 settlement agreement.  
 11 Under paragraph 14 of the settlement  
 12 agreement, Stavola remains obligated to  
 13 comply with all rules and regulations in the  
 14 Township's quarry ordinance regulation, but  
 15 not limited to those regulations regarding  
 16 blasting, dust control, air quality, water  
 17 quality and storm water runoff.  
 18 Under paragraph 11 of the settlement  
 19 agreement, should adoption of proposed  
 20 Ordinance 08-2008 be challenged, and the  
 21 ordinance invalidated, the settlement  
 22 agreement is deemed void and none of its  
 23 terms can be used by either party in any  
 24 subsequent legal or land use proceedings, it  
 25 is not in force and effect.

14

1 The settlement agreement also  
 2 contains certain, what we call, boilerplate  
 3 provisions, standard provisions that you  
 4 typically find in most agreements dealing  
 5 with governing law, in this case New Jersey  
 6 law governs. The parties benefit of each  
 7 having independent counsel in connection with  
 8 the negotiation and implementation of the  
 9 settlement. Construction and interpretation  
 10 as well as notices including the very notices  
 11 that are required associated with this public  
 12 hearing tonight.  
 13 The settlement also provides that  
 14 Stavola will execute a release in favor of  
 15 the Township, a form of the release is  
 16 attached to the settlement agreement as  
 17 Exhibit E, and in fact, the release has been  
 18 executed. The release is being held in  
 19 escrow in accordance with the terms of the  
 20 settlement.  
 21 Paragraph seven of the settlement  
 22 agreement which required the Township to  
 23 provide a release to Stavola was waived by  
 24 Stavola, and that was confirmed on the record  
 25 before Judge Kumpf on March 19, 2008.

15

1 Dismissal of the lawsuit challenging the  
 2 Township's rezoning, as I described to you  
 3 earlier, is governed by the Order dated March  
 4 19, 2008, which Judge Kumpf entered at the  
 5 conclusion of the hearing that day.  
 6 That is the summary of the terms of  
 7 the settlement. Obviously, the settlement  
 8 document speaks for itself, but I think I  
 9 have covered all of the salient features for  
 10 those of you who may be unfamiliar with that.  
 11 Let me describe now the benefits of  
 12 the settlement.  
 13 There are significant benefits of the  
 14 settlement that accrue for the Township.  
 15 They include terminating a long ongoing  
 16 dispute as to whether Stavola had the right  
 17 to reopen a concrete plant in Tewksbury, and  
 18 an asphalt plant in Readington, which had  
 19 Stavola succeeded, would have resulted in  
 20 incalculable harm to the quality of life of  
 21 those living in close proximity to those two  
 22 plants.  
 23 The second benefit is that Stavola  
 24 has agreed to dismantle and abandon both the  
 25 cement and asphalt plants.

16

1 Third, Stavola has dismissed all of  
 2 its claims with respect to all of the  
 3 rezoning affecting its properties. Your  
 4 rezoning recommended by the 2003 Master Plan  
 5 remains in full effect.  
 6 Fourth, Stavola has paid subject to  
 7 the escrow \$200,000 to the Township towards  
 8 reimbursement of its litigation expenses.  
 9 Fifth, Stavola has agreed to  
 10 remediate the high wall condition, and to  
 11 attend to reclamation of that area in a 60  
 12 month period as spelled out under the  
 13 settlement agreement. Stavola, under the  
 14 terms of the settlement, remains accountable  
 15 to the Township with respect to complaints  
 16 with the quarry regulation ordinance,  
 17 including provisions governing dust control,  
 18 air quality, storm water runoff and other  
 19 items that I described to you earlier.  
 20 Let me turn to the rationale for  
 21 Ordinance 08-2008, which will further be  
 22 explained to you by Andrew Holt.  
 23 Proposed Ordinance 08-2008 is  
 24 designed to facilitate remediation of the  
 25 high wall condition as shown on Exhibit C,

17

1 as well as reclamation of that high wall  
 2 condition, and also provides for remaining  
 3 operations up to the 50 foot buffer in the  
 4 area east of the high wall condition, and  
 5 mining along the eastern border up to the 50  
 6 foot buffer.

7 The ordinance is designed to remedy  
 8 present inconsistencies between the  
 9 provisions in the Township's development  
 10 regulation ordinance at Section 718 regarding  
 11 the mining district with regard to setback  
 12 and buffer requirements, and Chapter 8.30 of  
 13 the Township's code governing quarry  
 14 regulations. Under the quarry regulations  
 15 that I just described to you, mining is  
 16 permitted up to 50 feet of a municipal  
 17 boundary line, and under Section 8.30.030a4b,  
 18 the easterly boundary.

19 Whereas, under the present provisions  
 20 of Section 718 of the development regulations  
 21 ordinance, mining is only permitted up to 250  
 22 feet. The purpose of amending Section 718 of  
 23 the Development Regulations Ordinance is to  
 24 provide consistency with the Governing Quarry  
 25 Regulation ordinance.

18

1 Additionally, the proposed ordinance  
 2 that I have described to you earlier is  
 3 designed to acknowledge prior and current  
 4 quarry licensing, which permits mining up to  
 5 50 feet of the quarry's easterly boundary,  
 6 which coincides with the municipal boundary.

7 Further, as Andrew Holt will explain  
 8 to you, again, the 50 foot buffer provided  
 9 under the proposed Ordinance 08-2008 is in  
 10 fact twice that required by the State Code at  
 11 N.J.A.C., that is the New Jersey  
 12 Administrative Code 12:185 and 12:185-30.1.13  
 13 which is the regulation governing physical  
 14 conditions of pits and quarries.

15 Let me turn to the scope of tonight's  
 16 public hearing. Tonight's public hearing, as  
 17 I explained to you earlier, is confined to  
 18 two matters. One, the settlement agreement  
 19 dated March 19, 2008; and two, proposed  
 20 Ordinance 08-2008 amending Section 718 of the  
 21 mining district regulations.

22 While I understand that some present  
 23 this evening may wish to make general  
 24 comments concerning the quarry, it is  
 25 important to recognize the narrow and limited

19

1 nature of tonight's public hearing. As a  
 2 result, I am asking the Mayor, as Chair of  
 3 this meeting, to confine discussion and  
 4 comment to the matters about which this  
 5 hearing centers. I would ask the public  
 6 respectfully to also abide by those  
 7 parameters.

8 I am now going to introduce to you  
 9 Andrew Holt, who will give you a more  
 10 detailed explanation associated with the  
 11 stabilization, remediation and reclamation  
 12 processes involved under the terms of the  
 13 settlement.

14 MR. HOLT: Thank you. I am Andrew  
 15 Holt, Tewksbury Township Municipal Engineer,  
 16 and we have been involved in this process of  
 17 the quarry settlement discussions since our  
 18 appointment in 2005. We have a good  
 19 familiarity with the quarry limits today, the  
 20 terms and conditions that have just been  
 21 reported to you, and I would like to provide  
 22 you with a little more insight as to the high  
 23 wall remediation and reclamation of the  
 24 quarry as is anticipated by the settlement  
 25 agreement.

20

1 The first exhibit I will refer to is  
 2 Exhibit B, I have one here for the Township  
 3 Committee and it is entitled "High Wall  
 4 Corrective Action Plan" which was prepared by  
 5 Skelly & Loy. It describes the limits to the  
 6 High Wall area that pre-existed the current  
 7 owners, and basically the very fine contour  
 8 integrals you see here represent the planned  
 9 view of the steepness of an existing,  
 10 basically a cliff that exists today as a  
 11 result of prior mining activities. The  
 12 rectangular area you see here really  
 13 identifies the limits of the quarry's  
 14 activities in restoring a safe condition.

15 As I mentioned, the Department of  
 16 Labor Mine Safety Act regulates quarries and  
 17 pits, and currently the regulations require  
 18 the quarries, when they create embankments  
 19 such as this, have to use a bench method, a  
 20 step method which is a method I will describe  
 21 on Exhibit D here in a minute. But basically  
 22 that is the corrective action plan which is  
 23 anticipated to occur within these limits.

24 Just to get your bearings, I will  
 25 refer to Exhibit C-2, Mr. Cohen also referred

1 to this. This is the large exhibit prepared  
 2 by Gilmore & Associates entitled "Exhibit  
 3 C-2, Settlement Agreement", and actually I  
 4 have one over here for the Committee. This  
 5 is an overall planned view of the quarry  
 6 limits, and again, to get your bearings, on  
 7 the northern end of the mining district  
 8 boundary is the area of high wall remediation  
 9 and ultimate reclamation. The rest of the  
 10 upper quarry limits are depicted here by  
 11 these steep contours, and actually there is  
 12 another area of lower quarry activity on the  
 13 southern end of the quarry. Just to get your  
 14 bearings, Rockaway Road runs along the  
 15 southern or lower edge of this drawing.

16 I will show you that location as  
 17 well, Rockaway road here, the municipal  
 18 property is to the east, and the quarry  
 19 property, which is a continuation of the  
 20 quarry lot runs up to the north and northeast  
 21 of the mining district. But that is an area  
 22 outside of the limits of the mining district.  
 23 That is to give you a general orientation.

24 If I can now refer to Exhibit C-3, or  
 25 Exhibit 3, it is entitled "Quarry Mining

1 Plan" and that is also a document prepared by  
 2 Skelly & Loy Consultants to Stavola Quarry.  
 3 Again, this is another view of the quarry  
 4 limits and the high wall reclamation area,  
 5 as we looked at in Exhibit B. Also this  
 6 exhibit addresses the area to the east of the  
 7 high wall reclamation, the high wall  
 8 reclamation area and the area to the east,  
 9 which is also addressed by the settlement  
 10 agreement.

11 The 50 foot buffer to the north of  
 12 the active area is depicted here, as well as  
 13 the 50 foot buffer along the easterly  
 14 property line adjoining the municipal  
 15 property. What is depicted on this exhibit  
 16 is an area we have colored in green, and what  
 17 that reflects is the anticipated transition  
 18 area around an area of wetlands that exists  
 19 at the northeast corner of the quarry  
 20 property. So consistent with the first Water  
 21 Protection Wetlands Act, there are transition  
 22 areas or buffer requirements in and around  
 23 wetlands, and the quarry is actually in the  
 24 process of limiting those wetlands, and  
 25 anticipates the transition area we have

1 depicted here (indicating).

2 Basically, the point of this is to  
 3 show the limits of quarry activity. Although  
 4 anticipated by the ordinance change, in  
 5 theory, it could extend fully to the eastern  
 6 and other rectangular area, similar in size  
 7 to that which is associated with the  
 8 remediation of the high wall.

9 The majority of that area has  
 10 actually been constrained by other  
 11 environmental factors, and would include the  
 12 actual quarry activity in that area. So  
 13 along with the settlement agreement, we have  
 14 reclamation and remediation of the high wall  
 15 condition occurring over a period of 60  
 16 months.

17 Continuing with that, the quarry  
 18 operation could continue around in a  
 19 clockwise fashion and continue through this  
 20 area I have just described outside of the  
 21 limits of the wetland transition area and  
 22 continue to the quarry, further enabling the  
 23 restoration of the quarry or reclamation of  
 24 the quarry as anticipated by our ordinance  
 25 and annual mining license renewal.

1 Let me now refer to Exhibit D which  
 2 is entitled "Reclamation Plan for High Wall  
 3 Areas", and that is a document prepared by  
 4 Skelly & Loy, again, quarry consultants for  
 5 Stavola. What this is is a cross sectional  
 6 view taken, if I refer quickly back to  
 7 Exhibit C-3, if we were to cut a section  
 8 through the high wall condition and turn it  
 9 and look at it from its side, that is a  
 10 profile view of what we would see. The black  
 11 line across the top of this profile view  
 12 depicts the existing contour, existing ground  
 13 elevations, which I will refer to here, which  
 14 is a relatively steep embankment or cliff  
 15 associated with the existing high wall. That  
 16 is what the Department of Labor for Mine  
 17 Safety indicates is an unsafe condition which  
 18 needs to be addressed, and up until today has  
 19 not been able to be addressed due to the  
 20 inconsistencies in our ordinances.

21 What is proposed by the reclamation  
 22 plan we referred to in Exhibit B and C is the  
 23 bench method or stepping of proposed contours  
 24 in the quarry activity, which, when complete,  
 25 these benches will be in existence and then

1 backfilled with material to result in a safe  
2 slope, which would ultimately be restored,  
3 vegetated and completed in the 60 month time  
4 period for the high wall remediation. So  
5 this is again a section view of the limits of  
6 the high wall condition which ultimately will  
7 be removed, benched and restored with soil,  
8 and planted as a part of the overall quarry  
9 reclamation plan.

10 Questions may arise as to the limit  
11 or proximity or need for this activity to  
12 occur where it is shown on Exhibit D as  
13 opposed to some other horizontal location,  
14 and I would like to address that at this time  
15 with respect to it. We have depicted the  
16 property line on the right-most side of this  
17 profile view, and then we depicted the 50  
18 foot buffer, which is addressed by the  
19 ordinance, and that is the start of activity  
20 in terms of the restoration or reclamation of  
21 the high wall.

22 Now, the question could be could that  
23 occur somewhere further out, further away  
24 from the property line, and the answer to  
25 that is yes, it could. But could it start

1 from the peak of the existing embankment?  
2 The argument could be made that placement of  
3 fill at the one to one slope required for  
4 safe conditions would be a fairly sizeable  
5 embankment placement in the engineered filled  
6 process where the location of these rock  
7 benches provide a more stable opportunity to  
8 restore that embankment. Again, this is all  
9 in the sense that the settlement agreement in  
10 terms of the overall benefits that the  
11 Township approves as a result, and the time  
12 frame for the restoration of the high wall  
13 condition. I think that generally explains  
14 that, and I will turn it back over to Howard.

15 MR. COHEN: Okay, that completes the  
16 overview with respect to the settlement. The  
17 overview with respect to the ordinance, the  
18 benefits, as well as the rationale. Now I  
19 return the proceedings to the Mayor for  
20 public comment.

21 THE MAYOR: At this time, is there  
22 anybody in the public who would like to  
23 address us? Anybody in the second row?  
24 Anybody in the third row? Yes, sir.

25 MR. OSTERMAN: Good evening, Michael

1 Osterman from Herold & Haines appearing on  
2 behalf of the Melick family and Melicks'  
3 Oldwick Farm, LLC. The Melicks' Oldwick  
4 Farm, LLC, is Block 44, Lot 26 and it is a 60  
5 acre tract directly adjacent to the Stavola  
6 parcel. The Melicks are very concerned with  
7 the proposed ordinance, which would reduce  
8 the quarry buffer under the DRO from 250  
9 feet, which currently it enjoys, to 50 feet.  
10 We also understand the Township's desire,  
11 however, to settle this lawsuit, and to that  
12 end and in the interest of trying to resolve  
13 the Melicks' concern in a way that will not  
14 jeopardize the settlement, the Melicks have  
15 reached out to Stavola, and have actually  
16 begun discussions with Stavola about  
17 resolving their concerns. In fact, a meeting  
18 took place this Monday, and I think we are  
19 cautiously optimistic that given a little bit  
20 of time, we hopefully can arrive at some  
21 compromise that won't jeopardize the  
22 settlement and that will resolve the concerns  
23 that the Melicks have about this.

24 Rather than voice our objections to  
25 the ordinance tonight and our objections to

1 the settlement tonight, what we would rather  
2 do is ask with all due respect that you  
3 simply carry the adoption of the ordinance  
4 and adoption of the settlement agreement for  
5 a brief period of time, perhaps to your last  
6 meeting, to give the parties a little more  
7 time to discuss a resolution of the Melicks'  
8 concerns. I guess we just met for the first  
9 time Monday, yesterday, and as I said, I am  
10 cautiously optimistic given a little bit of  
11 time, and we will hurry up, so that we can  
12 hopefully resolve the concerns and not  
13 jeopardize the settlement.

14 MR. COHEN: For the Township's  
15 benefit, I will simply respond to your  
16 suggestion, and understanding, of course,  
17 that your client obviously has a desire to  
18 try to work out an accommodation with  
19 Stavola, that notwithstanding as special  
20 counsel to the Township, I am going to  
21 respectfully suggest that they take action  
22 with respect to the ordinance and the  
23 settlement agreement this evening. I will  
24 make that suggestion based upon the  
25 following: This litigation has a long

1 tortured history. In addition to the  
2 tortured history of the litigation, the  
3 settlement process has a long, tortured  
4 history. And recognizing that perhaps your  
5 clients have a desire to try to work  
6 something out that is mutually acceptable to  
7 them and Stavola, I dare say that whatever it  
8 is that your clients have in mind, more  
9 likely than not will give rise to a potential  
10 issue of moving the mining district line from  
11 where it is along the northern border to a  
12 further northernmost location on your  
13 client's property. Because I would  
14 anticipate that to the extent your clients  
15 have an interest in perhaps selling some  
16 property to Stavola, more likely than not  
17 Stavola probably would not be interested in  
18 buying the property, unless there is an  
19 economic return associated with the purchase.  
20 And that economic return more likely than not  
21 would probably include the right to mine.

22 You know, that issue is obviously  
23 something that you are clearly free to  
24 discuss with Stavola, and if you work  
25 something out, that is fine. But my concern

1 as special counsel, given the history of the  
2 settlement negotiations and the ultimate  
3 settlement agreement that was crafted and  
4 approved, subject to tonight's public  
5 hearing, is that it will open in my view a  
6 Pandora's box with a new issue, that issue  
7 being where the northern boundary is of the  
8 mining district.

9 We have examined the issue with  
10 respect to Melick, because one of the  
11 interesting aspects of what is being proposed  
12 here, and I will use this exhibit for  
13 reference purposes, is the Melick property  
14 which you described. It is located obviously  
15 to the north of the high wall condition.

16 MR. OSTERMAN: That is correct.

17 MR. COHEN: That is the only private  
18 property owner who was directly affected by  
19 the 50 foot setback. The property to the  
20 north of the eastern portion of the northerly  
21 section of the quarry is property that is  
22 owned by Stavola. The property that is to  
23 the east of the easterly boundary of the  
24 quarry is property also owned by Stavola. We  
25 have looked at, and in fact we took a tour of

1 the Stavola Quarry, to be personally familiar  
2 with the way it lays out, and to be  
3 personally familiar with the topography.  
4 When you are at the top of the high wall  
5 condition, the topography slopes downwards at  
6 a significant slope in relation to the Melick  
7 property, such that any mining up to the 50  
8 foot buffer will not affect any lateral  
9 support with respect to the Melick property.  
10 So there is no danger of loss of lateral  
11 support.

12 Additionally, as I pointed out to  
13 those present this evening, the 50 foot  
14 buffer proposed under the ordinance is twice  
15 that required by the State Code.

16 Additionally, the advantage  
17 associated with this settlement is that the  
18 clearly dangerous condition that exists with  
19 respect to the high wall will finally and  
20 conclusively be resolved within the stated  
21 period of time of 60 months.

22 There is a fence that Stavola has  
23 constructed along the northerly boundary and  
24 running along the easterly boundary designed  
25 to discourage, discourage but not necessarily

1 prevent trespassers. And clearly, it is to  
2 the advantage of the Township and the public  
3 that this condition with respect to the high  
4 wall be remediated and reclaimed sooner  
5 rather than later so that we don't have some  
6 trespasser falling to his or her death  
7 because they decided that they wanted to  
8 scale the fence.

9 Additionally, it is our understanding  
10 that the Melicks' orchards that are located  
11 to the north of the high wall condition are  
12 probably separated by approximately 300 feet  
13 of wooded area. That is the slope downward  
14 from the high wall condition that I was  
15 describing earlier.

16 So I understand that your client  
17 would like to try to reach some sort of  
18 agreement with Stavola, the Township has no  
19 desire to interfere with that process, but  
20 for all of the reasons I stated earlier this  
21 evening, and with due respect to your  
22 clients' concerns and objectives, I would  
23 still counsel the governing body in their  
24 discretion to ratify and approve the  
25 settlement tonight, and to adopt the

1 ordinance this evening.  
 2 MR. OSTERMAN: If I could respond,  
 3 first of all, I believe you received a letter  
 4 from the Planning Board that was addressed to  
 5 the governing body recommending that the  
 6 property owners be given a little bit of time  
 7 to try to resolve their differences and their  
 8 concerns. And I would respectfully suggest  
 9 that you follow the letter. And I think with  
 10 regard to your statement that we are using  
 11 the buffer to twice the State Code, there are  
 12 a lot of State regulations and State Codes  
 13 that we exceed here in Tewksbury for purposes  
 14 of things that are unique about Tewksbury;  
 15 such as, the open space, and so forth. We  
 16 can reduce lots of things down to the State  
 17 Code or twice the State Code, but Tewksbury  
 18 had a very healthy buffer requirement, and I  
 19 think that they had that buffer requirement  
 20 of 250 feet -- actually, it was 500 feet  
 21 allowed to be reduced to 250 in certain  
 22 circumstances.  
 23 I think that buffer requirement  
 24 served Tewksbury well and was consistent with  
 25 the type of rural landscape and open space

1 the mining line, it is really too early to  
 2 say where the discussions are going.  
 3 In the interest of trying to resolve  
 4 the differences, a number of different ways  
 5 to resolve the differences were suggested at  
 6 the meetings that we discussed, and we are  
 7 looking at several different possible ways to  
 8 resolve the concerns. I don't want to get  
 9 into the details of those, but we certainly  
 10 understand the Township's concerns and  
 11 interests in this, and we are not going to  
 12 resolve this in a way that would be to the  
 13 detriment of the Township.  
 14 But it is too early to say whether  
 15 the discussions are going to result in an  
 16 agreement between the parties, and what that  
 17 agreement is going to be. All we ask is for  
 18 a little bit of time so we can work it out,  
 19 and I think that is in everybody's best  
 20 interests.  
 21 MR. COHEN: I have one additional  
 22 comment with reference to the Planning  
 23 Board's letter. Under the Municipal Land Use  
 24 Code N.J.S.A. 40:55D-26 and D-64, there is a  
 25 requirement for the Planning Board to weigh

1 that we enjoy in Tewksbury.  
 2 So the Melicks feel like the  
 3 settlement might be the best thing for the  
 4 Township, but with regard to the settlement,  
 5 the only one who really suffers from the  
 6 settlement are the Melicks, the property  
 7 owners directly adjoining that area where the  
 8 buffer is being reduced from 250 to 50 feet.  
 9 Now, that being said, we are trying  
 10 to resolve our differences in a way that will  
 11 not upset the settlement, okay. We just ask  
 12 for a little bit of time to do it. And I  
 13 don't think there is a deadline, there is no  
 14 deadline that I am aware of that you have to  
 15 adopt this settlement and this ordinance  
 16 tonight. You know, I am not here to suggest  
 17 what will happen -- I don't want to get into  
 18 that, I will not stand here and suggest what  
 19 may or may not happen if you do adopt this  
 20 ordinance tonight. I will just respectfully  
 21 request that you give the parties a little  
 22 bit of time, not a lot of time, but a little  
 23 bit of time to try to work out their  
 24 differences. And with regard to the  
 25 suggestion that it is going to involve moving

1 in with respect to an ordinance relating to a  
 2 change or modification of zoning. But that  
 3 statute is very literal in terms of what the  
 4 Planning Board has a right to do. What they  
 5 do in the process of reviewing the proposed  
 6 ordinance is determining whether or not that  
 7 ordinance, as a matter of law, is consistent  
 8 or inconsistent with the Master Plan.  
 9 In this instance, on May 7, 2008, the  
 10 Planning Board reached a determination in  
 11 accordance with the Municipal Land Use Law  
 12 that the Proposed Ordinance 08-2008 was not  
 13 inconsistent with the Master Plan, meaning  
 14 that there is no impediment in your adoption  
 15 of this ordinance to the extent that the  
 16 adoption of the ordinance would represent an  
 17 inconsistency with the Master Plan.  
 18 Now, it is true that the Planning  
 19 Board in their infinite wisdom gratuitously  
 20 sent you a separate letter recommending that  
 21 perhaps a little time be given with respect  
 22 to the issues about which Mr. Osterman has  
 23 spoken this evening. They have no  
 24 jurisdiction to do that. I would  
 25 respectfully suggest that in your discretion

1 as members of the governing body you make the  
2 appropriate determination as to whether or  
3 not this ordinance proposed this evening,  
4 proposed for adoption, be adopted, and  
5 whether or not the settlement agreement this  
6 evening should be approved and ratified in  
7 the form it was approved by the Court on  
8 March 19, 2008.

9 THE MAYOR: Thank you.  
10 Anybody else in that row who would  
11 like to address the Township? Okay, next  
12 row. Mr. Barnes?

13 MR. BARNES: Yes. David Barnes  
14 again. I need to start with a question or  
15 two. Andrew, you did the studies of what is  
16 coming out of here? How much material do  
17 they get to remove in order to satisfy this  
18 ledging process?

19 MR. HOLT: I don't have the  
20 calculations of cubic yards of material,  
21 there is overburden or soil that gets removed  
22 first, so the net mineral in the benching  
23 process, I don't have the calculation of that  
24 tonnage or cubic yards.

25 MR. BARNES: The mineral that is

1 coming out, what is that?

2 MR. HOLT: I believe it is basalt and  
3 rock.

4 MR. BARNES: I did some simple math  
5 on this, and it is about 300,000 yards of,  
6 cubic yards of material that gets to come out  
7 of there, and that works out to about 150  
8 tons of basalt and at ten bucks a ton that is  
9 a million and a half dollars. I don't know  
10 what it goes for, but it seems very, very  
11 advantageous to me for Stavola to settle like  
12 this, because we are opening up a small cliff  
13 for them to come in and haul over a million  
14 dollars worth of rock out of. We are not  
15 getting a whole lot of it.

16 As a land owner in town, my house is  
17 restricted by the Township zoning ordinances.  
18 I know that if I want to do anything on my  
19 house it requires me getting a variance. I  
20 have to pay for that variance. I am not  
21 making a million dollars by asking the  
22 Township to change my land. You know,  
23 Stavola bought this property knowing that  
24 there was this defect with it, that there was  
25 this high wall, okay. The high wall

1 condition Mr. Cohen mentioned that the public  
2 benefits by the remediation of it, this is on  
3 Stavola's land. The only people who are in  
4 any type of even possible danger from this  
5 are Stavola employees. The property is  
6 fenced over there, there is "no trespassing"  
7 signs all over the place. The only people  
8 who could possibly be injured by this high  
9 wall condition are Stavola employees.

10 I would imagine if you put a fence  
11 around the bottom of that, around the bottom  
12 of the wall and put some signs on it to keep  
13 out, you could probably, out of a 400 acre  
14 property, you could probably keep people away  
15 from that, except the people who work there.  
16 I just don't understand the need for this. I  
17 mean, we have high wall conditions out at the  
18 Delaware Water Gap, if you drive out Route 80  
19 some day, there are rock walls out there  
20 higher than 300 feet, and nobody is doing  
21 anything to remediate them. Those are the  
22 ones that cut in when they put the road  
23 through out there. You go out to Colorado,  
24 there are peaks out there 2,000 to 3,000 feet  
25 straight up and nobody is doing anything to

1 remediate that. I am curious, though, if we  
2 are getting \$200,000 against our cost of  
3 litigation, do we still have to pay for  
4 litigation? Is that enough to cover our  
5 costs?

6 MR. CUSHING: Maybe I can help out,  
7 Mr. Barnes. Dick Cushing, and I also worked  
8 on the litigation, and maybe I can help you  
9 out with some of the questions that you  
10 asked. Your first question went to the  
11 benefits of the settlement, and it is true  
12 when you look at the documents that you  
13 actually looked at, that there is rock that  
14 the quarry gets as a result of this. When it  
15 takes out the area between the current  
16 perimeter, what will ultimately be the level  
17 that is created? One of the points that I  
18 think maybe gets overlooked here a little  
19 bit, I don't think you should focus in on the  
20 benefits to the quarry, because there are  
21 some benefits to that. But what I think you  
22 really need to focus in on are two very  
23 important benefits that you didn't actually  
24 address, and maybe you weren't as aware of  
25 with respect to this particular settlement.

1 This particular property was  
 2 originally operated as a quarry for many,  
 3 many years, and the quarry has really had  
 4 three components: One was the pit where they  
 5 mine rock, and the second two parts of that  
 6 component was an asphalt plant actually  
 7 located in Readington Township, but almost  
 8 right across the street, you probably know it  
 9 well, and the existing concrete plant. Now,  
 10 when this quarry got reactivated what  
 11 happened was because it is a pre-existing  
 12 quarry, and the municipality wanted to  
 13 control the quarrying activities but couldn't  
 14 stop the quarrying activities because they  
 15 were pre-existing, it permitted the quarrying  
 16 to go ahead because that was active and had  
 17 to be reserved, and they couldn't stop it.  
 18 But the ordinance passed at that time didn't  
 19 allow asphalt plants and concrete plants. So  
 20 the quarry said wait, you can't stop us from  
 21 operating those two plants because they are  
 22 also pre-existing uses. The municipality  
 23 said no, we don't agree with that, we think  
 24 you abandoned those uses, okay. So there has  
 25 been ongoing disputes between the quarry and

1 because an asphalt plant has the potential to  
 2 operate 24 hours a day, and as you probably  
 3 know. When they redo Route 78 periodically to  
 4 repave it, when they redo 22 and 31 and all  
 5 those roads, they always do it at night in  
 6 order to minimize the impact on traffic.  
 7 So one of the rights, and I will tell  
 8 you right now the ordinances of the Township  
 9 would not permit night operation, and  
 10 needless to say the Township would fight very  
 11 violently against any type of -- or  
 12 aggressively, I should say rather than  
 13 violently -- against any type of operation of  
 14 that nature. There would be a battle as to  
 15 whether or not the asphalt plant was a pre-  
 16 existing use that had not been abandoned.  
 17 However, if the Township lost on that, all of  
 18 those people who live along Rockaway Road on  
 19 both sides of the border, both in Tewksbury  
 20 and in Readington, would be impacted. There  
 21 is a significant risk with respect to the  
 22 fact that that plant could be called upon to  
 23 operate 24 hours a day in order to satisfy  
 24 the State's need to have asphalt at night to  
 25 repave.

1 municipality with respect to the  
 2 reinstatement of those two operations, and  
 3 those two operations, in the view of the  
 4 people who worked on this, presented an  
 5 extreme risk to the municipality if they were  
 6 reactivated.  
 7 Now, the concrete plant, concrete  
 8 plants normally operate eight to five, seven  
 9 to five, something along those lines because  
 10 that is usually when contractors or users  
 11 actually use the concrete operations. So  
 12 that is one thing.  
 13 If the concrete plant were  
 14 reactivated, it would create additional  
 15 trucks, you would have more people coming up  
 16 Rockaway Road and out through Mountainville  
 17 and going back through the Village of Oldwick  
 18 and things that are not good from the  
 19 Township's standpoint, especially a township  
 20 as beautiful as Tewksbury. You don't want to  
 21 have more operations than you can handle.  
 22 The other aspect which is more risky  
 23 is the asphalt plant. They are like gold,  
 24 and they present even more severe problems to  
 25 a municipality than the concrete plant,

1 So we would contest that. There have  
 2 been some cases and I am aware of some up in  
 3 Morris County where that issue has come up,  
 4 and judges have ruled that it is in the  
 5 public interest to allow asphalt plants to  
 6 operate at night in order to minimize the  
 7 number of people who would be passing on  
 8 Route 78 in the morning who would be  
 9 inconvenienced if it had to be done during  
 10 the day.  
 11 So that was a major factor in this  
 12 particular settlement, to get the quarry to  
 13 give that up.  
 14 Now, part of it, you have to  
 15 compromise when you settle, obviously, and  
 16 there was a bit of a compromise reached to  
 17 help them get the stone out of that area. So  
 18 there was some give and take, and you talked  
 19 about the dangers of the phases, and you  
 20 probably are familiar with the fact there is  
 21 a quarry out in Pohatcong, I think it is.  
 22 Not too long ago there was a situation and I  
 23 can tell you two cases that we have been  
 24 involved in in connection with that  
 25 particular quarry. One was a group of guys

1 who went out camping in the area, and decided  
2 to have a couple of beers or whatever, and  
3 decided to take a little walk. They went off  
4 the edge, and the guy was killed.

5 Not too long ago a young guy driving  
6 his ATV went over the edge and boom, he was  
7 killed. Another thing, people want to fence  
8 them, they fence them and they don't want  
9 people in there. So there are safety issues,  
10 and I am sure you have been in the area,  
11 those spaces are very severe, I am afraid of  
12 heights and I wouldn't go over to the edge  
13 over there, but those are important safety  
14 issues.

15 The other thing with respect to this  
16 particular quarry is to have a reclamation  
17 plan. Part of a major component of the  
18 quarry license ordinance is to have a plan  
19 that will take this property -- and one of  
20 two things, certainly at minimum, minimize  
21 the impact, the damage that has been done to  
22 the earth out there by this quarrying  
23 operation. By reclaiming it and trying to  
24 reduce the steep slopes that are out there to  
25 ones that are practicable -- I think this is

1 a picture here that you should take a look  
2 at. Everybody should take a look, this is a  
3 representation that shows the face of the  
4 quarry right now. That is on the left hand  
5 side, and it shows the high wall area, and  
6 this is obviously, you know, a pretty  
7 drawing, but this shows you what the goal of  
8 this is, to rehabilitate that slope and  
9 instead of having an ugly, jagged slope  
10 there, to replenish it. To have trees  
11 growing out there and have an environmentally  
12 safe and responsible outcome for that. Then  
13 you ultimately have the ability to reclaim  
14 this entire property out there to some  
15 beneficial purpose.

16 Now, who knows what that is going to  
17 be, because it is 20 years down the road, and  
18 nobody can really predict that. But why  
19 leave a scarred environment out there when  
20 the entire goal of this particular  
21 reclamation plan that the municipality spent  
22 a lot of time and effort on is to bring this  
23 property back, and hopefully you will have  
24 some use in the future, maybe it is open  
25 space, maybe it is not open space. We don't

1 know 20 years from now what the needs of this  
2 community will be. So that is the background  
3 of why it appears on one hand when you first  
4 look at it like the quarry gets something out  
5 of it, but the municipality gets an awful lot  
6 of it, too.

7 MR. COHEN: And let me just add to  
8 that because I was listening carefully to  
9 your question and I want to be fully  
10 responsive to your inquiry.

11 MR. BARNES: Can I just, before you  
12 start, may I address Mr. Cushing?

13 MR. COHEN: By all means.

14 MR. BARNES: I happen to remember a  
15 couple of years back that Stavola went before  
16 -- at the time it was our Zoning Board --  
17 asking to build a substation over on the  
18 corner right across the street from their old  
19 main entrance to the weight shaft there.  
20 That is a category one stream. The DEP shot  
21 down the permits, or they pulled the  
22 application for something, I don't remember  
23 the final outcome, but it went away. It  
24 didn't happen. So there is no substation, so  
25 without the substation you can't get the

1 power. They can't run a concrete factory or  
2 asphalt factory, that is the way I remember  
3 that resolving a couple of years ago.

4 MR. CUSHING: I don't know all of the  
5 details, but as I understand that, that was a  
6 JCP&L application because of a need to supply  
7 more power. I understand right now that  
8 JCP&L has another application in another  
9 place in the township for a substation. I  
10 don't think that it is correctly -- I am not  
11 an expert in this, I don't want to go too  
12 far, but my understanding is that it is  
13 because of a shortage of power around the  
14 area where they need to have the substations  
15 in order to provide more power. So I don't  
16 believe that that would be an impediment in  
17 that regard, but I respect your opinion.

18 MR. BARNES: The substation is on the  
19 other end of town, or JCP&L is on the other  
20 end of town, so it wouldn't be feeding this,  
21 so that is kind of -- I have always accepted  
22 the concrete and asphalt factories as non-  
23 starters --

24 MR. COHEN: I understand your point.  
25 I heard what you said. But there are certain

1 things, you asked a question and I wanted to  
2 be responsive to it. You said does this end  
3 the litigation? The answer is absent someone  
4 challenging the adoption of the ordinance or  
5 challenging the settlement, the answer is  
6 yes, it ends the litigation. It ends the  
7 spending of public money fighting with  
8 Stavola and moving on to more productive  
9 things as we have outlined under the terms of  
10 the settlement.

11 Secondly, understanding your view  
12 with respect to whether or not the asphalt  
13 plant and concrete plant are non-issues, in  
14 fact, they are real issues, because until and  
15 unless this settlement is approved at this  
16 public hearing, they remain open issues. In  
17 fact, Stavola continues to pay all taxes,  
18 keeps all permits in place, has upgraded the  
19 quarry operations to facilitate reactivation  
20 of the asphalt plant and concrete plant.  
21 They do not concede until and unless this  
22 settlement is concluded that they have  
23 abandoned those uses.

24 So in response to your question is  
25 litigation at an end, should the settlement

1 not be ratified and approved, I will  
2 guarantee you that there will be more  
3 disputes and regrettably potentially more  
4 litigation over the issue of whether Stavola  
5 has the right to operate a concrete plant;  
6 whether Stavola has the right to operate an  
7 asphalt plant; and for all of the reasons  
8 that were explained earlier, there are clear  
9 benefits to the Township, to its residents,  
10 in not having the noxious effects of those  
11 plants potentially being reactivated and  
12 affecting the public interest.

13 You also asked a question about  
14 litigation expense. I am informed that the  
15 \$200,000 payment towards reimbursement of  
16 litigation expenses markedly pays the most  
17 significant portion of the litigation expense  
18 with Stavola. Does the Township have some  
19 overcosts beyond the \$200,000? Yes. Is it  
20 significant? No. So Stavola has largely  
21 offset the Township's litigation expense. My  
22 recollection from the last report I received  
23 was, I think the Township paid somewhere in  
24 the neighborhood of \$280,000, and indeed the  
25 Stavola payment is \$200,000 as we described

1 to you. So I understand where you are coming  
2 from, and in law there is an expression that  
3 to have a good settlement there has to be a  
4 little unhappiness on both sides. Obviously  
5 there are costs to the Town, there are costs  
6 to Stavola, there are also benefits to  
7 Stavola and there are benefits to the Town.  
8 On balance, at least, as special counsel, I  
9 believe when you look at the big picture, the  
10 benefits of the settlement far outweigh  
11 whatever the costs are.

12 MR. BARNES: I listened to this a  
13 long time ago and I have been kind of paying  
14 attention to this as it has gone through, and  
15 to me, anyway, this looks like black now. I  
16 am not one for couching words, but you know  
17 Stavola sues us over our zoning and they are  
18 going to, you know, they want to sue us over  
19 something else, so they say they want to  
20 build these plants, but it will cost them a  
21 lot of money to do so. You know, we are  
22 giving in because we have been threatened.  
23 Sometimes it is worthwhile to keep a fight  
24 going, you know what you can win in the  
25 fight. I, personally, I am torn on this one.

1 But I just -- I don't like being threatened  
2 with things and then having to concede  
3 because you are afraid of the hammer that  
4 somebody picks up to swing at you. I mean, I  
5 appreciate the work that everybody has done  
6 on this over the years, but I think we are  
7 giving away the store here. I think they are  
8 achieving an incredible benefit from  
9 threatening us, and I am just opposed to  
10 that. That is all.

11 THE MAYOR: Is there anybody else in  
12 the back row who wishes to address the  
13 Township?

14 THE SECRETARY: For the record, I  
15 have proof of publication in the May 1, 2008  
16 "Hunterdon County Democrat". (Inaudible.)

17 THE MAYOR: Do I have a motion to  
18 close the public hearing on Ordinance 08-  
19 2008?

20 MR. CUSHING: And also the hearing on  
21 Whispering Woods.

22 THE MAYOR: Yes.

23 MR. DiMARE: So moved.

24 THE MAYOR: And close the hearing on  
25 Whispering Woods.

1 First we'll close the hearing on  
 2 Whispering Woods. Is there a motion?  
 3 MR. HOFFMAN: Motion to close the  
 4 Whispering Woods hearing.  
 5 MR. DiMARE: I will second that.  
 6 THE MAYOR: All in favor?  
 7 (Whereupon, all members voted in the  
 8 affirmative.)  
 9 THE MAYOR: The motion to close the  
 10 public hearing on 08-2008.  
 11 MR. HOFFMAN: I will move to close  
 12 the hearing on 08-2008.  
 13 MR. DiMARE: I second that.  
 14 THE MAYOR: All in favor, signify by  
 15 saying aye.  
 16 (Whereupon, all members voted in the  
 17 affirmative.)  
 18 THE MAYOR: Is there a motion to  
 19 adopt Ordinance Number 08-2008?  
 20 MR. DiMARE: I will move for adoption  
 21 of Ordinance 08-2008.  
 22 THE MAYOR: Is there a second?  
 23 MR. HOFFMAN: I will second it for  
 24 the purpose of discussion.  
 25 THE MAYOR: Okay, discussion.

1 MR. HOFFMAN: I listened to a couple  
 2 of comments that were made, and I understand  
 3 that if we pass this ordinance tonight and  
 4 somebody challenges the ordinance, it is not  
 5 done. We have to go back in litigation over  
 6 that. Am I correct?  
 7 MR. COHEN: That is correct.  
 8 MR. HOFFMAN: We have an attorney,  
 9 the Land Use Board heard this and asked us to  
 10 carry the adoption of the ordinance for a  
 11 short period of time. If we were to carry  
 12 the ordinance before we passed it for two  
 13 weeks and bring it back again, we don't have  
 14 to have another public hearing at that time.  
 15 Am I correct?  
 16 MR. COHEN: That is correct.  
 17 MR. CUSHING: That is correct.  
 18 MR. HOFFMAN: My concern is if we  
 19 carry this for two weeks to give them the  
 20 opportunity to try to work out their  
 21 differences and come back and pass it then,  
 22 they don't have a challenge. If we pass it  
 23 tonight and they challenge it we are  
 24 basically back to where we were. What will  
 25 happen with the settlement agreement if they

1 challenge it?  
 2 MR. COHEN: Are you addressing me?  
 3 MR. HOFFMAN: Yes. I think I am  
 4 addressing it to you, yes.  
 5 MR. COHEN: If you adopt the  
 6 ordinance tonight, or if you adopt the  
 7 ordinance two weeks from tonight, there still  
 8 remains the issue of whether someone chooses  
 9 to challenge the ordinance, which they can do  
 10 within 45 days of the date that the ordinance  
 11 is adopted and published.  
 12 MR. HOFFMAN: I understand that part.  
 13 MR. COHEN: Postponing the adoption  
 14 of this ordinance does not dispose of the  
 15 issue involving Melick and Stavola. My legal  
 16 argument is whatever be the results of those  
 17 discussions, I suspect that they may involve  
 18 potential further amendments of your  
 19 ordinance, including for example moving the  
 20 mining district line, which opens up a whole  
 21 new set of issues and we could potentially  
 22 jeopardize the settlement.  
 23 If you choose to adopt the ordinance  
 24 tonight and you, by separate vote, choose to  
 25 approve and ratify the settlement, it does

1 not impair the ability of Stavola and Melick  
 2 to continue their discussions. And if those  
 3 discussions result in something that involves  
 4 potential amendments to your land development  
 5 ordinance, that can be the subject of a  
 6 separate proceeding without affecting the  
 7 settlement and the terms of the settlement  
 8 which include this specific ordinance.  
 9 Obviously, you have to make that  
 10 judgment call. I don't believe because you  
 11 expressed concern about further litigation, I  
 12 truly do not believe that there is a certain  
 13 prospect of litigation resulting from the  
 14 adoption of this ordinance, because  
 15 ultimately if the ordinance is challenged  
 16 under the governing principle of law, one,  
 17 the Township comes to court with a  
 18 presumption of validity associated with the  
 19 ordinance. The challenger must prove that  
 20 that ordinance is arbitrary, capricious or  
 21 unreasonable, or contrary to sound planning  
 22 and zoning. That is a very high bar. As we  
 23 explained to you this evening, independent of  
 24 all of the benefits associated with the give  
 25 and take in the settlement, the buffering

1 requirement on its own is sound and  
2 reasonable. When you look at the conditions  
3 that exist, when you look at the engineering  
4 that needs to be done in order to effect that  
5 45 degree reclaimed slope, and when you look  
6 at the State regulations that provide that  
7 the buffer can be as small as 25 feet, while  
8 none of us can be a guarantor of no further  
9 litigation, quite frankly in my legal  
10 judgment whoever chooses to evaluate whether  
11 to challenge really has to assess their  
12 probability of success.

13 MR. HOFFMAN: Thank you.

14 MR. DIMARE: Let me ask a question  
15 following up on that, if I may. I am looking  
16 at it from a different perspective in terms  
17 of, I guess, in plain English, we struck a  
18 deal with Stavola, and part of that deal is  
19 for the Township to amend the mining district  
20 ordinances. If we were to not do that, or  
21 delay doing that for the purposes I have  
22 heard tonight, to allow one party to secure  
23 an accommodation from Stavola, are we not  
24 acting in bad faith with respect to the  
25 settlement with Stavola? Does that not

1 perhaps expose us to continued litigation?  
2 Does it not create the risk that Stavola  
3 would walk away from the settlement?

4 MR. COHEN: I don't believe that a  
5 bad faith claim could be successfully  
6 launched. Do I think that a short delay  
7 would be viewed negatively by Stavola?  
8 Probably. Is the ordinance an integral part  
9 of the settlement? Absolutely, yes. Would  
10 it be in the best interests of the Town to  
11 conclude this matter and then address what  
12 situations if any may arise as a result of  
13 discussions between Stavola and Melick? You  
14 could always do that another day. The beauty  
15 of government is you are in charge, subject  
16 to what the public has to say until and  
17 unless someone else is in charge. And the  
18 beauty of government is that you have the  
19 right in your judgment to amend and revise  
20 your ordinances as you see fit. And for all  
21 of the reasons I expressed earlier this  
22 evening, while I am not privy to the  
23 discussions between Melick and Stavola, it is  
24 my best judgment that more likely than not  
25 Stavola will not be interested in striking a

1 deal with Melick, unless Stavola can get an  
2 economic gain out of it, and the economic  
3 gain will implicate potentially moving that  
4 mining line further. That is a separate  
5 issue and can open up Pandora's box with  
6 respect to the settlement.

7 THE MAYOR: Any other questions?

8 MR. HOFFMAN: I have no further  
9 questions.

10 THE MAYOR: Any questions?

11 MR. DIMARE: No.

12 THE MAYOR: Call the question.

13 (On roll call, the Mayor and Mr.  
14 DiMare voted in favor and Mr. Hoffman voted  
15 against.)

16 THE MAYOR: That will be adoption of  
17 Resolution 08-2008. Now for the adoption of  
18 the Stavola Quarry settlement agreement. Is  
19 there a motion?

20 MR. DIMARE: Since he voted no, I  
21 will move the adoption of that.

22 THE MAYOR: Is there a second?

23 MR. HOFFMAN: I will second it for  
24 the purposes of discussion.

25 THE MAYOR: Any discussion?

1 MR. HOFFMAN: No.

2 THE MAYOR: Call the question.

3 (On roll call, Mr. DiMare and the  
4 Mayor voted in favor and Mr. Hoffman voted  
5 against.)

6 (Whereupon, the meeting was  
7 concluded.)

C E R T I F I C A T E

I, JACQUELINE KLAPP, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, holding License No. 30X100034700 do hereby certify that foregoing is a true and accurate transcript as taken to the best of my ability.

JACQUELINE KLAPP, CSR 30X100034700