

September 3, 2008

The work session of the Riverton Borough Council was held on the above date. Mayor Martin presiding.

**PRESENT:** Council members Brown, Cairns Wells, Smyth, Kinzler (arrived at 8:00pm), Cesaretti and Solicitor Bruce M. Gunn

**ABSENT:** Council member Daniel

The following statement was read by Mayor Martin:

Public notice of this meeting, pursuant to the Open Public Meetings Act, has been given by the Municipal Clerk in the following manner:

(a) Having written notice of all meetings to be held in 2008 published in the Burlington County Times on December 30, 2007

(b) Posting written notice on the official bulletin board on January 4, 2008

**Discussion: COAH and Zoning Issues (Tamara Lee, Planner, present)**

Tamara Lee reported that we have a deadline of December 31, 2008 to submit a housing plan to COAH. Tamara reminded Council that the Borough previously had verbal approval of our round three housing plan. We were only two days away from getting it in writing from COAH when the lawsuits started.

Ms. Lee explained that the new rules require us to re-do our housing plan and resubmit it for round three certification. Ms. Lee reported that the League of Municipalities is filing a lawsuit against COAH. Part of this lawsuit asks the court to put a stay on the December 31st deadline. However, Ms. Lee recommended that Council still move forward and submit the requirements by the end of this year. If we do nothing, we run the risk of losing our COAH certification. COAH would probably only give us 30 days to get into compliance. Mr. Brown asked if we know when the lawsuit would be heard. Ms. Lee responded that she did not know. Mr. Brown thought that it would be in the Borough's best interest to comply with the regulations and do the submission. Ms. Lee concurred with Mr. Brown.

Mayor Martin asked if there was anyway we could delay doing this work, perhaps saving us some money. Ms. Lee stated that this work should have been started six months ago. To get it done, she has to write the housing plan in September and October. This plan needs to be discussed with the Planning Board and Council in November. The required Resolutions need to be done in December. Ms. Cairns Wells questioned why we needed to do the housing plan since that was already done when the Master Plan was re-examined in 2007. Ms. Cairns Wells also asked if this is because the Borough's obligation has changed and we have to write this plan to show how we are going to meet these new obligations. Ms. Lee responded that COAH changed our obligations and the rules for how to meet those obligations. Mayor Martin suggested that Ms. Lee review the financial end of this work with Mr. Kinzler and Ms. Cairns Wells.

Ms. Lee reported that she doesn't know what the Borough's current obligation is. Previously our obligation was seven units. She has to calculate that and she hasn't done that yet. Mr. Brown asked if there was a formula. Ms. Lee responded yes. Mr. Smyth asked Ms. Lee if she was sure our obligation would be more than seven. Ms. Lee responded yes. Mr. Cesaretti asked if the seven units are part of our overlay zone or is that actual units. Ms. Lee stated that under the old round three rules, which don't apply anymore, we were required to provide two units for round two and 5 more units for round

three. Under the new rules our obligation will undoubtedly go up. It could be ten or twelve; she didn't know. Mr. Cesaretti asked if these are actual physical units or are they in a plan somewhere. Ms. Lee said there are two things we need to do—calculate our new obligation and then determine how we will satisfy it.

Ms. Lee stated that our Municipal Housing Liaison, Muriel Alls-Moffatt has been doing a lot of work exploring possibilities as to how we could satisfy our obligation. Ms. Lee cited some examples: taking an existing building and converting it in one fashion or another either with a group home or with the veteran's organizations, or maybe taking a couple of apartments and making them COAH units. Ms. Lee explained that, depending on how we work it, it's actually conceivable that we could completely re-write our housing plan and not use the affordable housing overlay on National Casein. We do have an affordable housing overlay already in place on Martha's Lane. Mr. Cesaretti thought we had one on the golf course as well. Ms. Lee responded yes, if that's ever developed, but that doesn't really go to the housing application she is talking about. That goes to something else called the unmet need. Ms. Lee stated that what we really need to talk about is a strategy for satisfying this obligation. Ms. Lee stated that Ms. Alls-Moffatt has sort of taken these discussions with these various property owners in town as far as she can. If we are going to include one of those properties in our housing plan due at the end of the year, it's going to have to include some sort of agreement between the Borough and the property owners. Somebody else has to get involved who has the ability to actually negotiate for the Borough. Mr. Brown asked if this is needed to be done prior to meeting our obligation. Ms. Lee responded yes this would have to be part of this submission. Mr. Brown expressed concern that COAH could change the rules again.

Mayor Martin asked if the housing plan currently in place at National Casein does not suffice what we are looking to do. Ms. Lee responded that that's actually in play. We had submitted a draft ordinance to COAH with our previous round three applications. Had we received written approval from them, we would have had 45 days to adopt that Ordinance. Mayor Martin asked why we couldn't use the same thing again. Ms. Lee responded that we could and we may decide to do that again. Mayor Martin thought it would be too quick to come to an agreement with a property owner by the end of the year. Ms. Lee agreed; however with the new rules we are under, the National Casein plan might not hold up because under the new rules, we actually have to produce that housing within a particular timeframe. Under the new rules there is a 3, 5 & 8 year review that COAH does. If we haven't made any progress, they could come back to us and say that that zoning is not real. Ms. Lee also stated that there is a possibility that that isn't real because of the Dreer's Nursery and what that did to the soil beds at that location. Ms. Lee would like to have some other options.

Mr. Smyth asked if the stay is granted soon, would we stop work on this. Ms. Lee responded yes, immediately. Ms. Lee explained that the stay could be for a temporary period of time or it will be until such time that the issues are resolved. Mr. Smyth asked Ms. Lee if she thought the stay would be granted. Ms. Lee responded that it would be the logical thing to do. Ms. Lee stated that these new rules are worse than the ones which COAH was originally sued over. Mr. Gunn stated that he thought we might know in a month or so whether the stay has been granted, but he thought the Borough needed to keep the planning going. Ms. Lee stated that she would like to start calculating what our

obligations will be. She would like to have a Council committee formed to review the options that we've got and then to discuss what the best housing plan strategy should be.

Ms. Lee reviewed some of the options that Ms. Alls-Moffatt's committee came up with. There is a group home at 815 Homewood Drive with units. Mayor Martin asked if these would cover anything. Ms. Lee stated that we could possibly negotiate an agreement there and those could be deed restricted COAH units. Another option would be the property at 204 Main Street, which was originally build for returning world war veterans. This property has a number of possibilities—maybe from 2 to 7 units. Another option is the Baptist Home. They are interested in possibly converting 2 of their units into COAH units. Another option is the property located at 407 Bank Avenue. There is a possibility of 6 apartments there. Ms. Lee cautioned that the building may not be viable. Ms. Lee stated that most of these options would be rental. Ms. Lee explained that COAH gives bonus credits. We have to provide a certain number of rental units but anything above that we would get a one for one bonus. So for one unit it counts for 2. Mayor Martin asked if 204 Main Street is affordable housing as it stands right now and doesn't Riverton already have a lot of affordable housing. Ms. Lee responded yes, but unless it is deed restricted and affirmatively marketed, it doesn't count. Mr. Smyth asked if the deed restriction was still 30 years. Tamara responded yes for the units we are talking about. Ms. Lee further stated that she needs to nail down a strategy, move forward, and work with a Council committee to look at some of the options.

Mr. Cesaretti asked if all of this falls under the same guidelines as Section 8 housing. Ms. Lee responded no, Section 8 housing is federally funded. Mayor Martin is concerned with Ms. Lee doing too much of the work before the end of the month. Mayor Martin wants her to confer with Finance Chair, Mike Kinzler.

Ms. Cairns Wells asked if the owners of the above referenced properties have been approached. Ms. Alls-Moffatt responded that she spoke to an administrator for Veterans Affairs about this issue. The property manager, R. H. Mosier, took them on a tour of 204 Main Street. They are interested in the property and are prepared to spend 2 million dollars in renovations to this property for the Veterans. Mrs. Alls-Moffatt commented that the owner of this property is very receptive to having COAH units placed at his property. There has to be a combination of low and moderate housing. Mrs. Alls-Moffatt also spoke to the owner of Cedar Lane Apartments, who was also interested in COAH units. Mrs. Alls-Moffatt reported that the owners of 815 Homewood Drive (Group Home-Quality Management) are very interested in COAH units. They also indicated that they would take care of the required deed restrictions. Mrs. Alls-Moffatt further reported that the Baptist Home is also receptive towards COAH units, but is leaning towards couples rather than single people. Mrs. Alls-Moffatt has a call into the owners of the Maples at 300 Main Street, who will get back to her about this issue.

Mrs. Alls-Moffatt reported that we have two required housing trusts accounts (in place). One is for payment in lieu of taxes, which presently has \$71,973.95 and the other is development fees, which presently has \$51,899.43. With the new COAH rules, Ms. Lee explained that a certain percentage of this money is to be reserved for the administrative agents and a certain percentage is to be reserved for affordable housing assistance programs. Ms. Lee explained that all of the units Mrs. Alls-Moffatt is talking about have a mandatory municipal subsidy requirement. Ms. Lee further explained that with a low income unit, you have to supply \$30,000.00 and for a moderate unit, you have

to provide \$25,000.00. Ms. Lee stated that Riverton does not have a lot of money. However, COAH has indicated that that's okay because there is going to be this State Housing Fund. Ms. Lee further explained that with the new rules, 2.5% of the assessed valuation of all new non residential development goes to the State, no matter whether you are involved with COAH or not. This is supposed to create this State Housing Fund. Ms. Lee explained that we would use the money we have in our housing funds to pay for these units but if we don't or won't, we would have to apply to the State to try and get it from the State Housing Fund. Ms Cairns Wells asked for a clarification as to what we get for paying for these units. Ms. Lee responded that in return for paying, the owners of the respective property would agree to get the required deed restrictions on the unit(s). Basically, we would be buying the required deed restrictions from our housing funds. Mayor Martin questioned the group home on Homewood Road. Ms. Lee stated that that is a separate issue and would be wholly negotiated because group homes are handled completely different. There is no mandatory subsidy for group homes. Ms. Cairns Wells asked if it would be enough to just use the information Mrs. Alls-Moffatt has gotten from these interested property owners. Ms. Lee responded no, we would need a written memorandum of understanding between the Council and the owner before the end of this year for whatever number of units is agreed to. All these requirements are now based on the new rules.

Mr. Cesaretti then asked if we can buy credits in other towns. Ms. Lee responded no, we can't do that anymore. Ms. Lee stated that the Affordable Housing legislation says that towns have to provide affordable housing but towns should not have to pay for that affordable housing. The League of Municipalities believes that the way the rules are written places the burden on the individual towns. That is why they are filing a lawsuit. Mr. Cesaretti asked what the basis was for affordable housing. Ms. Lee responded that it is based on income and what they have also done is to divide the entire state into regions. You have to look at the medium income within that region and if you make below 80% of that medium income, you're are a moderate income household. If you make below 50% of that medium income you are low income. If you fall below 30% you are very low income. It's also based on how big the family is. Ms. Lee also stated that based on how much income you make would determine how much rent a landlord can charge you. Mr. Kinzler thought that maybe we have people in town who already satisfy all of these requirements. Ms. Cairns Wells stated that we probably do, but the houses are not deed restricted, nor marketed; therefore, they would not qualify. However, Mr. Kinzler stated that he feels the spirit and intent of the legislation has been achieved.

Mrs. Alls-Moffatt reported that if we don't spend the money we have in these housing trust funds, the State will take it from us and spend it where they want. Ms. Lee stated that once we are COAH approved, you have four years to spend the money from these accounts. Ms. Lee reiterated the need to submit a plan to COAH by the end of the year. Mr. Kinzler believes that many municipalities will be in the same non-compliant position as Riverton. Mr. Smyth asked what would happen if we are non-compliant. Ms. Lee stated that we would be probably sued (builder's remedy suit).

Carl Mosier of RH Mosier, Real Estate manages 204 Main Street as a rental property. Mr. Mosier stated that the owner of this property is willing to do 7 units of low to moderate affordable housing units in his property. Mr. Mosier figures it would cost \$175,000.00 for 7 units to be placed at this location. Each unit would cost \$25,000.00.

Ms. Lee stated that utilizing COAH math; this could actually give us 11 units because of the bonus. Mr. Smyth recommended that Riverton should join with the other municipalities who are pledging \$500.00 towards the League of Municipalities lawsuit against COAH. Council concurred with Mr. Smyth's recommendation.

#### **RESOLUTION 71-08**

#### **A RESOLUTION RATIFYING THE PLEDGE OF CONTRIBUTION TO THE NEW JERSEY LEAGUE OF MUNICIPALITIES IN CONNECTION WITH AN APPELLATE CHALLENGE TO COAH REGULATIONS (IN FULL IN RESOLUTION BOOK)**

The above Resolution was read by title only by Mr. Smyth who moved for its adoption. This was seconded by Mr. Brown. A poll vote was then taken. Dr. Daniel absent, Mr. Brown aye, Ms. Cairns Wells aye, Mr. Smyth aye, Mr. Kinzler aye and Mr. Cesaretti aye. It should be noted that Mr. Smyth, Ms. Cairns Wells, Mr. Kinzler and Mrs. Alls-Moffatt would be serving on the COAH housing committee.

Mr. Smyth announced that the Freeolders have called a shared services session on September 18 to discuss the requirements of meeting the third round COAH regulations by the end of this year. Mr. Smyth will be attending this session and well as Mrs. Alls-Moffatt and Ms. Cairns Wells.

**ZONING ISSUES:** Due to the number of sub-divisions occurring, Ms. Lee stated that a suggestion was made at a Planning Board meeting to make the minimum lot size larger. Ms. Lee has a real concern about this. Ms. Lee explained that in 1998 when we zoned the entire town we did it after study was done of existing lot sizes and found out what the pattern was. Based on the pattern of the lot sizes we created the zones that we now have. Prior to that, our zoning ordinance was subject to challenge because it didn't apply to real life. As an example Ms. Lee stated that if we were to take the minimum lot size in the R4 zone and raise it from 4,000 to 5,000 sq ft. someone could make a challenge that it is invalid because it doesn't relate to real life. A court could say that we have made this increase in an arbitrary and capricious way and invalidate the Ordinance. Ms. Lee doesn't want to see us get into this type of situation.

Ms. Lee thinks there are a number of things we can try to avoid some of the problems that we have had. We could pass an ordinance that requires lots to be rectangular or square. Ms. Lee commented that she thinks some of the newly constructed homes are very big for the lots they are on. There are ordinances in other towns where they are using floor area ratios for houses. This might be a way to control this issue. As long as we have logical basis for what we do, it is defensive. Mr. Cesaretti thinks it is valid reason to make the minimum lot size larger. We are trying to avoid sub-divisions. He does not think this is arbitrary or capricious.

Mr. Smyth asked Ms. Cairns Wells if the Zoning Task Force Committee has done an inventory of the remaining lots in town that could be sub-divided. Ms. Cairns Wells responded yes, but she didn't know the number off the top of her head. Ms. Cairns Wells commented that the Mayor asked her to look at the former Zoning Ordinance and see where we stand versus the current zoning. Utilizing the current subdivisions, Ms. Cairns Wells reviewed the attached findings with Council. Two showed no change in the square footage, they are exactly 8,000 sq. feet. Two of them showed that instead of subdividing into 2 lots, they could have potentially subdivided into 3 lots. One showed there would have been no change or possibly a denial of the subdivision request. Ms. Cairns Wells

stated that the new Zoning Ordinance has turned out to be a better move. Ms. Cairns Wells stated that her committee would be making recommendations to Council in October.

**Meeting open to the public**

**Anne Creter, 9 Laurel Road**, announced that there will be a Peace Pole Dedication Ceremony on September 21<sup>st</sup> at Riverton Park. Mrs. Creter reviewed a recent flyer regarding this event which was sent home with the Riverton School children. Mrs. Creter asked if this flyer could be placed on the Borough's website. Mr. Smyth stated that he would be attending the dedication. Mrs. Creter reported that School Superintendent Mary Ellen Eck would also be attending.

**Gary Ford, 311 Bank Avenue**, expressed concern over the fact that two police officers recently resigned and that the department is short staffed. Mr. Ford encouraged Council to hire new officers. Mr. Kinzler commented that Council is well aware of the situation and the proper steps are being taken regarding this issue.

**Discussion: Change orders for 7<sup>th</sup> Street project and Curb Replacement at Cedar Street and Road Resurfacing at Thomas Avenue.** The Clerk and Mr. Gunn reported that in April of this year we were advised by our Engineer that an Emergency Change Order pursuant to the New Jersey Department of Transportation (DOT) Rule 5:38-11.9 for the Seventh Street Reconstruction project needed to be done. This was necessary because the amount of this project was more than 20% of the original bid price of \$97,970.69. Based on our Engineer's figures, Council approved the Change Order amount of \$121,432.53. We have now received notification from our Engineer that there was additional work on this project bringing the total amount to \$124,186.55. The Clerk, Mr. Gunn and Public Works Manager, Scott Reed raised strong concern that the correct information was not submitted to the DOT back in April. This might hamper the Borough being reimbursed grant money for this project in a timely manner by the DOT. Both the Clerk and Mr. Reed expressed their dissatisfaction with the Engineer's handling of this matter. After discussion, it was the consensus to have Mr. Smyth review our concerns with the Engineer, and obtain more detailed information prior to making a decision.

The Clerk also reported that a Change Order request has been submitted by the Engineer for the Curb replacement at Cedar Street and Road resurfacing at Thomas Avenue. All of the documentation appears to be in order; however, it was the Consensus to defer action on this issue until next week's meeting

**Discussion: Mobilitie Pre-Pay Information (cell tower)** Mr. Smyth reported that Mobilitie submitted an offer to pre pay their lease with the Borough. One proposal is for a pre pay lump sum amount of \$164,285 (payment for initial term and renewal terms of lease through October 2036. There would be 3 additional options to review of five years each at the end of the lease period at the same terms contained within the lease. Starting rent would be \$3,398 per month. The other option is a pre pay lump sum amount of \$235,565 (payment for initial term and 3 renewal terms of lease through October 2036. There would be 5 additional options to renew of 5 years each at the end of the lease period at the terms contained in lease. This would pay for the collocation tenants currently on the tower for the same allotted time. Starting rent would be \$4,855 per month. All other provisions of the lease would remain intact. Council reviewed correspondence. Mr. Smyth reported that the first option would be a proposed

amendment to the existing lease. Mobilitie would pay a pre pay lump sum amount (\$154,295) for the initial term and renewal terms of the lease through October 2036. Three additional options to renew of five years each at the end of the lease period at the same terms contained within the lease. After a short discussion, it was the consensus that this issue be referred to our Finance Committee for their review and recommendation. Council will be kept apprised of this issue.

**RESOLUTION 72-08**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE TITLE FOR  
THE 2003 GMC PICK-UP TRUCK  
(IN FULL IN RESOLUTION BOOK)**

The above Resolution was read by title only by Mr. Smyth, who moved for its adoption. This was seconded by Mr. Cesaretti. A poll vote was then taken. Dr. Daniel absent, Mr. Brown aye, Ms. Cairns Wells aye, Mr. Smyth aye, Mr. Kinzler aye and Mr. Cesaretti aye.

**Preliminary agenda for September 10.** The Clerk reviewed this with the Governing Body.

**RESOLUTION 73-08**

**A RESOLUTION PERMITTING THE EXCLUSION OF THE PUBLIC FROM A  
MEETING IN CERTAIN CIRCUMSTANCES PER SECTION 8 OF THE OPEN  
PUBLIC MEETINGS ACT. C.231 P.L. 1975  
(IN FULL IN RESOLUTION BOOK)**

The above Resolution was read by title only by Ms. Cairns Wells, who moved for its adoption. This was seconded by Mr. Brown. A poll vote was then taken. Dr. Daniel absent, Mr. Brown aye, Ms. Cairns Wells aye, Mr. Smyth aye, Mr. Kinzler aye and Mr. Cesaretti aye. It should be noted that personnel matters (professional service appointments) will be discussed.

At this time, Mr. Brown moved that we return to public session. This was seconded by Mr. Cesaretti. A poll vote was then taken. Dr. Daniel absent, Mr. Brown aye, Ms. Cairns Wells aye, Mr. Smyth aye, Mr. Kinzler aye and Mr. Cesaretti aye

There being no further business to discuss, Mr. Cesaretti moved that the meeting be adjourned. This was seconded by Mr. Brown, with all present voting in the affirmative.

Mary Longobottom, RMC  
Municipal Clerk