QUESTIONS AND ANSWERS

1. ***What is a builder's remedy lawsuit?*** A builder's remedy lawsuit is a process created under the ***Mt. Laurel II*** decision which allows a developer to file suit for the opportunity to construct housing at higher densities than a municipality would otherwise allow. If a trial court determines that a town's zoning does not satisfy its affordable housing obligation, the court will order revision of the town's zoning. The court may appoint a Special Master to oversee the zoning being brought into compliance. The remedy portion is that a court may permit the developer to construct on its property housing at a higher density than permitted, provided that a substantial number of affordable housing units are built.

2. ***What is COAH?*** COAH is the Council On Affordable Housing which was established under the Fair Housing Act of 1985, the legislative response to the ***Mt. Laurel II*** decision. Municipalities had the option of filing their affordable housing plans with COAH which allowed towns immunity from builder's remedy law suits.

3. ***How did a town defend against a builder's remedy lawsuit in the past?*** When COAH had jurisdiction to review municipal housing plans, a town would be immune from builder's remedy litigation if it availed itself of the administrative review process established by COAH for review of the town's affordable housing plan.

4. ***What changed in March 2015?*** On March 10 of that year, the New Jersey Supreme Court divested COAH of jurisdiction of municipal housing plans.

Towns are now required to petition the Superior Court for approval of their housing plans. Builders, developers and other interested parties may intervene in such proceedings, which are known as declaratory judgment actions.

5. ***What are the odds that a municipality can defend a builder's remedy lawsuit successfully?*** Once the builder demonstrates in court that a municipality has not met its numerical affordable housing obligation, the builder is then able to maximize the density and development on its property in order to set-aside 15% (rental) or 20% (for sale units) of the maximum number of units that can be built on the site for affordable housing units. When the site in question has already been developed once (as here for an office park), there is virtually no ability of the municipality to minimize the intensity of the development to take place on the property.

6. ***What is Upper Saddle River's present low income housing obligation?*** During the time that COAH was functional, the Borough's obligation was 82 affordable units. This was the obligation discussed by officials at the October 2014 Town Hall meeting. Since the Supreme Court decision in 2015, two sets of affordable housing numbers have been promulgated for every town in the State. Fair Share Housing Center ("FSHC"), a group that advocates for the construction of affordable units, has determined that Upper Saddle River has an obligation of 510 units between now and 2025. Another firm retained by 288 municipalities determines the Borough's obligation to be 308 units during the same time period. Based upon an 80% market/20% affordable ratio as is

common for affordable housing inclusionary development, these numbers could generate between 1,500 and 2,500 more units in the town.

7. ***Why did Upper Saddle River need to deal with a lawsuit?*** Mack Cali, the owner of 1 Lake Street, filed a builder's remedy law suit in 2014 after the Borough rejected its rezoning request for 240 rental apartments, 165,000 square feet of office space, retail development on 3 pad sites, and 1,500 surface parking spaces. Mack Cali also sued the Borough in Federal Court claiming that the Borough's zoning practices were discriminatory, promoted racial segregation and were unconstitutional.

8. ***Why were the residents informed in 2014 that Upper Saddle River could defend against a lawsuit, but in 2016 they are being told the opposite?*** Since the fall of 2014, the planning rules have changed as noted above due to the Supreme Court decision in 2015.

9. ***Why can't we have single family homes or commercial development?*** Mack Cali refused to even discuss an entirely commercial development or single family homes. Our professionals advise that Mack Cali representatives would not consider any development other than multiple family housing. Initially, Mack Cali would only consider a rental apartment development.

10. ***What is Fair Share Housing Center?*** Fair Share Housing Center "FSHC") is a housing advocacy group which advocates for the development of affordable housing on a State-wide basis. Under the March 2015 Supreme Court decision, FSHC has "a seat at the table" to comment on every affordable housing plan in every town in the State. While the Federal Court Judge has determined

the settlement to be fair and reasonable, approval is still required in the State court proceeding.

11. ***Why didn't the Borough push for an age-restricted community (55+)?*** Our professionals advised that this was raised in the initial meeting, and Mack Cali refused to consider this option. Presently, age-restricted developments have little demand in the development community and market. Moreover, there are caps on the number of age-restricted units for which a municipality can obtain credit towards satisfying its numerical affordable housing obligation resulting in the need for the municipality to construct even more market units.

12. ***What are the provisions of the settlement?*** The Mack Cali site will be developed with 208 townhomes, 186 of which will be market rate townhomes estimated by the Developer to sell for between $750,00 and $850,000, having floor areas of between 2,500 and 2,700 square feet, with two car garages. 22 will be affordable units, some of which will have a garage. The plan depicts large buffer areas between the site and adjoining uses. Another 25 affordable units will be built off-site, at no cost to the Borough, giving the Borough credit for a total of 47 affordable housing units against its alleged affordable housing obligation of 510 (FSHC) or 308 (Econsult). A 9 acre portion of the 1 Lake Street property will also be purchased by the Borough which, after allowance for credits, will cost the Borough $2 million. The Borough will be seeking grants and open space funding from various agencies to further reduce the net cost to the Borough.

13. ***Is the Borough committed to put a new Municipal Building or other improvements on the 9 acres?*** The Borough has not committed to improve the 9 acres in any way. Under the settlement, zoning will permit certain municipal uses, including recreational facilities and lighting, as well as parking. A determination as to use will be made only after analysis of costs and input from residents.

14. ***What was the tax revenue from the Mack Cali property now and in the future?*** This year, the Mack Cali property generated approximately $948,000 in tax revenue. Once the building is demolished, the tax revenue will decline by $600,000. However, rezoning of the property may permit an increase in the land assessment, even without the new construction.

15. ***Why did the Borough settle?*** The main reason is to address its affordable housing obligation. Given the range of the numerical affordable housing obligation of the Borough from the two experts (FSHC=510; Econsult=308), Borough professionals advised the Mayor and Council that litigating the case may result in 1,000 or more units on the subject property. By entering into the settlement, the Borough is able to control the number of units while still providing 20% of the units (22 on the Mack Cali site and 25 elsewhere) that meets the 20% obligation that courts look to in determining whether a settlement is fair and reasonable.

16. ***When will the town see additional revenue?*** As noted above, rezoning of the property will result in an increased value to the land itself. It is estimated

that once the townhomes have been constructed, that the average tax bill for each townhome will be approximately $17,000.

17. ***How many children are expected to come from this development?*** The Borough relied upon the analysis of its planner, who has nearly 40 years of experience in this area and a proven record of prediction of school enrollment. His estimate is that there will be approximately 56 school-age children generated by the development. Presently in the Borough, there is a total of 251 for sale condominium units and rental apartments. The rental apartment units generate just under one student for every two units, while the for sale condominium units generate less than one student for every three units. In the 2014 school year, the 154 rental apartments at the Commons generated 71 public school students. The 97 units in the three for sale condominium unit developments generated 26 public school students. There is no factual basis for any assertion that hundreds of new students would be generated by the proposed development.

18. ***What are the trends in school enrollment?*** School officials have advised that there has been a nearly 20% decline in enrollment over the past 13 years. They believe that there is capacity for another 250 students. The Borough is confident that this will not be an issue.

19. ***Can Mack Cali or another developer seek to change the Settlement Agreement?*** No. The Agreement is binding on Mack Cali and any successor developer.

20. ***Does the settlement satisfy the town's affordable housing obligation?*** This will be decided by the Superior Court. Through this settlement

and the implementation of a previously approved plan for Apple Ridge, the Borough has managed to address, to the extent possible, the future development of two sites having nearly 100 acres of land area: Apple Ridge and Mack Cali.

21. ***Why weren't the negotiations discussed?*** Attorneys for the Borough recommended that the process be kept confidential. There are legal and strategic reasons not to disclose details relating to settlement discussions which are ongoing. Numerous approvals, with the opportunity for public input, will occur during the consideration of the Master Plan Amendment, Zoning Ordinance Amendment, and the site plan application as the process goes forward.

22. ***How did the Council vote?*** Council members voted unanimously to settle the litigation.

23. ***What is high density housing?*** When COAH had jurisdiction over municipal housing plans, generally the minimum density per acre was 6 to 8 units. Inclusionary development in nearby towns and throughout the county and state is currently being proposed at 20 or more units per acre. The 208 units on the 38.65 acres is at a density of 5.38 units per acre. This does not include in the calculation the 9 acres the municipality is acquiring.

24. ***Will a court consider economic input to the community, including schools?*** No. Courts will not consider the economic impact to a municipality, whether the impact is on schools or other services.