

**SPECIAL MEETING
JULY 9, 2012**

A Special Meeting was called to adopt the Settlement Agreement in litigation entitled Donna Faulkenberry v. Borough Council of the Borough of Helmetta

MEETING CALLED TO ORDER * STATEMENT REGARDING OPEN PUBLIC MEETING LAW * SALUTE TO THE FLAG

The meeting was called to order at 7:01 p.m. by Mayor Martin. Adequate notice of this meeting was provided as is required by the Open Public Meetings Law with advertising in the Home News Tribune and posting on the bulletin board. All present Pledged Allegiance to the Flag.

CALLING OF THE ROLL:

ASCIOLLA- absent
JANECZEK
KARCZEWSKI
PEREZ - absent
SLAVICEK
SMITH - absent

PUBLIC PORTION

RESOLUTION # 2012 – 128

A RESOLUTION AUTHORIZING THE BOROUGH ATTORNEY TO SIGN SETTLEMENT AGREEMENT IN LITIGATION ENTITLED DONNA FAULKENBERRY v. BOROUGH COUNCIL OF THE BOROUGH OF HELMETTA, et al., DOCKET NO. MID-L-6185-11
MOTION – Clmn. Karczewski SECOND – Clmn. Janeczek
ROLL CALL: 3 - 0

ADJOURNMENT

There being no further business, the meeting adjourned at 7:05 p.m.

Sandra Bohinski, RMC
Municipal Clerk

RESOLUTION
#2012 -128

A RESOLUTION AUTHORIZING THE BOROUGH ATTORNEY TO SIGN
SETTLEMENT AGREEMENT IN LITIGATION ENTITLED DONNA
FAULKENBERRY v. BOROUGH COUNCIL OF THE BOROUGH OF
HELMETTA. et at,
DOCKET NO. MID-L-6185-11

WHEREAS, Donna Faulkenberry, Curt Stollen, the Spotswood Board of Education and the Borough of Spotswood ("Plaintiffs") filed suit in the Superior Court of New Jersey, Middlesex County against the Borough Council of the Borough of Helmetta, the Borough of Helmetta Planning Board and Kaplan at Helmetta, L.L.C. ("Defendants"); and

WHEREAS, the lawsuit concerns real property known as the former Helme Snuff Mill and located on Main Street and Maple Street and designated as Block 17, Lot 1, Block 18, Lot 6.02 and Block 19, Lots 1.02 & 1.03, in the Borough of Helmetta ("Subject Property"); and

WHEREAS, the Plaintiffs, through the Complaint, alleged that the Borough of Helmetta Planning Board and the Borough Council of the Borough of Helmetta acted improperly with regard to the proposed redevelopment of the Subject Property by the redeveloper Kaplan at Helmetta, L.L.C.; and

WHEREAS, the Defendants denied acting improperly with regard to any negotiations and/or approvals granted in connection with the redevelopment of the Subject Property with a non-age restricted residential housing project; and

WHEREAS, the Borough has determined that rather than incurring the costs and risks associated with litigation, it is in the public interest to settle this litigation, subject to the terms and conditions set forth within the attached Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Helmetta that the Settlement Agreement in the matter captioned Donna Faulkenberry v. Borough Council of the Borough of Helmetta. et al., Docket No. MID-L-6185-11, is hereby approved, and that the Borough Attorney is hereby authorized to sign the Settlement Agreement, in the form attached hereto, on behalf of the Borough.

BE IT FURTHER RESOLVED that the Borough Clerk is hereby directed to provide a certified copy of this Resolution to each of the following:

- a. Gluck Walrath, LLP
- b. David B. Rubin, Esq.
- c. Ronald Blumstein, Esq.
- d. James J. Kinneally, III Esq.

DONNA FAULKENBERRY, CURT STOLLEN, SPOTSWOOD BOARD OF
EDUCATION and BOROUGH OF SPOTSWOOD

v.

BOROUGH COUNCIL OF THE BOROUGH OF HELMETTA, BOROUGH OF
HELMETTA PLANNING BOARD and KAPLAN AT HELMETTA L.L.C.

DOCKET NO. MID-L-6185-11

SETTLEMENT AGREEMENT

WHEREAS, Donna Faulkenberry, Curt Stollen, the Spotswood Board of Education and the Borough of Spotswood (hereinafter referred to as "Plaintiffs") filed suit in the Superior Court of New Jersey, Middlesex County against the Borough Council of the Borough of Helmetta, the Borough of Helmetta Planning Board and Kaplan at Helmetta, L.L.C. (hereinafter referred to as "Defendants"), and

WHEREAS, this lawsuit concerns property known as the former Helme Snuff Mill and located on Main Street and Maple Street and designated as Block 17, Lot 1, Block 18, Lot 6.02 and Block 19, Lots 1.02 & 1.03, in the Borough of Helmetta (hereinafter referred to as the "Subject Property"), and

WHEREAS, the Plaintiffs, through the Complaint, alleged *inter alia* that the Borough of Helmetta Planning Board and the Borough Council of the Borough of Helmetta acted improperly with regard to the proposed redevelopment of the Subject Property by Kaplan at Helmetta, L.L.c. ("Kaplan") by, among other things, agreeing that if certain conditions are satisfied, that an urban renewal entity created by Kaplan will be entitled to receive a long term tax exemption for the improvements that it will construct as part of the redevelopment of the Subject Properties as set forth more fully within a financial agreement (the "PILOT Agreement"), and

WHEREAS, the Defendants denied acting improperly with regard to any negotiations and/or approvals granted in connection with the redevelopment of the Subject Property with a non-age restricted residential housing project (the "Kaplan Complex"), and

WHEREAS, the Plaintiffs and Defendants are desirous of settling this lawsuit in its entirety based upon the terms and conditions set forth herein.

THE PLAINTIFFS and DEFENDANTS on the _____ day of June, 2012, HEREBY AGREE as follows:

1. Kaplan has guaranteed, subject to the provisions of paragraph 5 below, that there will be a minimum PILOT of \$275,000.00 (the "Minimum PILOT"). Once the mandatory 5% payment to Middlesex County (the "County Share") is deducted from the Minimum PILOT, Helmetta shall direct Kaplan to pay half of the remaining portion of the Minimum PILOT (i.e. \$130,625.00) to the Spotswood School District (the "Spotswood Share") and shall retain the other half of the Minimum PILOT (i.e. \$130,625.00)(the "Helmetta Share"). Such payment shall be made by Kaplan to the Spotswood School District on an annual basis in order to compensate the Spotswood School District for the costs of educating the students who reside in the Kaplan Complex and attend the Spotswood School District.

2. The cost of educating the students in the Spotswood School District shall be determined by taking the annual tax fund levy as shown on the most recent A4F-Form B submitted by Spotswood to the New Jersey Department of Education and dividing that number by the number of students from Helmetta and Spotswood attending the Spotswood School District as shown on the AI form submitted annually by Spotswood to the New Jersey Department of Education in order to calculate a "per pupil cost". In the event that these existing forms are no longer utilized during the term of this Settlement Agreement, the parties shall in good faith determine the appropriate form(s) to utilize for this purpose so as to achieve the same substantive result.

3. The Spotswood School District shall provide a calculation of the number of students residing in the Kaplan Complex and attending the Spotswood School District to Helmetta and Kaplan on an annual basis. This calculation shall be provided to Kaplan and Helmetta by October 15 each year. This calculation shall be subject to the provisions of Paragraph 5 below. This number of students residing in the Kaplan Complex shall be multiplied by the per pupil cost of the most recent year available to determine whether the Spotswood Share covers the costs of educating these students.

4. If the cost of educating the students residing in the Kaplan Complex and attending the Spotswood School District exceeds the Spotswood Share, then the additional costs associated with the education of these students will be satisfied as follows:

a. If Helmetta receives an actual PILOT in excess of the Minimum PILOT, then, after deducting the County share from the actual PILOT and distributing the Helmetta Share to Helmetta, the remainder of the actual PILOT (i.e. the Spotswood Share plus any remaining portion of the actual PILOT) shall be paid by Helmetta to the Spotswood School District to the extent necessary to compensate the Spotswood School District for the per pupil cost of educating the students who reside in the Kaplan Complex

and attend the Spotswood School District (the "Additional Spotswood Share"); provided however, that Helmetta shall only be obligated to pay the Additional Spotswood Share to the Spotswood School District to the extent that it compensates the Spotswood School District for 20 or less students from the Kaplan Complex who attend the Spotswood School District and that Kaplan will be solely responsible for compensating the Spotswood School District if 21 or more students from the Kaplan Complex attend the Spotswood School District in any given school year

b. If the Spotswood Share and the Additional Spotswood Share do not cover the cost of educating the students residing in the Kaplan Complex and attending the Spotswood School District, as calculated in Paragraphs 2 and 3, above, then Kaplan shall be obligated to pay the Spotswood School District any remaining amount necessary to compensate the Spotswood School District for the per pupil cost of the students residing in the Kaplan Complex and attending the Spotswood School District.

5. The parties hereby acknowledge and agree that: (i) the Kaplan Complex will be completed in stages over time and the provisions herein regarding minimum payments are premised upon the completion of the Kaplan Complex and that, therefore, such payments shall be pro-rated to correspond with the portion of the Kaplan Complex completed at any particular point in time prior to full completion of the Kaplan Complex; (ii) the Spotswood School District shall provide no more often than quarterly, the calculation of the number of students residing in the Kaplan Complex and attending the Spotswood School District which will be adjusted and pro-rated to the extent that the students only attend the Spotswood School District for a portion of the school year; and (iii) this Settlement Agreement is premised and conditioned upon the existing Executive County Superintendent's Plan implementing the merger of the Helmetta and Spotswood School District, including, in particular, the formula currently used to calculate the funding obligations of Helmetta and Spotswood towards the consolidated school district, and therefore in the event that such formula changes during the term of this Settlement Agreement, the parties shall in good faith determine the appropriate adjustment to the terms hereof, if any, necessary so as to achieve the same substantive result.

6. Kaplan shall, at its sole cost and expense, execute and record a memorandum of the details of this Settlement Agreement, including the payment agreement by Kaplan to Spotswood, against the Subject Property.

7. Kaplan will provide a title search of the Subject Property to the Plaintiffs to confirm that there are no existing mortgages, judgments, or other similar encumbrances against the Subject Property.

8. Kaplan agrees that any conveyance of the Subject Property to any third party is subject to the terms of this Settlement Agreement.

9. Kaplan and Helmetta agree to amend the appropriate agreement(s) between the two entities to reflect the provisions of this Settlement Agreement.

10. In consideration of Paragraphs 1-9, the Plaintiffs agree to withdraw their opposition to the application filed by Kaplan relating to the Kaplan Complex currently pending before the Helmetta Planning Board.

11. In consideration for Paragraphs 1-9, the Plaintiffs agree to dismiss the above captioned matter, with prejudice.

12. In consideration for Paragraphs 1-9, Plaintiffs agree to provide a Release to the Defendants, releasing any claims that they have with regard to the subject matter of the above captioned matter.

13. The payment obligations outlined in Paragraphs 1-5 shall exist for the duration of the PILOT Agreement Helmetta and Kaplan, its successors and assigns; at the time that the Subject Property is added back on to the tax rolls of Helmetta, and becomes a tax assessed property, the payment obligations outlined in Paragraphs 1-5 will cease to exist.

14. This Settlement Agreement contains the entire settlement agreement between the Parties to the above captioned lawsuit.

David B. Rubin, Esq

DONNA FAULKENBERRY SPOTSWOOD
BOARD OF EDUCATION

James J. Kinneally, III Esq.

CURT STOLLEN
SPOTSWOOD BOROUGH

David Clark
BOROUGH OF HELMETTA

Ronald S. Blumstein, Esq. KAPLAN
AT HELMETTA L.L.C.

DONNA FAULKENBERRY, CURT STOLLEN, SPOTSWOOD BOARD OF
EDUCATION and BOROUGH OF SPOTSWOOD

v.

BOROUGH COUNCIL OF THE BOROUGH OF HELMETTA, BOROUGH OF
HELMETTA PLANNING BOARD and KAPLAN AT HELMETTA L.L.C.

DOCKET NO. MID-L-6185-11

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WHEREAS, this lawsuit concerns property known as the former Helme Snuff Mill and located on Main Street and Maple Street and designated as Block 17, Lot 1, Block 18, Lot 6.02 and Block 19, Lots 1.02 & 1.03, in the Borough of Helmetta (hereinafter referred to as the "Subject Property"), and

WHEREAS, the Plaintiffs, through the Complaint, alleged *inter alia* that the Borough of Helmetta Planning Board and the Borough Council of the Borough of Helmetta acted improperly with regard to the proposed redevelopment of the Subject Property by Kaplan at Helmetta, L.L.C. ("Kaplan") by, among other things, agreeing that if certain conditions are satisfied, that an urban renewal entity created by Kaplan will be entitled to receive a long term tax exemption for the improvements that it will construct as part of the redevelopment of the Subject Properties as set forth more fully within a financial agreement (the "PILOT Agreement"), and

WHEREAS, the Defendants denied acting improperly with regard to any negotiations and/or approvals granted in connection with the redevelopment of the Subject Property with a non-age restricted residential housing project (the "Kaplan Complex"), and

WHEREAS, the Plaintiffs and Defendants are desirous of settling this lawsuit in its entirety based upon the terms and conditions set forth herein.

THE PLAINTIFFS and DEFENDANTS on the _____ day of June, 2012, HEREBY AGREE as follows:

1. Kaplan has guaranteed, subject to the provisions of paragraph 5 below, that there will be a minimum PILOT of \$275,000.00 (the "Minimum PILOT"). Once the mandatory 5% payment to Middlesex County (the "County Share") is deducted from the Minimum PILOT, Helmetta shall direct Kaplan to pay half of the remaining portion of the Minimum PILOT (i.e. \$130,625.00) to the Spotswood School District (the "Spotswood Share") and shall retain the other half of the Minimum PILOT (i.e. \$130,625.00)(the "Helmetta Share"). Such payment shall be made by Kaplan to the Spotswood School District on an annual basis in order to compensate the Spotswood School District for the costs of educating the students who reside in the Kaplan Complex and attend the Spotswood School District.

2. The cost of educating the students in the Spotswood School District shall be determined by taking the annual tax fund levy as shown on the most recent A4F-Form B submitted by Spotswood to the New Jersey Department of Education and dividing that number by the number of students from Helmetta and Spotswood attending the Spotswood School District as shown on the AI form submitted annually by Spotswood to the New Jersey Department of Education in order to calculate a "per pupil cost". In the event that these existing forms are no longer utilized during the term of this Settlement Agreement, the parties shall in good faith determine the appropriate form(s) to utilize for this purpose so as to achieve the same substantive result.

3. The Spotswood School District shall provide a calculation of the number of students residing in the Kaplan Complex and attending the Spotswood School District to Helmetta and Kaplan on an annual basis. This calculation shall be provided to Kaplan and Helmetta by October 15 each year. This calculation shall be subject to the provisions of Paragraph 5 below. This number of students residing in the Kaplan Complex shall be multiplied by the per pupil cost of the most recent year available to determine whether the Spotswood Share covers the costs of educating these students.

4. If the cost of educating the students residing in the Kaplan Complex and attending the Spotswood School District exceeds the Spotswood Share, then the additional costs associated with the education of these students will be satisfied as follows:

a. If Helmetta receives an actual PILOT in excess of the Minimum PILOT, then, after deducting the County share from the actual PILOT and distributing the Helmetta Share to Helmetta, the remainder of the actual PILOT (i.e. the Spotswood Share plus any remaining portion of the actual PILOT) shall be paid by Helmetta to the Spotswood School District to the extent necessary to compensate the Spotswood School District for the per pupil cost of educating the students who reside in the Kaplan Complex

and attend the Spotswood School District (the "Additional Spotswood Share"); provided however, that Helmetta shall only be obligated to pay the Additional Spotswood Share to the Spotswood School District to the extent that it compensates the Spotswood School District for 20 or less students from the Kaplan Complex who attend the Spotswood School District and that Kaplan will be solely responsible for compensating the Spotswood School District if 21 or more students :from the Kaplan Complex attend the Spotswood School District in any given school year

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5. The parties hereby acknowledge and agree that: (i) the Kaplan Complex will be completed in stages over time and the provisions herein regarding minimum payments are premised upon the completion of the Kaplan Complex and that, therefore, such payments shall be pro-rated to correspond with the portion of the Kaplan Complex completed at any particular point in time prior to full completion of the Kaplan Complex; (ii) the Spotswood School District shall provide no more often than quarterly, the calculation of the number of students residing in the Kaplan Complex and attending the Spotswood School District which will be adjusted and pro-rated to the extent that the students only attend the Spotswood School District for a portion of the school year; and (iii) this Settlement Agreement is premised and conditioned upon the existing Executive County Superintendent's Plan implementing the merger of the Helmetta and Spotswood School District, including, in particular, the formula currently used to calculate the funding obligations of Helmetta and Spotswood towards the consolidated school district, and therefore in the event that such formula changes during the term of this Settlement Agreement, the parties shall in good faith determine the appropriate adjustment to the terms hereof, if any, necessary so as to achieve the same substantive result.

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