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February 28, 2008

William Sohl  
Business Administrator  
Mt. Olive Township  
PO Box 450  
Mt. Olive, NJ 07828

RE: Planning Board Procedures

Dear Mr. Sohl:

I have been asked by the Planning Board to respond to the concerns raised before Council at your February 19, 2008 meeting regarding Planning Board procedures. I note that on February 20, 2008, Catherine Natafalusy, Planning Administrator, provided you with some background information regarding these issues.

In an effort to better understand the mechanism for presentation of applications before the Planning Board, allow me to explain the procedure. An applicant is provided an opportunity to present his/her case. This is usually done by way of testimony and exhibits. All witnesses testify under oath before the Board. At the conclusion of each witness, the Board members and the public are given an opportunity to cross-examine those witnesses and ask questions in a full and complete manner.

Once the applicant completes the case, the public is given a full and complete opportunity to present their case, whether that be simply a statement made by an individual or expert witnesses hired on behalf of a particular party or parties representing an opposing view. That testimony is under oath whether it be expert testimony or lay testimony.

At the conclusion, the Board is then faced with a determination regarding all of the facts relating to the application. They must then decide whether to approve the application, deny the application or approve it with conditions. The vast majority any approvals granted are

conditioned on numerous qualifying factors predicated on the record made at the hearings before the Planning Board.

This process and procedure has been explained on numerous occasions to Mr. Duarte. At the conclusion of each witness, Mr. Duarte has been given an opportunity to cross-examine those witnesses. In fact, Mr. Duarte has brought other individuals including a Mr. Messina of Manalapan, New Jersey who has also been given the opportunity to cross-examine witnesses. While this is an unusual request, the Board has given this extra leeway to Mr. Duarte.

In regard to this particular case, the Board has deviated from its normal procedure as outlined above and has allowed Mr. Durarte to present evidence prior to the conclusion of the applicant's case.

Therefore, for all of the above reasons, I believe that the Board has not only followed its normal procedure in regard to the opportunity for the public to be heard, but has gone above and beyond those procedures in an effort to accommodate Mr. Duarte. This has been explained to Mr. Duarte, and either he does not understand the procedure despite the explanations or chooses not to abide by the normal rules of the Planning Board.

With regard to Mr. Duarte's request to give expert testimony, the Board ruled, at my suggestion, that he is not a licensed real estate appraiser and, therefore, his attempt to provide expert testimony would not be allowed. He advised the Board that he is a realtor and a builder. That, in and of itself, would not qualify him to provide real estate appraisal testimony. Therefore, in my opinion, he was properly denied the request to present expert testimony in that field since he did not have adequate qualifications to do so.

With regard to the requested ordinance change by Mr. Duarte, he was informed by me at Board meetings that the Planning Board does not have the authority to change the ordinance. The Planning Board can recommend a change to the governing body or it has the responsibility of reviewing any land use ordinance change that is referred to it by the governing body. At the January 17, 2008 meeting, Mr. Duarte for the first time indicated that he felt the setback from his property should be 200 feet and suggested that it should be the same as the setback on State Route 46. Clearly, there are significant planning differences between a setback that should exist from a State highway as compared to a local street. I defer to Mr. McGroarty, the township planner, as to whether he believes there is a planning basis to increase this particular buffer. That is clearly a planning decision. However, from a legal viewpoint, the Board and the Council must be concerned that changes in ordinance do not only affect an individual such as Mr. Duarte, but have a larger effect on all individuals within the zone. Therefore, the Board must take into consideration the community-wide consequences of a zone change, not simply those consequences on an individual.

Finally, I note in Ms. Natafalulusy's report to you of February 20, 2008, Mr. Simoff and

Mr. Vogel have met individually with Mr. Duarte and Mr. Messina and are, in fact, attempting to redesign the project to further mitigate any adverse impact on his property. I suggest that process should be played out and, if amendments are made to the plan, the Board will certainly review them and again provide the public an opportunity to provide comments and testimony in accordance with the requirements of the Municipal Land Use Law.

In the event that I can be of any further assistance to you or to council, feel free to contact me.

Very truly yours,  
DOLAN & DOLAN, PA

Roger W. Thomas

RWT/sem

cc: Mayor David Scapicchio  
Township Council Members  
Joe Fleischner, Chairman Planning Board  
Chuck McGroarty, Planning Consultant  
Gene Buczynski, Township Engineer  
Catherine Natafalusy, Planning Administrator