

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

Flag Salute.

Roll Call: Present – Cohen, Duffy, Insel, Pendergast, Shea, Smith, 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 Mrs. Insel seconded by Mr. Smith, to approve minutes of the Special Council Meeting held September 28 2012 as submitted.

Vote all ayes
2 Abstentions (Pendergast, Shea)
Motion carried

APPROVAL OF MONTHLY REPORTS – SEPTEMBER

A motion was made by Mr. Smith seconded by Mrs. Insel, to accept the monthly reports for the month of September as submitted:

Administrator’s Report, Buildings and Grounds 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, Wastewater Treatment Plants Superintendent’s Report, Water Superintendent’s Report, Zoning Officer’s Report.

Vote all ayes
Motion carried

PUBLIC COMMENT- none

MAYOR’S COMMENTS – none

WEB SITE DISCUSSION

Patty Hatalla, web mistress for the Town of Clinton site, came before Council this evening to discuss the renewal contract for City Connections (CC), the company hired to maintain and manage our Town website since 2005. Mrs. Hatalla explained to Council that the contract term is October to September of the next year and it is important to discuss any changes far in advance of renewal terms if it is the wish of Council to make changes. Mrs. Hatalla gave a very detailed description of the services provided by CC and the annual contract fee. Council engaged in discussion with Mrs. Hatalla and council liaison, Brad Cohen, will attend a meeting with the Newsletter/Web Site to discuss updating and refreshing the web site. Mr. Cohen will report back.

BEST PRACTICES

In the absence of Mrs. Olsen, CFO, Richard Phelan, PW/BA explained the Best Practices worksheet for CY 2012 prepared by Ms. Olsen for the Department of Community Affairs, Division of Local Government Services. A certified copy confirming will be sent to the Division.

INTRODUCTION OF ORDINANCE #12-10 – AMENDMENT TO FEE SCHEDULE

Board of Health Secretary, Cecilia Covino, reported to Council that at the Board of Health meeting held September 11, 2012, the Board voted to increase the fees for food establishments with seating for over 50 patrons and for temporary food licenses. The Board prepared a memo to the Council for their review and approval. A motion was made by Mr. Smith, seconded by Mr. Duffy, accept the changes and to introduce Ordinance #12-10 on first reading as submitted:

ORDINANCE #12-10

AN ORDINANCE OF THE TOWN OF CLINTON AMENDING SECTION 73-3 OF THE CODE OF THE TOWN OF CLINTON ENTITLED “FEES” TO ESTABLISH NEW FEES FOR CERTAIN RETAIL FOOD ESTABLISHMENTS

WHEREAS the Board of Health of the Town of Clinton issues annual retail food establishments licenses pursuant to §157-6 of the Code of the Town of Clinton for businesses located in the Town of Clinton, and

WHEREAS, the Board of Health of the Town of Clinton also issues temporary food licenses to vendors that meet the definition of retail food establishments in the Retail Food Establishment Code and are interested in selling food at events held in Town; and

WHEREAS, inspectors from the Hunterdon County Health Department provide the inspections required by §157-7 of the Code of the Town of Clinton prior to the issuance of any retail food establishment licenses; and

WHEREAS the Hunterdon County Health Department charges the Town for each inspection performed; and

WHEREAS, the Town incurs expenses in administering retail food establishment licenses over and above the amount charged by Hunterdon County; and

WHEREAS, an increase in fees for annual retail food establishment licenses for larger establishments and temporary retail food establishment licenses for longer events is necessary to compensate the Town for its administrative expenses connected with the issuance of these licenses.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Town of Clinton, County of Hunterdon as follows:

SECTION 1. Subsection A entitled “Public documents, permits and services” of Section 73-3 entitled “Schedule of fees and charges” of the Code of the Town of Clinton is amended so that Category 3 of retail food establishments reads as follows:

Category 3

All other retail food establishments with seating for 50 or fewer patrons	\$ 25.00 (Town) \$200.00 (County)
All other retail food establishments with	\$ 50.00 (Town)

seating for more than 50 patrons	\$200.00 (County)
Temporary retail food establishments for events of 3 or fewer days	\$ 50.00 (Town) \$ 75.00 (County)
Temporary retail food establishments for events more of 4 or more days	\$ 50.00 (Town) \$125.00 (County)

SECTION 2. If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 3. All ordinances and resolutions inconsistent with the provisions of this ordinance are hereby repealed as to such inconsistencies.

SECTION 4. This ordinance shall take effect immediately upon publication following its final passage, in accordance with law.

Vote all ayes
Motion carried

A copy of this ordinance will be published in the October 17, 2012 edition of the Hunterdon Review. A second reading and public hearing will be held November 6, 2012.

INTRODUCTION OF ORDINANCE #12-11 – PAY TO PLAY

Mr. Cushing explained Ordinance #12-11 measures limiting the award of public contracts to business entities that have made contributions and limiting the contributions that the recipient of such a contract can make during the term of a contract. A motion was made by Mr. Pendergast, seconded by Mr. Duffy, to adopt Ordinance #12-11 on first reading as submitted:

ORDINANCE # 12-11

AN ORDINANCE AMENDING THE CODE OF THE TOWN OF CLINTON TO ADD A NEW CHAPTER ENTITLED “CONTRACTS” WITH A SECTION ENTITLED “RESTRICTIONS ON AWARD OF CONTRACTS EXEMPT FROM PUBLIC BIDDING”

WHEREAS, certain contracts are exempt from public bidding under the Local Public Contracts Law, *N.J.S.A. 40A:11-1 et seq.*; and

WHEREAS, there is the potential for business entities whose contracts are exempt from public bidding to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding contracts to such business entities; and

WHEREAS, permitting substantial local political contributions from business entities receiving discretionary contracts from the elected officials who receive such contributions raises

reasonable concerns on the part of taxpayers as to the influence of those contributions on the process of local government as well as the quality or cost of services received; and

WHEREAS, pursuant to *N.J.S.A. 40A:11-51* a municipality is authorized to adopt by ordinance, measures limiting the award of public contracts to business entities that have made contributions, and limiting the contributions that the recipient of such a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the Town Council of the Town of Clinton desires to establish a policy that will avoid the perception of improper influence in public contracting and local elections.

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Clinton, in the County of Hunterdon, and State of New Jersey, as follows

SECTION 1. In the Code of the Town of Clinton, in Part I, "Administrative Legislation," there is established a new Chapter 6 entitled "Contracts" reading as follows:

Chapter 6
CONTRACTS
ARTICLE I

Restrictions on Award of Contracts Exempt from Public Bidding

§ 6-1 Purpose.

It shall be the purpose of this article to foster competition in the contracting process that is exempt from public bidding and thereby to avoid the appearance of improper influence in public contracting through unregulated contributions to public officials who award contracts by business entities who seek public contracts.

§ 6-2 Definitions.

As used in this article, the following terms shall have the meanings set forth below:

BUSINESS ENTITY

An individual person; firm; corporation; professional corporation; partnership; organization; or association. When a business entity is a natural person, a contribution by that person's spouse or any child living at home shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by all principals, partners, officers, or directors of the entity or their spouses; any subsidiaries directly or indirectly controlled by the entity; or any political organization organized under § 527 of the Internal Revenue Code that is directly or indirectly controlled by the entity shall be deemed to be a contribution by the business entity.

CANDIDATE

Includes:

- A. Every candidate for Town of Clinton elective municipal office;
- B. Every candidate committee established by or for the benefit of a candidate for Town of Clinton elective municipal office;
- C. Every joint candidate committee established in whole or in part by or for the benefit of a candidate for Town of Clinton elective municipal office;

D. Every political party committee of the Town of Clinton

To the extent not defined herein, the terms in the foregoing paragraph have the meaning set forth in *N.J.A.C.* 19:25-1.7.

CONTRACT FOR PROFESSIONAL OR EXTRAORDINARY SERVICES

All contracts for professional services and/or extraordinary unspecifiable services as such terms are used in the Local Public Contracts Law at *N.J.S.A.* 40A:11-5.

CONTRIBUTION

Has the meaning set forth in *N.J.A.C.* 19:25-1.7. By way of illustration, and not limitation, this definition includes gifts, pledges, loans, and in-kind contributions.

§ 6-3 Awarding public contracts to certain business entities prohibited.

A. To the extent that it is not inconsistent with state or federal law, the Town of Clinton and any of its departments, instrumentalities, Chief Financial Officer, or purchasing agents, shall not enter into any agreement or otherwise procure a contract for professional or extraordinary services from any business entity if such business entity has solicited or made any contribution to a candidate or a holder of public office in the Town of Clinton having ultimate responsibility for the award of a contract, within one calendar year immediately preceding the date of the contract or agreement.

B. No business entity who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with the Town of Clinton or any of its departments or instrumentalities, for the provision of professional services or extraordinary unspecified services shall knowingly solicit or make any contribution to a candidate or a holder of public office in the Town of Clinton having ultimate responsibility for the award of a contract between the time of first communication between that business entity and the municipality regarding a specific agreement for professional services or extraordinary unspecified services, and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance or specified time period of that contract or agreement.

C. For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:

(1) The Town of Clinton governing body (including the Mayor), if the contract requires approval or appropriation from the Mayor or governing body; or

(2) The Mayor of the Town of Clinton if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.

D. No person may be awarded a subcontract to perform under a contract subject to this article, if the subcontractor would be disqualified by § 6-3A from receiving the contract at the time that the subcontract is awarded. Nor may any person who would be disqualified by § 6-3A from receiving the contract perform substantially all of the obligations described in a contract for professional or extraordinary services that is subject to this article.

§ 6-4 Contributions made prior to effective date.

No contribution or solicitation of a contribution made prior to the effective date of this article shall be deemed to give rise to a violation of this article.

§ 6-5 Contract renewal.

No contract subject to this article may be renewed, extended, or materially modified unless the resulting renewal, extension, or modification would be allowable under the provisions of this article if it were an initial contract.

§ 6-6 Contribution statement by business entity required.

A. Prior to awarding any contract for professional or extraordinary services to any business entity, the Town of Clinton or its Chief Financial Officer, purchasing agents and departments, as the case may be, shall receive a sworn statement from said business entity which is the intended recipient of said contract that he/she/it has not made a contribution in violation of this article. The Town of Clinton, its Chief Financial Officer, purchasing agents and departments shall be responsible for informing the Town Council that the aforementioned sworn statement has been received and that the business entity is not in violation of this article, prior to awarding the contract or agreement.

B. A business entity shall have a continuing duty to report to the Town of Clinton any contribution that constitutes a violation of this article made during the negotiation, proposal process or the duration of a contract. The Town of Clinton, its purchasing agents and departments shall be responsible for informing the governing body within 10 business days after receipt of said report from the business entity, or at the next Town Council meeting following receipt of said report from the business entity, whichever comes first.

C. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Town of Clinton, or prior to the provision of services or goods, as the case may be, and shall be in addition to any other certifications that may be required by any other provision of law.

§ 6-7 Return of contributions.

A business entity that is a party to a contract for professional or extraordinary services may cure a violation of § 6-3 of this article, if, within 30 days after the date on which the applicable ELEC report is published, said business entity notifies the municipality in writing and seeks and receives reimbursement of the contribution from the recipient of such contribution.

§ 6-8 Exemption; fair and open contracts not exempt.

The contribution prohibition prior to entering into a contract contained in this article does not apply to contracts which are awarded to the lowest responsible bidder after public advertising for bids and bidding therefore within the meaning of *N.J.S.A. 40A:11-4*, or are awarded in the case of emergency under *N.J.S.A. 40A:11-6*. There is no exemption for contracts awarded pursuant to a "fair and open process" under *N.J.S.A. 19:44A-20 et seq.*

§ 6-9 Violations and penalties.

A. It shall be material breach of the terms of a Town of Clinton contract for professional or extraordinary services if a business entity that is a party to such agreement or contract has:

- (1) Made or solicited a contribution in violation of this article;
- (2) Knowingly concealed or misrepresented a contribution given or received;
- (3) Made or solicited contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (4) Made or solicited any contribution on the condition or with the agreement that it will be recontributed to a candidate or holder of public office having ultimate responsibility for the award of a contract;

(5) Engaged or employed a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject the business entity to the restrictions of this article;

(6) Funded contributions made by third parties, including consultants, attorneys, family members, and employees;

(7) Engaged in any exchange of contributions to circumvent the intent of this article; or

(8) Directly or indirectly, through or by any other person or means, done any act which if done directly would subject the business entity to the restrictions of this article.

B. Any business entity that violates this article shall be disqualified from eligibility for future Town of Clinton contracts for a period of four calendar years from the date of violation.

C. Notwithstanding the foregoing, any business entity who violates any provision of this article shall, upon conviction, be liable to the penalties set forth in §1-15 of the Code of the Town of Clinton.

SECTION 2. If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 3. All ordinances and resolutions inconsistent with the provisions of this ordinance are hereby repealed as to such inconsistencies.

SECTION 4. This ordinance shall take effect immediately upon publication following its final passage, in accordance with law.

Vote all ayes
Motion carried

A copy of this ordinance will be published in the October 17, 2012 edition of the Hunterdon Review. A second reading and public hearing will be held November 6, 2012.

RESOLUTION #146-12 – CURFEW

A motion was made by Mr. Smith, seconded by Mrs. Insel, to adopt Resolution #146-12 as submitted:

RESOLUTION # 146-12

WHEREAS, the period immediately prior and subsequent to Halloween, and the holiday time period commencing October 10 and continuing through November 12, 2012, a time when persons under the age of eighteen and others often engage in mischief, acts of vandalism, and other petty disorderly offenses which are harmful to and interfere with the rights of citizens to use the streets and public areas of the Town of Clinton; and

WHEREAS, the Chief of Police of the Town of Clinton has determined, after due investigation and deliberation, that the incidence of juvenile delinquency within the Town will or may reach such a level of frequency or severity so as to present a clear and present danger to the public peace, safety, health, morals and welfare of the Town; and

WHEREAS, the Chief of Police has studied and evaluated to question of the public safety and health in the Town of Clinton and has determined that the safety of the public and the welfare of juveniles will be enhanced if a nocturnal curfew is imposed limiting the ability of persons under the age of eighteen to use the streets and public areas of the Town of Clinton.

WHEREAS, Chapter 60 of the Ordinance of the Town of Clinton authorizes the imposition of a curfew.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Town of Clinton, Hunterdon County, New Jersey, as follows:

- (A) Based on an oral report submitted to the Mayor and Council by the Chief of Police, the Mayor and Council hereby declare that a temporary emergency exists in the Town of Clinton during the period from Wednesday, October 10, 2012, up to and including Monday, November 12, 2012; and
- (B) The Mayor and Council do hereby declare a curfew commencing at 9:00 p.m. October 10, 2012, up to and including 6:00 a.m. November 12, 2012. The terms of the curfew shall be consistent with Chapter 60 of the Code of the Town of Clinton.
- (C) Notice of this curfew shall be posted in accordance with Section 60-8 of the Ordinance of the Town of Clinton in such places as may be designated by the Chief of Police so as to give all interested parties notice of the imposition of the curfew.

Vote all ayes
Motion carried

RESOLUTION #147-12 – AWARD CONTRACT TO NATIONAL METERING SERVICES

A motion was made by Mr. Smith, seconded by Mr. Pendergast, to award a contract to National Metering Services in the amount of \$46,091.00 for the water meter replacement program.

RESOLUTION #147-12
RESOLUTION TO AWARD CONTRACT TO
NATIONAL METERING SERVICES

WHEREAS, the Town of Clinton did solicit bids for the Water Meter Replacement Program; and

WHEREAS, pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and upon recommendation of the Town Water Engineer, National Metering Services has been determined to be the lowest responsible bidder; and

WHEREAS, a certificate of available funding has been presented;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Clinton, County of Hunterdon, State of New Jersey, that a contract is hereby awarded to National Metering Services, in the amount of \$46,091.00 for the Water Meter Replacement Program, and that the Mayor and Town Clerk of the Town of Clinton are hereby authorized, respectively, to

execute and attest to an agreement with National Metering Services, pursuant to bid specifications, and subject to approval by the Town Attorney.

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

Vote all ayes
Motion carried

RESOLUTION #148-12 – SUPPORT STATE FUNDING FOR PRESERVATION

Mayor Kovach explained that she is co-sponsoring this resolution with Mt. Arlington Mayor, Arthur Ondish, for supporting sustainable State funding for preservation and stewardship of Open Space, Parks, Farmland and Historic Sites in New Jersey as described in the following resolution. Following adoption, copies will be forwarded the Governor's office, Senators and Assemblyman, all Hunterdon county Municipalities and Freeholders as well as being presented at the New Jersey League of Municipalities in November. A motion was made by Mrs. Insel, seconded by Mr. Cohen to adopt Resolution #148-12 as presented:

RESOLUTION #148-12

Supporting Sustainable State Funding for Preservation and Stewardship of Open Space, Parks, Farmland and Historic Sites in New Jersey

WHEREAS, New Jersey has a long and successful history of preserving open space, parks, farmland, and historic sites; and

WHEREAS, the Green Acres Program has helped to preserve over 650,000 acres of land and supported more than 1,100 park development projects over the past 50 years; the State Agricultural Development Committee has preserved 200,000 acres of farmland over the past 30 years; and the Historic Trust has preserved 477 historic sites over the past 45 years; and

WHEREAS, all remaining funds for these programs under the Green Acres, Water Supply and Floodplain Protection, Farmland and Historic Preservation Bond Act of 2009 will be fully allocated by the end of 2012; and

WHEREAS, the Town of Clinton has been a direct beneficiary of, and partner to, these critical state preservation programs; and

WHEREAS, substantial unmet needs remain for additional land and water protection, park development, and farmland and historic preservation, for the health and welfare of our communities and residents; and

WHEREAS, it is imperative that a long-term, dedicated source of funding be established in order to:

- sustain open space, farmland, and historic preservation programs beyond the 2009 Bond Act
- improve and ensure proper stewardship of parks, preserved lands, and historic sites
- provide equitable access to quality parks and recreation in urban, suburban, and rural areas
- match and leverage local, county, and private funds for these purposes
- protect drinking water supplies, water quality, and alleviate costly flood damages
- preserve fish and wildlife habitat and provide public access for hunting and fishing

- revitalize cities and towns
- protect our quality of life and economic prosperity.

NOW, THEREFORE, BE IT RESOLVED on this 9th day of October , 2012, by the Town of Clinton in Hunterdon County, State of New Jersey, that:

1. Clinton Town supports establishment of a long-term, dedicated source of state funding for these purposes.
2. A certified copy of this resolution be served upon Governor Chris Christie, Senator Michael Doherty, Assemblyman John DiMaio and Assemblyman Erik Peterson, all Hunterdon County Municipalities, Hunterdon County Freeholders, NJ Keep It Green, and the New Jersey State League of Municipalities.

Vote all ayes
Motion carried

RESOLUTION #149-12 – ASSESSMENT OF MUNICIPAL LEINS

A motion was made by Mr. Pendergast, seconded by Mr. Duffy, to adopt Resolution #149-12 as presented:

RESOLUTION #149-12

WHEREAS Section 45 BRUSH, GRASS, AND WEEDS, of the Town of Clinton Code Book requires that certain aspects of a homeowners property be maintained as to not create a concern to the public, welfare and safety or constitute a fire hazard; and,

WHEREAS the code states that all grass and weeds must be maintained so as not be greater than 3 inches in height; and,

WHEREAS the Code Enforcement Official is authorized to enforce Section 45 by notifying residents of a violation and allowing ten (10) days to abate a violation; and,

WHEREAS of the owner of said property does not abate the problem within ten (10) days after receipt of the notice, a provision in the Section allows for the Public Works/ Business Administrator to reinspect the lands in question and report to Council at its next regular meeting the condition complained of, and

WHEREAS the Public Works/ Business Administrator shall cause the condition complained of to be abated and certify to the Mayor and Council, the cost charged which shall become a lien upon the lands and be added to become a part of taxes next to be assessed and levied upon the lands and shall bear interest at the same rate as taxes and be collected and enforced by the same officer and in the same manner as taxes.

NOW, THEREFORE, BE IT RESOLVED, that steps to abate conditions as stated in Section 45 to the following properties have been remedied by the Town of Clinton Public Works Department and the liens on the respective fees be assessed to the said properties are as follows:

2 Hillside Drive	Block 5, Lot 17	\$372.00
8 Hillside Drive	Block 5, Lot 20	\$372.00
19 West Main Street	Block 25, Lot 20	\$337.00
31 West Main Street	Block 25, Lot 15	\$337.00

3371

116 West Main Street	Block 2, Lot 27	\$248.00
65 Center Street	Block 14, Lot 15	\$402.00

BE IT FURTHER RESOLVED that the Mayor and Council have reviewed documentation and approve the liens to be assessed as presented. Certified copies of this resolution shall be presented to the Town of Clinton Tax Assessor and Tax Collector.

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

Vote all ayes
Motion carried

RESOLUTION #150-12 – SUPPORT OF GRANT SUBMISSION TO DOT FOR HUNTS MILL ROAD IMPROVEMENT PROJECT

A motion was made by Mr. Cohen, seconded by Mr. Duffy, to approve the submission of a grant application and to execute a grant agreement with the New Jersey Department of Transportation for the Hunts Mill Road Improvement Project as submitted.

RESOLUTION #150-12

RESOLUTION: Approval to submit a grant application and execute a grant agreement with the New Jersey Department of Transportation for the Hunts Mill Road. Improvement Project

WHEREAS, Hunts Mill Road is in need of Improvement

WHEREAS, Robert J. Clerico, P.E., Town Engineer, has prepared a cost estimate for improvements to this road.

NOW, THEREFORE, BE IT RESOLVED that the Mayor & Council of the Town of Clinton formally approved the grant application for the above stated project.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to submit an electronic grant application identified as MA-2013-Town of Clinton -#00531 to the New Jersey Department of Transportation on behalf of the Town of Clinton.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to sign the grant agreement on behalf of the Town of Clinton and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approved the execution of the grant agreement.

Vote all ayes
Motion carried

RESOLUTION #151-12 – SUPPPORT OF GRANT SUBMISSION TO DOT FOR HELEN ROAD IMPROVEMENT PROJECT

A motion was made by Mr. Duffy, seconded by Mr. Shea to adopt Resolution #151-12 as submitted:

RESOLUTION #151-12

RESOLUTION: Approval to submit a grant application and execute a grant agreement with the New Jersey Department of Transportation for the Helen Road. Improvement Project

WHEREAS, Helen Road is in need of Improvement

WHEREAS, Robert J. Clerico, P.E., Town Engineer, has prepared a cost estimate for improvements to this road.

NOW, THEREFORE, BE IT RESOLVED that the Mayor & Council of the Town of Clinton formally approved the grant application for the above stated project.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to submit an electronic grant application identified as MA-2013-Town of Clinton -#00532 to the New Jersey Department of Transportation on behalf of the Town of Clinton.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to sign the grant agreement on behalf of the Town of Clinton and that their signature constitutes acceptance of the terms and conditions of the grant agreement and approved the execution of the grant agreement.

Vote all ayes
Motion carried

CORRESPONDENCE

1. Notification has been received by Mayor Kovach from The Sobel & Co., a free cocktail and networking program, October 25, 2012 at The Westminster Hotel in Livingston, New Jersey.
2. Jersey Cares is an organization that is holding their 17th annual Jersey Cares Coat Drive and is asking the Town of Clinton if they would participate in collecting coats. The clerk will contact the organization and get the details before committing.

REPORTS FROM COUNCIL & TOWN OFFICIALS

Richard Phelan, PW/Business Administrator

1. The re-bid for garbage and recycling has been published. The bid opening is November 27, 2012 at 10:00 a.m.
2. The first round of the auction went very well, raised approximately \$9,000.00 to date.

Councilman Smith

1. The semi-final inspection of the new tank went well, the rehabilitation of the existing tank is on schedule, tank should be back in service by mid-November.
2. Rescue Squad is up 22 calls for September, 61 calls over 2011 to date, in town response time of 3 minutes 22 seconds!

Councilman Shea

1. Met with the County Procurement Department, a function of SWAC, regarding a regional co-operative plan with other towns to enter into waste and recycling contracts in hopes of saving money for towns. The Freeholders have expressed their support. Mr. Shea will update Council as the plan progresses.

2. Roads Committee – The State Route 173 project is moving along and near completion. Discussed road projects for next year, Helen Road and Hunts Mill, applying for grants.
3. Shade Tree – four trees will be removed on East Main Street and will be replaced with new trees that have been purchased through solicited funds through the efforts of the Clinton Book Shop.

Clerk Covino

Clerk asked Council's opinion of sending out the requests for proposals for professionals for 2013. Council directed the clerk to advertise for all professionals for all Town positions. The notice will be placed on the town web site.

Councilman Pendergast

1. Sewer Committee – The filter replacement project is going well. The primary filtration system has been installed, the new wall erected and the rebuilding of the exterior wall. The size of these new filters are much smaller, allowing for much more space at the plant.
2. The Black Potato organizers are hosting a Gospel Brunch/Breakfast and all you can eat pancakes at the Clinton Fire Department on Saturday, October 13, 2012 beginning at 11:00 a.m. Cost is \$20.00 and entertainment will be provided by the Harlem/Washington DC Gen3tics Gospel singers.

Councilman Cohen

1. Historic Preservation Commission is holding a Halloween Home Decorating Contest. Homes will be judged in three categories, Spooky, Imaginative and Classic Fall. Judging will be held October 21 through 26, time will be 6 – 9 p.m.
2. The Commission continues to plan for the repainting of "Welcome to Clinton" signs and will attempt to get wood donated from Fox Lumber.

Councilman Duffy

1. Clinton Fire Department – Following up of discussions of the Council budget meeting in August, Mr. Duffy discussed with the fire department members and the fire department decided to raise the fee to put up banners from \$25.00 to \$50.00.

APPROVAL OF STANDBY AND OVERTIME

A motion was made by Mr. Smith, seconded by Mr. Pendergast to approve the standby and overtime pay attached to these minutes for August 31 through September 13, 2012.

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

Vote all ayes
Motion carried

A motion was made Mr. Pendergast seconded by Mrs. Insel, to approve the standby and overtime pay attached to these minutes for September 14 through September 27, 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. Duffy 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

RESOLUTION #-152-12 – EXECUTIVE SESSION – Contract Negotiations/Litigation

A motion was made by Mr. Pendergast seconded by Mrs. Insel, to enter into Executive Session at 8:20 p.m. to discuss a matter of Contract Negotiations and Litigation.

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;

 X 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 9:30 p.m.

RESOLUTION #153-12 – AGREEMENT TO SETTLE DISPUTE WITH THE MUSEUM

A motion was made by Mr. Pendergast, seconded by Mr. Shea, to adopt resolution #153-12 as submitted:

RESOLUTION #153-12

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 that the Mayor and the Clerk are authorized to execute a settlement agreement with the Hunterdon Art Museum, in a form acceptable to the Municipal Attorney which generally contains the following terms and representations:

1. The Town acknowledges receipt of the Museum's October 3, 2012 payment to the Town in the amount of \$80,000.00.
- 2, The Town will provide to the Museum by October 11th copies of all invoices not previously submitted to the DEP documenting the Town's expenses incurred in connection with the Dam & Dike Restoration Project.
3. The Town will provide to the Museum by October 11th a letter to the DEP notifying it that the Town consents to having the DEP immediately resume servicing the subject loan consistent with the terms of this Agreement and the loan agreement entered into in November of 2007 among the DEP as lender and the Town and the Museum as co-borrowers (the "Loan Agreement"). The parties acknowledge and agree that the maximum amount available as of this date under the Loan Agreement is \$344,479.10 (\$450,000.00 minus \$105,620.91 already borrowed). The Town reserves the right to rescind the letter to the DEP if the Museum fails to provide a second mortgage to the town as described in paragraph 6 below.
- 4, All loan proceeds received from the DEP shall initially be deposited by the Museum into the non-interest-bearing attorney trust account for Herold Law, P.A. (the "Trust Account") to be disbursed by Robert F. Simon, Esq. as trustee of the account. No monies may be released from said trust account until the Town is in receipt of the second mortgage as described below.
5. The Museum has recently received approvals from the Planning Board subject to adoption of a memorializing resolution. The Planning Board has informed the Town that it anticipates its memorializing resolution will be adopted by the Planning Board on October 22, 2012 and published by October 25, 2012.
6. On or before November 15,2012, the Museum will provide to the Town a second mortgage in a form acceptable to the Town Attorney, to contain commercially reasonable terms, properly executed and in recordable form, on the real property it owns in the Town of Clinton in an amount sufficient to cover the \$450,000.00 maximum amount of the loan and that, until all amounts due under the loan are paid by the Museum, the second mortgage shall remain in effect

with any first mortgage on the property to have a principal face amount less than or equal to \$370,000.00. By October 19, 2012 the Museum's attorney will deliver to the Town attorney the form of the second mortgage.

7. The Museum and Town will immediately work together to issue a joint press release pertaining to the resolution of this matter. The parties agree refrain from disparaging each other and the Town agrees to update its website to reflect the new cooperative relationship.

8. The Museum will comply with the expected conditions of the memorializing resolution as identified at the October 2, 2012 Planning Board meeting (including drafting permanent easements in forms to be agreed to by the respective attorneys - which once executed will be placed in escrow with the Town's attorney pending the issuance to the Museum of all required construction permits and approvals for the subject Project). The Town agrees to respond reasonably promptly to Museum requests for review of documents with the intent that all conditions of the memorializing resolution will be met by October 29, 2012 and that all construction and other permits and approvals required to construct the Museum's patio and parking spaces at its property will be issued by no later than November 2, 2012. All Stop Work Orders/Notices of Violation have been satisfied/lifted/concluded with no penalties assessed against the Museum.

9. On or before November 30, 2012, the Museum will deliver to the Town a check payable to the Town of Clinton in the amount of \$49,947.73.

10. On or before December 14, 2012, the Museum will deliver to the Town a check payable to the Town of Clinton in the amount of \$50,000.00.

11. The Town agrees that a final certificate of approval and occupancy for the use of the patio and parking area will be issued to the Museum once construction is completed in accordance with the Planning Board's memorializing Resolution and in compliance with Town ordinances.

13. The Town further agrees that repairs started by the Town to the retaining wall along the edge of the South Branch on and near the MUSEUM's property will include the installation of a railing as provided for in Change Order No. 5 to the Agreement between the Town and Adamsville Maintenance, Inc. dated August 10, 2010.

14. Upon payment of \$179,947.73 by the Museum to the Town, and the Museum receiving all final certificates of approval/occupancy required to use the subject patio and parking area, the parties will exchange mutual releases (in a form to be agreed to by the respective attorneys) that shall specifically exclude claims or liability for monetary and equitable relief arising from future storm damage to the retaining wall or associated railing system, or associated damage to the Museum's property or any structures thereon, or any rights or remedies contemplated by the 2009 Temporary Construction Easement Agreement between the parties.

15. The Town and Museum agree that nothing herein shall be construed as an admission by either of them of any wrongdoing or violation of any applicable law, and that nothing shall be so construed by any other person.

Mr. Duffy stated that he has reservations that the Hunterdon art Museum will not honor the agreement with the Town of Clinton.

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ROLL CALL: Duffy, no; Cohen, yes

Pendergast, “yes, with reservations that they will not fulfill their obligations with the same reservations I’ve had as long as we have been making votes on this matter”

Insel, yes; Shea, yes

Smith, with reservations

Mayor Kovach, yes

Vote 6 yes

1 nay

Motion carried

ADJOURNMENT: There being no further business, a motion was made by Mrs. Insel, seconded by Mr. Cohen to adjourn the meeting at 9:35 p.m.

Vote all ayes

Motion carried

Cecilia Covino, RMC/CMC
Town Clerk

Mayor Janice Kovach