

The Council Meeting venue for this evening's meeting is being held at the Clinton Fire Department in anticipation of a large attendance. Approximately 85 people were in the audience.

Mayor Kovach called the special meeting to order at 7:30 p.m.

Flag Salute.

Roll Call: Present – Cohen, Duffy, Insel, Pendergast, Smith, Shea, Mayor Kovach

STATEMENT OF ADEQUATE NOTICE:

Mayor Kovach read the following statement: "Adequate notice of this meeting has been provided, indicating the time and place of the meeting and the proposed agenda, which notice was posted, made available to newspapers, and filed with the Clerk of the Town of Clinton in accordance with Section 3(d) of Chapter 231 of the Public Laws of 1975."

APPROVAL OF MINUTES

A motion was made by Mr. Smith seconded by Mrs. Insel, to approve minutes of August 28, 2012 as submitted.

Vote all ayes
Motion carried

APPROVAL OF EXECUTIVE SESSION MINUTES

A motion was made by Mr. Pendergast, seconded by Mr. Shea, to accept the Executive Session minutes of August 28, 2012 as submitted.

Vote all ayes
Motion carried

APPROVAL OF BUDGET MEETING

A motion was made by Mr. Smith, seconded by Mr. Pendergast, to accept the Budget meeting minutes of August 22, 2012 as submitted.

Vote all ayes
1 Abstention (Cohen)
Motion carried

APPROVAL OF MONTHLY REPORTS – AUGUST

A motion was made by Mr. Smith seconded by Mr. Pendergast to accept the monthly reports for the month of August as submitted.

Administrator's Report, Building and Grounds Foreman's Report, Clerk's Account, Cat & Dog Licensing Accounts, Construction Control/Inspection Report, Police Report, Road Foreman's Report, Sewer Collector's Report, Tax Collector's Report, Water Collector's Report, Zoning Officer Report.

Vote all ayes
Motion carried

PUBLIC COMMENT

Whitney Wetherhill asked if the Mayor and Council could remind residents in the next Newsletter about cleaning up after their dogs, specifically between the Clinton House and the Red Mill Museum Village.

MAYOR'S COMMENTS

1. In observance of 9/11, Mayor Kovach asked for a moment of silence in remembering the tragedy that took place 11 years ago today. This morning, at Patriot's Point, a ceremony was held organized by Ruthann Brown Disotell, to reflect. Vocalists Vincent Grana and Jen Gursky of Encore Music Studio led the group in song, Sean VanLew of Veterans Haven North, Cliff Delany of Rolling Thunder, Michelle Gardner of the Clinton Rescue Squad, Paul Lingch of the VFW Spruce Run Post #5119, Walt Dorf of the Clinton Fire Department, Clinton Police Chief Brett Matheis and Tom Kowalchek of Rolling Thunder NJ Chapter 3 were invited guests. Many residents attended the 9/11 commemoration. A beautiful heartfelt event.

Mayor Kovach took this opportunity to thank our Police Department, Fire and Rescue Squads, and a special thank you to Detective Sgt Jay Hunter for three tours of duty in Iraq. Jay received two purple hearts during that time and we are lucky to have him back safely.

2. On Sunday, September 16, 2012 at 1:00 p.m., there will be a grand celebration at the Clinton Community Center to celebrate the completion of the renovations to the Grandstand and the Scoreboard and the renaming of the Community Center Gym as the "Ginny Rylak Memorial Gym" in honor of Ginny's 30 years of service to the Town of Clinton and the Community Center. Sadly, Ginny passed away in February, 2012.
3. An invitation to attend a meeting at the Vought House on September 25, 2012 at 7:30 pm.

A special thank you to the Clinton Fire Department for accommodating the Council to hold this meeting here tonight.

PUBLIC HEARING OF ORDINANCE #12-09 – DEFINITION OF SIGN ERECTION

A motion was made by Mrs. Insel, seconded by Mr. Smith, to open the public hearing of Ordinance #12-09 as presented:

**ORDINANCE #12-09
AN ORDINANCE REGARDING SIGNS IN THE PUBLIC RIGHT-OF-WAY
AND THE DEFINITION OF SIGN ERECTION**

Vote all ayes
Motion carried

There being no public comment, a motion was made by Mr. Smith, seconded by Mr. Pendergast, to close the public portion of the meeting.

Vote all ayes
Motion carried

A motion was made by Mr. Pendergast, seconded by Mr. Smith, to adopt Ordinance 12-09 as submitted.

ROLL CALL: Cohen, Duffy, Insel, Pendergast, Shea, Smith, Mayor Kovach

Vote all ayes
Motion carried

RESOLUTION #140-12 – PLACE TO PLACE TRANSFER – HOLIDAY INN

A motion was made by Mr. Smith, seconded by Mr. Shea, to adopt Resolution #140-12, approving the place to place transfer, (expansion of premises) for the Clinton Holiday Inn.

**RESOLUTION #140-12
PLACE TO PLACE TRANSFER
EXTENSION OF PREMISES
CLINTON HOLIDAY INN**

WHEREAS an application has been filed for a place-to-place transfer (Expansion of Premises) by the Clinton Holiday Inn of a Plenary Retail Consumption License (Hotel/Motel Exception) License No: 1005-36-004-008, for the purposes of expanding the premises under the license wherein the sale, service and storage of alcoholic beverages are authorized; and

WHEREAS the submitted application form is complete in all respects, the transfer fees have been paid, and the license has been properly renewed for the current license term; and

WHEREAS, the full investigation and an on-site ABC inspection of the existing licensed premise has been completed by the Clinton Police Department and found to be in order;

NOW, THEREFORE, BE IS RESOLVED, that the Town of Clinton Governing Body does hereby approve, effective September 11, 2012, the expansion of the aforesaid Plenary Retail Consumption licensed premises located at 111 Route 173, Clinton, New Jersey 08809 to a place under license the area delineated in the application form and the sketch of the licensed premises attached hereto.

Vote all ayes
Motion carried

RESOLUTION #141-12 – CANCELLATION OF LIEN

A motion was made by Mr. Pendergast, seconded by Mrs. Insel, to adopt Resolution #141-12 as present:

RESOLUTION # 141-12

WHEREAS, the Tax Collector of the Town of Clinton has been paid \$38,699.81 the amount necessary to redeem Tax Sale Certificate #2012-8 on Block 13, Lot 20, assessed to 27 Leigh Street LLC, and purchased by Singh Real Estate.

NOW THEREFORE BE IT RESOLVED, on this 11th day of September 2012 by the Mayor and Council of the Town of Clinton, County of Hunterdon, that the Chief Financial Officer be authorized to issue a check in the amount of \$38,699.81 (certificate) & \$42,000.00 (premium) payable to Singh Real Estate, 555 Lincoln Drive West, Suite 100, Marlton, NJ, 08053, upon receipt of the original Tax Sale Certificate endorsed for cancellation, and

BE IT FURTHER RESOLVED that the Tax Collector be authorized to cancel Lien #2012-8 on Block 13, Lot 20, assessed to 27 Leigh Street LLC, from the Town of Clinton Tax Records.

ROLL CALL: Ayes: Cohen, Duffy, Insel, Pendergast, Shea, Smith, Mayor Kovach

Vote all ayes
Motion carried

RESOLUTION #142-12 – CHANGE ORDER NO. 1 – GARCIA CONSTRUCTION

A motion was made by Mr. Smith, seconded by Mr. Duffy, to adopt Resolution #142-12 as submitted:

**RESOLUTION # 142-12
CHANGE ORDER NO. 1**

WHEREAS, the need has arisen for a change order to Phase One of the Potterstown Production Well 4 by John Garcia Construction Company, and

WHEREAS, according to the Town Engineer's correspondence dated August 31, 2012, it was necessary to furnish and install two gate valves which results in the desirable isolation of the stilling pipe from the main distribution system, and

WHEREAS, the resulting contract cost of the project, is as follows:

Original Cost of Contract	\$156,992.00
Change Order #1 Cost Adjustment	\$ 2,100.00
Resulting Contract Cost	\$159,092.00

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Town of Clinton that Change Order Number 1 for the Phase One Potterstown Production Well 4 Project be approved.

ROLL CALL: Ayes: Cohen, Duffy, Insel, Pendergast, Shea, Smith, Mayor Kovach

Vote all ayes
Motion carried

CORRESPONDENCE

1. Correspondence received from the Highlands Council highlighting the importance of providing final documents and closely attending to the sequence of adoption of certain documents as the implementation process proceeds. The letter will be forwarded to Mrs. Insel to follow up.
2. Notification received from the North Jersey Transportation Planning Authority addressing rail freight capacity and needs assessment to the Year 2040.

REPORTS FROM COUNCIL & TOWN OFFICIALS

Councilman Shea

1. Shade Tree Commission – will be replacing trees on East Main Street in October.

Councilman Duffy

1. Board of Recreation - Town Picnic will be held Saturday, September 22, the scheduled rain date. The Clinton Fire Department will be cooking burgers, dogs and chicken for purchase. Boy Scouts will have a display and the Clinton Public School PTA will also be selling water and soda.
2. Clinton Fire Department will be hosting Grill Night on Friday, September 21st!

APPROVAL OF STANDBY AND OVERTIME

A motion was made by Mr. Duffy, seconded by Mr. Pendergast to approve the standby and overtime pay attached to these minutes for August 17 through August 30, 2012.

ROLL CALL: Ayes: Cohen, Duffy, Insel, Pendergast, Shea, Smith, Mayor Kovach

Vote all ayes
Motion carried

PAYMENT OF BILLS

A motion was made by Mr. Pendergast seconded by Mr. Smith to approve the voucher list attached to these minutes.

ROLL CALL: Ayes: Cohen, Duffy, Insel, Pendergast, Shea, Smith, Mayor Kovach

Vote all ayes
Motion carried

BUDGET DISCUSSION – REVALUATION

Mayor Kovach explained to the large audience the revaluation process. Town Council decided to begin a proactive approach and has already begun the budget process for next year. The Town suffered a \$12,000,000 loss in ratables due to tax appeals this year, a reduction in State aid, and lawyer fees to handle the tax appeals amounted to \$24,000. This impact on the Town has resulted in an extremely tight budget and all expenditures are on hold. There will no longer be waiving of food license fees, as well as construction, electrical, plumbing or fire permits. The Town continues to wait for the repayment of \$179,900 from the Hunterdon Art Museum, which monies will be returned to the capital account. Mayor Kovach proceeded to explain the need for a town wide revaluation, something that has not been done in several years and the reason for so many tax appeals. Following the revaluation, homes will be assessed at true values. The Town Council asks for the cooperation and patience of their residents.

7:46 p.m. – TOWN OF CLINTON / HUNTERDON ART MUSEUM

Councilman Pendergast presented the audience with a basic timeline for the Dam and Dike project as well as the additional Hunterdon Art Museum patio project. Councilwoman Insel, who was present at all meetings that have taken place over the years with the engineers and all interested parties, along with Councilman Duffy, as members of the Buildings and Grounds Committee, helped prepare this evening's presentation by researching years of documents. Proof of all events are documented and available to the public for their viewing in the clerk's office in the Municipal Building.

The timeline began in 2001 when New Jersey Department of Environmental Protection notified the four property owners, Hunterdon Art Museum, Red Mill Museum Village, Pender's Boat House/property of the Bishop family, and Roses in Your Hair/property of Rosalee and Jim Carney, that work on the dam and dike needed to be done and the estimated cost is over \$1,000,000. A grant was obtained by NJDEP in the amount of \$914,000 to make this project possible.

The presentation was also depicted with a power point presentation. Mr. Pendergast gave a detailed journey of the project over the years to the present day. The public was given an opportunity to speak and address council with statements and questions. The Executive Board of the Hunterdon Art Museum was personally invited by Mayor Kovach to attend the meeting this evening. The table and chairs were set but remained empty.

Following Council's presentation, audience members were allowed to come up and ask questions of Council and Mr. Cushing, the Council's Attorney. The following is a list of speakers, their addresses and their comments briefly stated.

Hoyte Baucom, 24 Messig Road, stated he sympathized with Council for being in such a predicament but expects council to handle the situation and "keep hands out of the resident's pockets". Mr. Baucom loves this Town, feels Clinton is the greatest Town, but understands that all the high taxes are not just for the Town but for school and county and that although the Town has a CAP on their spending, he does not believe the school and the county are required to. Mr. Baucom stated he was talking to someone connected with the museum and was sorry that no one from the museum was here tonight. Mr. Pendergast suggested that when residents see members of the museum on the street, or maybe sending an email to the museum, suggesting that they pay their bill to the Town.

Craig Sailer, 68 Lakeview Avenue, asked if there was ever a binding contract or agreement with the Museum? Mr. Pendergast said no, and it is a huge shame, but the Town always worked together with the museum and other entities and no one ever saw it necessary to do so. It was a handshake agreement because of the relationship the Town had. There is a website that anyone can access for non-profit organizations where their assets are listed and as of 2011, the museum had \$2.5 million dollars and approximately \$400,000 of them were liquid. Mrs. Insel interjected that the Town took over the project because grants are not payable to individual property owners and the Town became the general contactor for this project.

Ron Subber, Main Street, commended council on their efforts and asked if the Town was close to an agreement? Mr. Pendergast said the Town was ready to sign an agreement in June that would have secured payment, secured a route through to the Planning Board, secured the loan and a mortgage securing the loan, 3 ½ hours before the meeting when the mayor was to sign the agreement, the rug was once again pulled out from under us. The museum is notorious for changing attorneys and at the final hour, settlements come to a halt. Mr. Subber explained that he and his wife were willing to begin fund raising efforts to help the museum with their patio project but after 6 months, internal issues at the museum caused them to cease trying.

Dave Wiant, 78 Center Street, questioned the \$179,000 expended for the patio and the museum's draw downs on the loan that the Town co-signed for. It was explained that the Town has learned many lessons through this and the normal community spirit will no longer be and contracts in the future will be drawn. The \$105,000 loan draw down was not approved by the Town, however, the State made the disbursements. Mr. Cushing wished to clarify the monies owed and the turn of events. Negotiations began two years ago and the museum represented that they had no money to pay the Town, that was before the Town went on the website and saw how much the Museum had in assets. The museum asked the Town if they could continue to use the DEP loan source to pay back the \$179,000 and to pay for improvements of the patio but that was not an option. If the Town gets the \$179,000 from HAM and the loan, regardless, they will have to give the 2nd mortgage to the Town to secure the loan of \$450,000 that we co-signed for. The Hunterdon Art Museum has a 1st mortgage in the amount of \$350,000 with the property assessed at \$780,000. The settlement would envision consenting to an additional loan by the museum from DEP to repay the Town and to give a second mortgage to the Town guaranteeing any loan being taken by the museum.

Jim DeGroff, 7 Leigh Street, stated that everyone is talking about the money but how about the eyesore? He questioned if the Town can claim eminent domain? Mr. Cushing explained that it

would cost the Town a lot of money to seize it. It was explained that the Museum is expected to go before the Planning Board at the meeting of October 2, 2012.

Whitney Wetherill, 36 West Main Street, thanked Council for all their hard work and says she can live with the eyesore but please do not dip into the pockets of the residents. Ms. Wetherill suggested clarifying the difference between the grant and the loan. The Town went to the DEP and received a grant of \$914,000 to the Town for the reconstruction of the dam and dike. Then the Museum came to council asking for support in obtaining a loan because a not-for-profit cannot go for a loan without the Town co-signing. The Town agreed to co-sign but the Museum was to get town's approval before drawing down, the loan was obtained by the Museum with the co-signing of the Town. At that time, Councilwoman Kovach asked if the New Jersey Water Supply Authority would be interested in taking ownership but the answer was no.

Kevin Cotte, 34 Rachel Court, does not want to see the Town lose services and asked if services have been looked at individually. The brush is currently handled internally, garbage and recycling was just recently bid and bids came in a little lower than last year but bids were rejected for insufficient proposals. Council's goal is to keep all services as is. We are going out to bid once again, and keep garbage and recycling as a service to the residents. Mr. Smith stated garbage would be the last thing ever to be cut in the Town of Clinton. Mr. Cotte asked once again how this will impact his taxes. Mayor Kovach attempted to explain the State imposed budget caps to municipalities and deferred to Kathy Olsen, CFO, for further explanation. Ms. Olsen explained that there are two budget CAPS, appropriations 2 ½% and tax levy at 2%. Exceptions to these CAPS are few, being debt service, capital improvements, a portion of pension and health benefits. Mr. Cotte then asked for contact information for museum Board members, and was directed to the Museum's website. Mr. Cotte asked for information of their Board members and attorney. Mr. Pendergast relayed the list of Board Members: Marjorie Nathanson, Executive Director; James McDevitt, President; Jorge Blanco, Vice President, Jocelyn Capmanship, Lidia Hickman, Recording Secretary, the remaining Board of Trustee members are Pamela Becker, Ed Gagne, Dr. Jennifer Lea Kozar, Mark Mazzeta, Treasurer; Patricia McKiernan, Ingrid Renard, Ellen Segal, Corporate Secretary, Cathy Ahart and Elizabeth Mato. The audience was also directed to the web site to review their Form 990, showing financial situation of the museum.

Margaret Hamilton, West Main Street, referred to the letter received from the Art Museum and said they were willing to pay the \$179,000 but there were outstanding issues regarding the steps. Mr. Cushing explained that the steps are no longer an issue but the museum is holding off on paying the \$179,000 until after Planning Board approval and they are trying to use this as leverage as part of the Planning Board approval. Council has no say in regards to Planning Board applications.

Patty Hatalla, 35 Spruce Run Road, referred to the HAM letter also and asked what are the other issues are discussed in executive session. Mayor Kovach explained that matters are specific regarding contract negotiations, personnel, litigation and attorney giving advice to council which is attorney/client privilege. **NO** decisions are ever made in executive session. Council will always state to the public if they expect to return to the regular meeting to make announcements or take a vote on a matter, allowing the public to wait and return for action on a matter.

Mr. Cushing stated there are only a couple issues outstanding:

- The museum agreed to pay the \$179,000, after agreeing the museum came back and said they will only pay the \$179,000 if they get the money from the State. The Town said no,

you need to pay that money whether or not you get it from the State. The residents are out this money. Regarding the mortgage, the museum also agreed to this with some additional language added which is not a problem.

- The big problem is the museum is placing a condition on paying the \$179,000 on whether it gets Planning Board approval exactly by the terms set forth by the museum. The application submitted refers to a larger patio area to display art and host social affairs and to cut back on the parking spaces, limiting them to 5 spaces. Their application calls for 5 parking spots there are 9 there now. That is an issue for the Planning Board not the Council.
- Pay the \$179,000 and the Town will give a letter to the Planning Board in support. The museum also wants copies of all invoices, which has been supplied several times. The Museum wants to hold back on their obligation depending on the decision of the Planning Board. If the museum does not like the terms and conditions of the Planning Board, the museum wants to say no deal because they did not get the approval they wanted. This has been back and forth so many times that the Town Council said no more spending money on negotiations and told the attorney to stop communicating.

Mrs. Insel wished to respond to comments regarding Executive Session. Several meetings were held with the Art Museum with representatives of both parties. When the museum hired their first attorney to represent them, then it was time for Council to bring in counsel to represent us too. That is when Executive Sessions began due to potential litigation.

Margaret Layding, 24 Rachel Court, as an aside Mrs. Layding stated she is a member of the Clinton – Glen Gardner School Board, but is here as a resident with concerns. Mrs. Layding began by thanking Council for such a thorough explanation. Although the \$179,000 and the \$105,000 loan draw down are large amounts of money, would repayment of this amount solve all the budget problems? Mayor Kovach explained no, and that is the reason council has been making tough decisions and has been making cuts. It is going to take several years building a surplus. Hopefully, with the revaluation process we will not be having the tax appeals and will have appropriate assessments, it will help us rebuild surplus. A quarter of the Town will be reassessed every year. Mrs. Layding asked what was the \$179,000 spent on? Mr. Pendergast said most of the patio was not there, there was a large slope. Mr. Cushing explained the extension of the training wall from where the gabion wall had been, and the extended parking area. The museum went to the Town's Dam Engineer and asked that this project be designed and they would pay him.

Rhonda Witever, 36 Lingert Avenue, what are some of the other issues causing the deficit? How much of the increase in taxes is due to the Hunterdon Art Museum and what are the other things contributing to the deficit? Mayor Kovach said the monetary issues are discussed at Council meetings and budget meetings. Some items are unpredictable, such as tax appeals. Ms. Witever asked what is the percentage attributed to the museum, Mr. Pendergast said we are not able answer that question at this time. Budget sessions have begun early this year as Mayor Kovach stated, in light of budgetary issues, however, the money from the Art Museum is owed money, a guarantee of money to come in and it should be paid.

Ms. Witever expressed her frustration and Mr. Duffy spoke up. He referred to frustration! Every council meeting, the hours Council members have put in, the executive sessions, the extra meetings, the committee meetings, for years. Every time Council came close to closing the deal and at the last minute the museum withdraws. It's tiresome, all the meetings, all the discussions.

However, Mr. Duffy said he is glad to see the crowd that has come out tonight. Mr. Pendergast stated that the Art Museum does not get any more free rides, and this is his strategy from here on.

Jack McBurney, 38 Haver Farm Road, directed to the attorney, all of these handshake agreements and informal agreements, any advice for council to accept these as bindings? Mr. Cushing replied no, as he was not asked. Mr. Cushing echoed Mrs. Insel, the long history of the Town working with the non-profits, was a good relationship. Mr. McBurney said, "yes, but not with dollar amounts like this". Mr. McBurney attempted to say that former councils were at fault but again, the long history of working with the museums never made anyone suspect that something like this would happen all in good faith. Mr. McBurney asked the amount for the dam/dike and Mr. Pendergast stated it was \$914,000. The museum added part 2 to the entire project, the extension of the patio. The museum asked the Town to include the extension of the patio at this time and they would pay for it. All the work has been done to this point, the stabilization of the ground under the patio, the extension of the gabion wall to the bridge. Repairs to the wall following the storm last August are 85% complete. The Town paid the contractor \$179,000 for the work that was done as the Town is the general contractor in charge of the project. The only thing that needs to be done is the concrete poured for the patio, following their meeting with the Planning Board and the Planning Board's decisions.

Ray Bahto, 47 Alexandra Way, asked what the Town is on the hook for? \$179,000 for the patio and contingent liability \$105,000 for the loan draw down. Mr. Bahto then asked if a financial report was ever submitted back in 2003-2004? He supported the council in doing whatever they have to do to get reimbursed.

Andrew Cebello, 45 Quarry Ridge Road, everything in the future should be written agreements. Museum's lack of presence, they were invited, was there any response? In the midst of this meeting, Mr. Cushing received a message from their attorney stating that the museum would not be present tonight. Mr. Cebello said that sends a message "all gloves are off".

John Madden, 9 Fairview Drive, resident and planner for the Hunterdon Art Museum, will represent them at the Planning Board meeting in October. Mr. Pendergast asked Mr. Madden, as a professional planner, does the council have any jurisdiction over the Planning Board. Mr. Madden replied no. Mr. Cushing gave the background on the museum originally not going to the Planning Board. Mr. Cushing reiterated what the proposed resolution dictates for the museum to pay the \$179,000 and then go to the Planning Board. Mr. Madden agreed that the resolution is a good step forward. In the spring of 2011, the museum was notified that they have to go to the Planning Board.

Lisa Lamarrow, Clinton Township, a volunteer for the museum. Mr. Cushing gave Mrs. Lamarrow a copy of the Resolution to bring back to the Executive Director to review and possibly come to an agreement. Mrs. Lamarrow said, "try not to make this adversarial between the museum and the Town". Mrs. Lamarrow commended council on holding a such a civil meeting. Mayor Kovach said yes, it has been civil, and all the time and efforts of council have been in good faith. Communication on behalf of the Town has always been open.

Danielle Badiali, 32 Alexandra Way, is it possible to have an emergency Planning Board meeting? The applicant must request and they did not make any effort to do so. The August meeting was adjourned after the museum declined to come. Is the museum patio open to the public or is it just the museum's private property? It is solely the museum but as in the past the public has been able to use it. The steps are a public easement. Is there a contract moving forward, yes, Mayor Kovach replied, the resolution becomes a contract.

George Runyon, 116 Leigh Street, ratables going by the wayside, hotel on Route 31, Wargo Tract on Old Highway 22, Eastern Hill Project next to the Hunterdon County Library, Agway, house boarded up on West Main Street. We need to have a look at these situations.

Dave Wiant, 78 Center Street, how can the Museum expect to get a hearing with the Planning Board when there are outstanding fees? When an applicant comes before the Planning Board, taxes must be proven paid to date. Mayor Kovach said the Council will send a letter in support of the project once a resolution/agreement is signed.

Tony Hatalla, 35 Spruce Run Road, asked is the project near completion? Yes. Mr. Hatalla asked about the railing as mentioned by Mr. Madden. Mr. Madden was referring to the hand rail that failed during Hurricane Irene because the contractor did not bury the bolts deep enough into the wall. The veneer is being replaced and the railing to meet specifications as the specs required, at no cost to the town.

Invoices, what is the total cost to the Town? The project was paid for as a whole, including mobilization costs, \$179,947.00 will make the agreement whole.

Mayor Kovach announced that Council will take a 5 minute break and enter into executive session. Mr. Pendergast thanked everyone for coming. Council will be returning following Executive Session to take action.

RESOLUTION #-144-12 – EXECUTIVE SESSION – Contract Negotiations/Potential Litigation

A motion was made by Mr. Pendergast seconded by Mrs. Insel, to enter into Executive Session at 10:20 p.m. to discuss a matter of Contract Negotiations and Potential Litigation. Council is expected to return to the regular meeting to take action.

RESOLUTION AUTHORIZING EXECUTIVE SESSION

WHEREAS, the Open Public Meetings Act; *N.J.S.A. 10:4-6 et seq.*, declares it to be the public policy of the State to insure the right of citizens to have adequate advance notice of and the right to attend meetings of public bodies at which business affecting the public is discussed or acted upon; and

WHEREAS, the Open Public Meetings Act also recognizes exceptions to the right of the public to attend portions of such meetings; and

WHEREAS, the Mayor and Council find it necessary to conduct an executive session closed to the public as permitted by the *N.J.S.A. 40:4-12*; and

WHEREAS, the Mayor and Council will reconvene in public session at the conclusion of the executive session;

NOW, **THEREFORE**, BE IT **RESOLVED** by the Mayor and Council of the Town of Clinton, County of Hunterdon, State of New Jersey that they will conduct an executive session to discuss the following topic(s) as permitted by *N.J.S.A. 40:4-12*:

A matter which Federal Law, State Statute or Rule of Court requires be kept confidential or excluded from discussion in public (Provision relied upon:

_____);

_____A matter where the release of information would impair a right to receive funds from the federal government;

_____A matter whose disclosure would constitute an unwarranted invasion of individual privacy;

_____A collective bargaining agreement, or the terms and conditions thereof
(Specify contract:

_____A matter involving the purpose, lease or acquisition of real property with public funds, the setting of bank rates or investment of public funds where it could adversely affect the public interest if discussion of such matters were disclosed;

_____Tactics and techniques utilized in protecting the safety and property of the public provided that their disclosure could impair such protection;

_____Investigations of violations or possible violations of the law;

Pending or anticipated litigation or contract negotiation in which the public body is or may become a party; (the general nature of the litigation or contract negotiations is:

_____ OR _____ the public disclosure of such information at this time would have a potentially negative impact on the municipality's position in the litigation or negotiation; therefore this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists.

_____Matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his or her ethical duties as a lawyer; (The general nature of the matter is: _____

OR _____ the public disclosure of such information at this time would have a potentially negative impact on the municipality's position with respect to the matter being discussed; therefore this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists);

_____Matters involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance, promotion or disciplining of any specific prospective or current public officer or employee of the public body, where all individual employees or appointees whose rights could be adversely affected have not requested in writing that the matter(s) be discussed at a public meeting; (The employee(s) and/or general nature of discussion is _____

OR _____ the public disclosure of such information at this time would violate the employee(s) privacy rights; therefore this information will be withheld until such time as the matter is concluded or the threat to privacy rights no longer exists.;

_____ Deliberation occurring after a public hearing that may result in the imposition of a specific civil penalty or loss of a license or permit;

BE IT FURTHER RESOLVED that the Mayor and Council hereby declare that their discussion of the subject(s) identified above may be made public at a time when the Town Attorney advises them that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Town or any other entity with respect to said discussion. That time is currently estimated to be: _____ (estimated length of time) OR upon the occurrence of _____

BE IT FURTHER RESOLVED that the Mayor and Council, for the reasons set forth above, hereby declare that the public is excluded from the portion of the meeting during which the above discussion shall take place.

Vote all ayes
Motion carried

Council returned to the Regular Council meeting at 11:00 p.m.

RESOLUTION #143-12 – MUNICIPAL COURT

A motion was made by Mr. Shea, seconded by Mr. Cohen to adopt Resolution #143-12, entering into a Shared Service Agreement for a Shared Municipal Court with Clinton Township.

RESOLUTION #143-12

**RESOLUTION AUTHORIZING A SHARED SERVICES
AGREEMENT FOR A SHARED MUNICIPAL COURT
BETWEEN THE TOWNSHIP OF CLINTON AND
THE TOWN OF CLINTON**

WHEREAS, the Town of Clinton and the Township of Clinton are interested in creating a Shared Municipal Court; and

WHEREAS, an agreement to enter into a shared service for municipalities is permitted under *N.J.S.A. 40A:65-1 et seq.*, the “Uniform Shared Services and Consolidation Act”; and

WHEREAS, *N.J.S.A. 2B:12-1(c)* allows for the establishment of Shared Municipal Courts; and

WHEREAS, the Township and the Town will secure approval for the Shared Municipal Court from the State Judiciary; and

WHEREAS, the Township and the Town will take those steps required to implement a Shared Municipal Court including complying with the requirements of the State Judiciary; and

WHEREAS, the Town will appoint as its own Municipal Court Judge, Court Administrator, Prosecutor or Public Defender pursuant to *N.J.S.A. 2B:12-1(c)* those individuals who will be or have been appointed by Clinton Township to fill those positions; and

WHEREAS, the Town desires to enter into a Shared Services Agreement for a Shared Municipal Court between the Town of Clinton and the Township of Clinton substantially in the

form attached subject to any changes required by the State Judiciary in order that the Shared Municipal Court becomes operational on January 1, 2013.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Town of Clinton, County of Hunterdon, New Jersey, that the Mayor and Clerk are hereby authorized to sign a Shared Services Agreement for a Shared Municipal Court between the Township of Clinton and the Town of Clinton substantially in the form attached subject to any changes required by the State Judiciary.

ROLL CALL: Ayes: Cohen, Duffy, Insel, Pendergast, Shea, Mayor Kovach
Abstained: Smith

Vote all ayes
1 Abstention (Smith)
Motion carried

RESOLUTION #145-12 – AGREEMENT TO SETTLE DISPUTE WITH HUNTERDON ART MUSEUM

A motion was made by Mr. Pendergast, seconded by Mrs. Insel, to adopt Resolution #145-12 as submitted and read allowed earlier this evening by Mr. Pendergast:

**RESOLUTION #145-12
AGREEMENT TO SETTLE DISPUTE WITH HUNTERDON ART MUSEUM**

WHEREAS, the Hunterdon Art Museum ("MUSEUM") owns property on Lower Center Street, adjacent to the South Branch of the Raritan River on which is located an historic mill which is used as an art museum; and

WHEREAS, over the years the South Branch of the Raritan River has overflowed its banks causing damage to the MUSEUM property and nearby properties; and

WHEREAS, The State of New Jersey, Division of Dam Safety, made demands upon the MUSEUM and other adjoining property owners that they either reconstruct the dam and the nearby dike, or that the dam be eliminated; and

WHEREAS, in order to assist the MUSEUM and adjoining property owners remedy this problem the TOWN, on behalf of the MUSEUM and adjoining property owners, secured from the State of New Jersey, Department of Environmental Protection a grant in the amount of \$914,000 to reconstruct portions of the dam and the dike along the MUSEUM's side of the River; and

WHEREAS, in order to design the reconstruction of the dam and the dike the TOWN hired an engineer highly experienced in the construction and reconstruction of dams, who prepared a set of plans to reconstruct the dam and the dike in a manner consistent with the terms of the grant; and

WHEREAS, after that design was completed, the MUSEUM requested that the engineer prepare for it plans for additional work in order to improve the patio and parking area of the MUSEUM, which design work included extending the "training wall" along the edge of the South Branch an additional distance to reduce the potential for continued erosion, adding fill and drainage features and other work that improved the MUSEUM's property; and

WHEREAS, discussions were held between the TOWN and the MUSEUM about the additional costs that would be incurred by virtue of work requested by the MUSEUM and the MUSEUM agreed to pay the cost of work that benefited the MUSEUM property; and

WHEREAS, the reconstruction of the dam and dike has been completed; and

WHEREAS, a dispute arose between the parties as to how to apportion the cost of the work performed; and

WHEREAS, the only remaining issues are the payment by the MUSEUM to the TOWN of the amount agreed to for the additional work, \$179,947.73; the supplying by the MUSEUM to the TOWN of a mortgage to secure a guaranty being given by the Town to the State of New Jersey for a loan to be obtained by the MUSEUM to do certain improvements; the request by the MUSEUM for a letter of support by the TOWN for the patio project the MUSEUM wishes to construct; and the supplying of copies of invoices from the TOWN to the MUSEUM

WHEREAS, the TOWN desire to settle and resolve the dispute between it and the MUSEUM and believes that there is a simple, prompt and fair way to resolve that dispute which would involve each party agreeing to do in two weeks what they are already willing to do;

WHEREAS, the TOWN believes this settlement will allow the taxpayers to recoup the money advanced by the TOWN on behalf of the MUSEUM and will let both the taxpayers and the donors to the MUSEUM know that their hard-earned dollars are not being spent on additional lawyers' and engineers' fees.

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLINTON, HUNTERDON COUNTY AS FOLLOWS:

The Mayor and Council are willing to resolve the dispute with the MUSEUM on the following terms:

1. On Tuesday, September 25, 2012, the Museum delivers to the Town: (a) a check payable to it in the amount of \$179,947.73; and (b) a second mortgage on the Museum property in an amount sufficient to cover the entire loan proceeds to be prepared by the Museum and contain commercially reasonable terms.
2. On that same date, upon receipt of items 1.a. and 1.b. above, the Town will provide to the Museum: (a) a letter to the Planning Board indicating the Town's support for the Museum's project; (b) a letter to the DEP notifying it that the Town consents to having the DEP resume servicing the loan; and (c) another copy of the invoices documenting the Town's expenses incurred in connection with the Dam & Dike Restoration Project.
3. The parties will thereafter promptly exchange mutual releases and a right of way agreement in the form to be agreed to by the respective attorneys.

ROLL CALL: Ayes: Cohen, Duffy, Insel, Pendergast, Shea, Smith, Mayor Kovach

Mr. Duffy stated prior to voting that "I have no confidence that the agreement will be upheld by the Art Museum and that payment will be received by the next council meeting. I am frustrated,

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disappointed and disgusted how this has transpired, however, in the spirit of getting this resolved, I will reluctantly vote yes.”

Mr. Pendergast also stated “I also have no confidence that the art museum will follow through, but an additional good faith gesture, I vote yes.

Vote all ayes
Motion carried

ADJOURNMENT: There being no further business, a motion was made by Mr. Pendergast seconded by Mrs. Insel to adjourn the meeting at 11:06 p.m.

Vote all ayes
Motion carried

Cecilia Covino, RMC/CMC
Town Clerk

Mayor Janice Kovach