

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

Flag Salute.

Roll Call: Present – Dineen, Karsh, Smith, Sosidka, 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 COUNCIL MINUTES - JUNE 26, 2018 - TABLED

APPROVAL OF EXECUTIVE MINUTES - JUNE 26, 2018 - TABLED

APPROVAL OF MONTHLY REPORTS – JUNE

A motion was made by Ms. Sosidka seconded by Ms. Dineen to approve the monthly reports for the month of June as submitted:

Administrator’s Report, Clerk’s Account, Construction Control/ Inspection Report, Cat & Dog Licensing, Sewer Collector’s Report, Tax Collector’s Report, Water Collector’s Report, Zoning Officer Report.

Vote all ayes
Motion carried

PUBLIC COMMENTS

Walter Wilson, Clinton Development Partners, referring to the agenda, Executive Session is listed and settlements to be discussed will follow. Mr. Wilson stated he “is speculating but is asking that internally, council think about the effects on the Agway re-development plan with the purchasers of the Music Hall.” Mr. Wilson has set forth a fair proposal and hopefully the purchaser of the Music Hall will settle to negotiate fairly. Mr. Wilson stated he feels that if negotiations cannot be worked out, the plan will not be as nice and access will be limited to two lanes instead of three for access to the site. Furthermore, Mr. Wilson also mentioned incorporating units from another site into this site as all affordable units which would work as a better solution. Mr. Wilson thanked Council for their consideration to his request.

Mayor Mark Desire of High Bridge handed out a letter to Council updating information as to the on-going mediation. Mayor Desire addressed Mayor Kovach as to the recent progress they have made back in March, 2018 in working together and agreed mediation is the next step. Mr. Cushing explained getting an independent judge to mediate is getting close and the next possible date to do so. Mayor Kovach referred back to March when conversations with Clinton Township Sewerage Authority did not happen as planned and the new issue of rates was brought up for the first time ever. Mayor Kovach said High Bridge and CTSA need to provide what issues are to be addressed and have now provided the specific issues, the mediator and date is the next step.

MAYOR'S COMMENTS

1. Clinton Fire Department has received a full fireman application for Brandon M. Kubik, New Street, Clinton, New Jersey. A motion was made by Mr. Smith seconded by Ms. Dineen, to accept Mr. Kubik to the Clinton Fire Department.

Vote all ayes
Motion carried

Ms. Sosidka wished to congratulate Mr. Kubik in his role as becoming a full fireman Ms. Sosidka said "we watched him grow up in Town and he has become a fine gentleman, congratulations"!

2. Following the vacancy of Councilman Al Rylak, the Republican Committee has submitted three names to fill the vacancy:

Marty Pendergast, 20 Spruce Run Road
Michele Snyder, 40 Halstead Street
Deena Roberts, 20 Pond Ridge Drive

Council has been given their resumes and will hold a special meeting on Monday, July 16, 2018 at 7:00 p.m. to interview and appoint a replacement.

COMCAST FRANCHISE RENEWAL

Rob Clifton, Senior Director Government Liaison / Assemblyman from Monmouth County*, came before Council to explain the state and federal regulations in processing the renewal of the cable franchise which currently expires January 1, 2019. The hearing tonight is the final phase of the three year process and the Town will have 30 days to make final consideration. The Town must then issue a consent ordinance allowing the right of way, which most importantly, is non-exclusive to Comcast meaning any cable company can come in to the Town and use the right of way. Ms. Sosidka suggested asking residents while Comcast is up for renewal, if there are complaints that should be forwarded to Comcast representatives. Mr. Clifton said there is a BPU guide to Franchise Renewal on their website with a survey for parties to complete if interested but is always available to address concerns. Ms. Sosidka asked if Comcast pays a fee to the Town and Mr. Clifton assured her Comcast pays 2% of basic cable rates per customer every January 25 which covers all fees to the municipalities such as road opening or door to door salesman. 2% of Comcast's gross receipts is the number allowable according to the State. Mr. Cushing stated that Mr. Clifton is willing to attend council meetings for any issues that may come up.

- Mayor Kovach joked about Mr. Clifton's legislative position and said she always encourages residents to contact legislators about government imposed mandates, such as affordable housing.

Opened to public, Walter Wilson, asked for additional locations to drop off equipment. Mr. Clifton said Comcast is actually trying to do away with counter locations and looking more into larger "Apple type" regional locations. Mr. Clifton thanked Mayor and Council and will look into two additional issues and will get back to the Mayor with answers.

BRIEF ADJOURNMENT

Mayor Kovach asked for a motion to enter into a brief adjournment to discuss a matter of litigation with Attorney Cushing, Councilman Smith, High Bridge Mayor Desire, High Bridge Councilman Christopher Zappa, Clinton Township Sewerage Authority Chairman, Steve Krommenhoek and herself at 7:55 p.m. A motion was made by Ms. Dineen, seconded by Ms. Karsh to enter a brief adjournment as requested.

Vote all ayes
Motion carried

Upon returning from a brief executive session at 8:00 p.m., council returned to the regular council meeting agenda.

2017 AUDIT

Mayor Kovach asked all council members to sign the Group Affidavit which states that everyone received and reviewed the 2017 Audit.

PUBLIC HEARING OF ORDINANCE #18-07 – VALVE & METER REPLACEMENT PROJECT

A motion was made by Mr. Smith, seconded by Ms. Sosidka, to open the public hearing of Ordinance #18-07:

ORDINANCE #18-07

BOND ORDINANCE PROVIDING FOR THE VALVE AND METER REPLACEMENT PROJECT IN COMPLIANCE WITH THE WATER QUALITY ACCOUNTABILITY ACT IN AND BY THE TOWN OF CLINTON, COUNTY OF HUNTERDON, NEW JERSEY, APPROPRIATING \$3,200,000 THEREFORE AND AUTHORIZING THE ISSUANCE OF \$3,200,000 BONDS OR NOTES OF THE TOWN TO FINANCE THE COST THEREOF

Vote all ayes
Motion carried

There being no questions from the public, a motion was made by Mr. Smith, seconded by Ms. Dineen to close the public portion of the meeting.

Vote all ayes
Motion carried

A motion was made by Mr. Smith, seconded by Ms. Dineen, to adopt Ordinance #18-07 on final reading.

ROLL CALL: Ayes: Dineen, Karsh, Smith, Sosidka, Mayor Kovach

Vote all ayes
Motion carried

SEWER REFUND

Sewer Collector, Cecilia Covino, is requesting a sewer payment refund in the amount of \$115.00 to Joseph Gruenling, a double payment was received. A motion was made by Ms. Sosidka, seconded by Ms. Dineen, to refund the amount as requested.

ROLL CALL: Ayes: Dineen, Karsh Smith, Sosidka, Mayor Kovach

Vote all ayes
Motion carried

RESOLUTION #108-18 – AWARD OF CONTRACT TO EDMUNDS & ASSOCIATES

A motion was made by Ms. Dineen, seconded by Ms. Karsh, to adopt Resolution #108-18 as submitted:

RESOLUTION # 108-18

AWARD CONTRACT TO EDMUNDS & ASSOCIATES

WHEREAS, The Town of Clinton has the need to upgrade their Finance, Tax, Utility and Dog Licensing programs;

WHEREAS, N.J.S.A. 40A:11-5(dd) allows a municipality to award contracts for proprietary computer software without using the bidding process;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Town of Clinton hereby award Edmunds and Associates the contract for computer software not to exceed \$41,585.00.

ROLL CALL: Ayes: Dineen, Karsh, Smith, Sosidka, Mayor Kovach

Vote all ayes
Motion carried

CORRESPONDENCE

1. Clinton Public School formally thanked the Mayor and Council for awarding the annual “Good Kid Award” to a student. This year’s recipient was Katherine Leddy! Congratulations to Katherine!!
2. New Jersey Society of Municipal Engineers is accepting nominations for a 2018 Project of the Year Award. Mayor Kovach passed this along to Mr. Phelan if there are any suggestions.

REPORTS FROM COUNCIL

Kathy Olsen, CFO

Ms. Olsen asked for authorization from Mayor and council to pay the bills on the next regular cycle due to the fact that the July 24, 2018 council meeting is being cancelled. A motion was made by Ms. Sosidka, seconded by Ms. Dineen, authorizing the Finance Officer to pay bills on schedule.

We are Awaiting the State to certify State aid and school funding. Once State completes, the tax bills will be sent out. An extension for taxes will be made once they are received likely to the end of August.

Councilman Smith

1. Roads Committee – a new storm grate was installed in front of the pharmacy on Main Street in the handicapped parking spot.
2. Buildings and Grounds is updating the Facility Usage Form that will cover building and field usage on municipal properties.
3. Sunrise Rotary is donating a bike rack to be installed at the Lower Center Street parking lot.

Councilwoman Dineen

1. Land Use Board approved a variance application for the LoCasio property on Old Highway 22 for 6 – 1 bedroom apartments on the second and third floors.

Master Plan Committee is working on the updated plan and the next will be July 17, 2018 at 7:00 p.m.

Councilwoman Sosidka

1. Environmental Commission public outreach meeting held June 7, 2018 at the Hunterdon Art Museum. Members of the Green Team, Environmental Commission and interested members of the public discussed the grant received from ANJEC and the plan for DeMott Pond. A representative from the New Jersey Association of Environmental Commission spoke at length of the resources available to the Town and the extensive professional help available. In light of new development, assistance regarding reviews and environmental issues is available as well as keeping the character of the Town.

Mayor Kovach informed Ms. Sosidka and council that Anthony and Nicole Piazza recently purchased the Clinton Falls building and are planning extensive renovations of the building. Mr. Piazza is seeking history of the building and guidance in keeping with the character of this original location. Ms. Sosidka said the Historical Commission loves the idea and would be interested in helping in any way they can.

Ms. Sosidka wished to commend Kathy Madden, of the Clinton Conservancy, for her continued efforts of the butterfly gardens and plantings. Monday evening Ms. Madden and some volunteers moved mulch from one area to another and preparing the area at Water Street. Gardens are blooming and looking great!

Councilwoman Karsh

1. Clinton Guild – sidewalk sales will be held July 20, 21, 2018. Super Hero Sprint scheduled for October 6, 2018, the day before the half marathon, is gaining great interest! Street will be closed and children dress up as their favorite Super Heros!
2. Economic Development Commission next meeting will be July 12, 2018 at 8:00 p.m.

STANDBY AND OVERTIME

A motion was made by Ms. Sosidka, seconded by Ms. Dineen, to approve the standby and overtime submitted for the period of June 15 through June 28, 2018 attached to these minutes.

ROLL CALL: Ayes: Dineen, Karsh, Smith, Sosidka, Mayor Kovach

Vote all ayes
Motion carried

PAYMENT OF BILLS

A motion was made by Ms. Karsh seconded by Ms. Johnson to approve the bill list attached to these minutes as submitted.

ROLL CALL: Ayes: Dineen, Karsh, Smith, Sosidka, Mayor Kovach

Vote all ayes
Motion carried

RESOLUTION #111-18 – EXECUTIVE SESSION

A motion was made by Ms. Sosidka seconded by Ms. Karsh, to enter into Executive Session at 8:16 p.m. to discuss a matter of affordable housing, action may be taken upon returning to regular meeting

RESOLUTION # 111-18

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 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: Land Acquisition 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

RESOLUTION #109-18 – SETTLEMENT AGREEMENT WITH FAIR SHARE

Upon returning from Executive Session at 9:43 p.m., Mayor Kovach asked for a motion to adopt Resolution #109-18 authorizing a settlement agreement with Fair Share Housing. Mayor Kovach explained that all Council members will have a chance to explain their vote during roll call. A motion was made by Mr. Smith, seconded by Ms. Dineen, to adopt Resolution #109-18 as submitted:

RESOLUTION #109-18

AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT WITH THE FAIR SHARE HOUSING CENTER (“FSHC”) FOR THE TOWN’S 1999-2025 AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Town of Clinton (the “Town”) filed a Declaratory Judgment Action (the “Litigation”) in the Superior Court of New Jersey, Hunterdon County, in furtherance of the Supreme Court’s March 10, 2015, decision captioned In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”), which was assigned to the Honorable Thomas C. Miller, P.J., Cv.; and

WHEREAS, Fair Share Housing Center (“FSHC”) is a Supreme Court-designated interested party in the Litigation in accordance with the Supreme Court Decision; and

WHEREAS, FSHC and the Town appeared before The Honorable Thomas C. Miller at two case management conferences on January 28, 2016 and April 15, 2016; participated in settlement conferences

with Special Master, the Honorable Peter A. Buchsbaum (the “Special Master”) on several occasions; and participated in Court-Ordered Mediation on July 3, 2018; and

WHEREAS, through that process, FSHC offered to settle the Litigation in exchange for the Town to agreeing to provide for 116 affordable housing credits as its Third-Round obligation covering the period 1999-2025; and

WHEREAS, through that process, the Town and FSHC agreed to settle the Litigation pursuant to a Settlement Agreement in the form attached hereto as Exhibit A and to present such Settlement Agreement to the trial court with jurisdiction over this matter to review; and

WHEREAS, the Town and FSHC seek to settle this matter because both parties recognize that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households;

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

1. The Town Attorney is authorized and directed to execute the Settlement Agreement in substantially the same form as attached hereto.
2. The Town Attorney and Town Planner are hereby authorized to take all steps to effectuate the Settlement Agreement including appearing at a Fairness Hearing, publishing notice of such hearing, and drafting an Affordable Housing and Fair Share Plan
3. This Resolution shall take effect immediately.

ROLL CALL: Dineen, Karsh, Smith, Sosidka, Mayor Kovach

Dineen: Statement: votes yes with reservations. Town has been dealt a tough hand and is making the best of a really bad situation.

Karsh: Statement: votes yes and “ditto” to Ms. Dineen’s comment.

Smith: Statement: votes yes and would like to thank those who worked on this for their time and efforts in this thankless job.

Sosidka: Statement: votes yes. I believe this is the best deal for our town at this point given the lack of legislation , the fact that a Town had to react to the position put in for court rulings. Thanks to the people who worked hard and the effort in this on-going matter. A lot of consideration has been put into this to make Clinton an affordable place to live while giving consideration to its infrastructure and congestion. Other concerns are using existing properties, proper concern for planning and up front involvement of the Historic Commission, Environmental Commission and the Economic Development Commissions of this Town.

Mayor Kovach: Statement: votes yes. Mayor Kovach echoed the previous comments and has repeated this several times, beyond disappointed with the State legislature for 19 years they have sat on their hands and did not address issues facing the 566 municipalities of this state. Towns are put into a position to react instead of provide good planning. This Town has worked since March, 2015 to try to determine how to address the affordable housing obligation as well as work with an intervenor that was part of the process. The fact that intervenors were given the status that would allow them to determine the fate of a community is wrong. She strongly disagrees and hopes at some point in time that someone in the legislature will hear what towns are

saying and push for towns to manage their own future. Hopefully, with the assistance of the New Jersey State League of Municipalities this can be accomplished.

Vote all ayes
Motion carried

AUDIO AVAILABLE IN THE CLERK'S OFFICE

RESOLUTION #110-18 – SETTLEMENT AGREEMENT WITH CLINTON MOEBUS 34, LLC

A motion was made by Mr. Smith, seconded by Ms. Sosidka, to adopt Resolution #110-18, agreement with intervenor, Clinton Moebus 34, LLC

**RESOLUTION #110-18
AUTHORIZING EXECUTION OF A SETTLEMENT AGREEMENT WITH
CLINTON MOEBUS 34, LLC**

WHEREAS, Clinton Moebus 34, LLC (“CM34”) is the owner of certain property designated as Block 14, Lot 32 on the Tax Maps of the Town of Clinton and consisting of approximately 28 acres (the “Moebus Property”); and

WHEREAS, the Town of Clinton (the “Town”) filed a Declaratory Judgment Action (the “Litigation”) in the Superior Court of New Jersey, Hunterdon County, in furtherance of the Supreme Court’s March 10, 2015, decision captioned In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”), which was assigned to the Honorable Thomas C. Miller, P.J., Cv.; and

WHEREAS, Fair Share Housing Center (“FSHC”) is a Supreme Court-designated interested party in the Litigation in accordance with the Supreme Court Decision; and

WHEREAS, pursuant to a Consent Order filed on or about October 14, 2015, CM34 is a defendant-intervenor in the above-referenced Declaratory Judgment Action; and

WHEREAS, FSHC, CM34, and the Town appeared before The Honorable Thomas C. Miller at two case management conferences on January 28, 2016 and April 15, 2016; participated in settlement conferences with Special Master, the Honorable Peter A. Buchsbaum (the “Special Master”) on several occasions; and participated in Court-Ordered Mediation on July 3, 2018; and

WHEREAS, through that process, the Town and CM34 negotiated the terms of a Settlement Agreement, which is attached hereto as **Exhibit A**; and

WHEREAS, upon approval of the Settlement Agreement, same will be subject to a Fairness Hearing before the trial court upon notice to interested parties and the general public, to determine whether the terms of the Settlement Agreement are fair and reasonable to the region's low- and moderate-income households according to the principles set forth in Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359 (Law Div. 1984) and East/West Venture v. Sor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and

WHEREAS, the Settlement Agreement is contingent upon the trial court's approval of the Settlement Agreement.

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

1. The Town Attorney is authorized and directed to execute the Settlement Agreement in substantially the same form as attached hereto.
2. The Town Attorney and Town Planner are hereby authorized to take all steps to effectuate the Settlement Agreement including appearing at a Fairness Hearing, publishing notice of such hearing.
3. This Resolution shall take effect immediately.

ROLL CALL: Ayes: Dineen, Karsh, Smith, Sosidka, Mayor Kovach

Dineen: yes

Karsh: Voted yes, but with very strong reservations about this particular agreement. Ms. Karsh stated she is strongly in favor of affordable housing, it is good for the Town and the community. Ms. Karsh is also in favor of smart planning and has some issues with the way this has come about and the way it is being handled. Ms. Karsh urges the owner of the Moebus property to act in good faith and in a productive manner and build the affordable housing they are now obligated to build. Ditto to Mayor Kovach's message earlier, urging the State Legislators, specifically Assemblyman Peterson and DiMaio and Senator Doherty to act in the best interest of their own personal districts and if they can't, encourage others to take their place. It is essential for municipalities to plan in intelligent and rational ways. This is the best "worst deal" we can make and we hope for the best for this Town. Extensive time has been put in this agreement by everyone on this council and we want the best for this town. Town is in my heart and I truly believe in affordable housing.

Smith: yes

Sosidka: Voted yes, but asked for a better understanding of what our spending obligations would be regarding rehabilitation share. Town Planner, James Kyle, read from the COAH manual, New Jersey Council on Affordable Housing, third Round Substantive Rules, Chapter 5:97, Section 6-2, subsection (B) 2:

Municipal rehabilitation investment for hard costs shall average at least \$10,000 per unit, and include the rehabilitation of a major system. If the rehabilitation program is funded by an affordable housing trust fund, administrative costs shall be limited by the provision of N.J.A.C. 5:97 – 8.9.

Mr. Kyle further explained that the hard cost is approximately \$10,000 per unit so it could be broken down to \$8,000 for one, \$10,000 for another, \$12,000 for another, with a total of \$180,000 at a minimum.

Ms. Sosidka stated she wanted it on the record what the town's potential obligation could be with affordable housing units and the terms of rehabilitation, which appears it could be an average cost of \$10,000 per unit. Mayor Kovach wanted it clearly stated that that money would go to Fair Share Housing and not the Clinton Moebus 34, LLC.

Mayor Kovach sent a message to Clinton Moebus 34, LLC that the Town is putting their faith in their work.

Ms. Dineen has a note to our residents that we understand not everyone will be happy with the settlement and agreement but wants everyone to know that nothing was taken lightly and the Mayor, Council and professionals have done their best to make this possible.

Mayor Kovach is preparing a letter after the Land Use Board reviews and will explain the process taken and the outcome. It will be available on the website once completed.

Mr. Cushing commented on Mr. Wilson's earlier public comment and does not disagree about the benefits of seeing a relationship between the Music Hall and Agway properties and we strongly support harmoniously working together for a good outcome.

Vote all ayes
Motion carried

**PROPOSED ORDINANCES AND SETTLEMENT AGREEMENT AS MENTIONED IN
FOREGOING RESOLUTIONS**

**TOWN OF CLINTON
ORDINANCE (PROPOSED)
AN ORDINANCE CREATING THE AR-1 ZONING DISTRICT**

WHEREAS, the Town of Clinton filed a Declaratory Judgment Action in the Superior Court of New Jersey, Hunterdon County, captioned IMO Town of Clinton, Docket No. HNT-L-304-15 (the "Declaratory Judgment Action"), in furtherance of the Supreme Court's March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the "Supreme Court Decision"); and

WHEREAS, Clinton Moebus 34, LLC is the owner of Block 14, Lot 32, which has been subdivided into three lots: Block 14, Lots ____, ____, and 32; and of Block 25, Lot 19;

WHEREAS, pursuant to a Consent Order filed on or about October 14, 2015, CM34 is a defendant-intervenor in the above-referenced Declaratory Judgment Action; and

WHEREAS, the Town of Clinton (the "Town") entered into Settlement Agreements with Fair Share Housing Center on _____ and with CM34 on _____ (hereinafter the "Settlement Agreements") that determine the Town's affordable housing obligation and the mechanisms for how the obligation will be addressed; and

WHEREAS, the Settlement Agreements contemplate development of Block 14, Lot ____ with a noncontiguous inclusionary residential development; Block 14, Lot ____ with a commercial development; and Block ____, Lot ____ ten age-restricted affordable rental apartments; and

WHEREAS, the zoning amendments herein support the development of Block 25, Lot 19 as an age-restricted affordable housing complex consistent with the Settlement Agreements; and

WHEREAS, the revisions to the zoning map, and creation of the Age-Restricted Housing (AR-1) Zoning District, are intended to follow the property lines of Block 25, Lot 19; and

WHEREAS, the Town's Land Use Board adopted a Housing Element and Fair Share Plan, that comprehensively provides for the creation of affordable housing in the Town in a manner consistent with all applicable affordable housing statutes and regulations.

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

Section 1. Section 88-51(A) of the Code of the Town of Clinton (the “Code”) entitled “Zone Districts” is amended and supplemented to add the Age-Restricted Housing (AR-1) District.

Section 2. Section 88-51(C) entitled “Map and schedule” is amended such that the boundary of the Age-Restricted Housing (AR-1) District shall be applied to Block 25, Lot 19.

Section 3. Chapter 88 entitled “Zoning” is hereby supplemented and amended to create the AR-1 District as follows:

§88-56.1 AR-1 Age-Restricted Housing Zone.

A. Purpose. The Township hereby establishes the AR-1 Age-Restricted Housing Zone to comply with the requirements and terms of a Settlement Agreement entered into on _____ between the Town and Fair Share Housing Center and to address the Town’s affordable housing obligation established therein. The ordinance creates design and bulk standards to ensure that age-restricted housing in this zone is developed in a manner that is sensitive to the character of the surrounding area.

B. Permitted Uses. The following are principal permitted uses:

(1) Multi-family dwelling units

C. Accessory Uses. The following are permitted accessory uses:

(1) Accessory uses and structures customarily incidental to permitted uses.

(2) Sewerage and sewage treatment, water, fire protection, stormwater management and other utility facilities.

(3) Parking and loading in accordance with the requirements of Section 88-62, with the exception that only one space per unit shall be provided

(4) Signs in accordance with the requirements of Section 88-64.

(5) Normal residential storage structures.

(6) Other normal residential structures such as private swimming pools, fireplaces, trellises, lampposts and the like.

D. Density. 45 units per acre not to exceed 10 units.

E. Impervious Coverage. The entire tract may be developed at 100% impervious coverages.

F. Setbacks.

(1) Minimum Front Yard: 10 feet, with the exception that parking areas may be within 1 foot of the property line.

(2) Minimum Side Yard: 5 feet, with the exception that parking areas may be within 1 foot of the property line.

(3) Minimum Rear Yard and Distance Between Buildings: 5 feet, with the exception that parking areas may be within 1 foot of the property line.

H. Maximum Building Height. No building shall exceed 2 ½ stories or 35 feet; however, if parking is located beneath the building, such shall not count as a story. For the purposes of calculating maximum building height, the average grade shall be measured from the streetline.

I. The property in the AR-1 Zone is located in Clinton’s Historic District, which is listed on the New Jersey and Federal Registers of Historic Places. Therefore, an overall theme of design and architectural mode consistent with the historic character of the surrounding area shall be utilized within the development for the purpose of presenting an aesthetically desirable effect.

Section 4. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its

operation to the section, paragraph, sentence, clause, phrase, term, or provision or part there of directly involved in the controversy in which such judgment shall have been rendered.

Section 5. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 6. This Ordinance shall take effect upon the filing thereof with the Hunterdon County Planning Board after final passage, adoption, and publication in the manner prescribed by law.

ORDINANCE (PROPOSED)

AN ORDINANCE CREATING THE C-5 ZONING DISTRICT

WHEREAS, the Town of Clinton filed a Declaratory Judgment Action in the Superior Court of New Jersey, Hunterdon County, captioned IMO Town of Clinton, Docket No. HNT-L-304-15 (the “Declaratory Judgment Action”), in furtherance of the Supreme Court’s March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”); and

WHEREAS, Clinton Moebus 34, LLC is the owner of Block 14, Lot 32, which has been subdivided into three lots: Block 14, Lots ____, ____, and 32; and of Block 25, Lot 19;

WHEREAS, pursuant to a Consent Order filed on or about October 14, 2015, CM34 is a defendant-intervenor in the above-referenced Declaratory Judgment Action; and

WHEREAS, the Town of Clinton (the “Town”) entered into Settlement Agreements with Fair Share Housing Center on _____ and with CM34 on _____ (hereinafter the “Settlement Agreements”) that determine the Town’s affordable housing obligation and the mechanisms for how the obligation will be addressed; and

WHEREAS, the Settlement Agreements contemplate development of Block 14, Lot ____ with a noncontiguous inclusionary residential development; Block 14, Lot ____ with a commercial development; and Block ____, Lot ____ ten age-restricted affordable rental apartments; and

WHEREAS, the zoning amendments herein support the development of Block 14, Lot ____ as commercial pad sites consistent with the Settlement Agreements; and

WHEREAS, the revisions to the zoning map, and creation of the Route 31 Commercial District (C-5) Zoning District, are intended to follow the property lines of the newly created Block 14, Lot ____.

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

Section 1. Section 88-51(A) of the Code of the Town of Clinton (the “Code”) entitled “Zone Districts” is amended and supplemented to add the Route 31 Commercial (C-5) District.

Section 2. Section 88-51(C) entitled “Map and schedule” is amended such that the boundary of the Route 31 Commercial (C-5) District shall be applied to Block 14, Lot ____

Section 3. Chapter 88 entitled “Zoning” is hereby supplemented and amended to create the C-5 District as follows:

§88-55.2 C-5 Route 31 Commercial Zone.

A. Purpose. The Town hereby establishes the C-5 Route 31 Commercial Zone to comply with the requirements and terms of a Settlement Agreement entered into on _____ between the Town and Clinton Moebus 34, LLC. The ordinance creates design and bulk standards to ensure the commercial uses in this zone are developed in a manner that is sensitive to the character of the surrounding area.

B. Permitted Uses. The following are principal permitted uses:

- (1) Stores and shops for retail business, provided that any process of manufacture, assembly, treatment or conversion involves a product or service intended to be sold or provided to the ultimate consumer and further provided that not more than five employees are involved in any such process. The foregoing shall not be deemed to include laundries or dry-cleaning establishments.
- (2) Offices for business, executive, professional and administrative purposes.
- (3) Restaurants, cafes and taverns in which patrons are seated at tables or counters and are served food and drink by waiters or waitresses for consumption on the premises.
- (4) Studios for art, dancing, music, language, photography, and similar activities.
- (5) Municipal buildings and municipal uses.

C. Accessory Uses. The following are permitted accessory uses:

- (1) Off-street parking in accordance with § 88-62.
- (2) Signs in accordance with § 88-64.
- (3) Other accessory uses customarily incident to the uses listed in Subsection B.

D. Impervious Coverage. Impervious coverage shall not exceed 55%. Provided that there is 45% open space, a pad site may be 100% impervious.

E. Floor to Area Ratio. The floor to area ratio shall not exceed 30%.

F. Setbacks.

(1) 100-foot side-yard setback from the Property boundary for principal buildings; however, parking shall be permitted within 50 feet of the Property boundary.

(2) 50-foot front-yard setback from the Property boundary for principal buildings; however, parking shall be permitted within 5 feet of the Property boundary along State Route 31

frontage, but shall in no case be any closer than 30 feet to the edge of pavement of State Route 31.

(3) 50-foot rear-yard setback, however, parking shall be permitted within 25 feet of the Property boundary.

(4) 15-foot minimum setback to residential uses that are part of the Property from a building. Parking may be located within 10 feet of the internal commercial to residential boundary of the Property.

G. Landscaped Buffer. A landscaped buffer and berm between the commercial and residential uses shall be installed to provide year-round screening of buildings, parking, service areas, and roadways from residential neighborhoods. This buffer shall be designed to provide screening with a minimum of 85% opacity within three growing seasons for the first 10 feet of elevation of any building or improvement and seasonal (deciduous) screening with 25% opacity within the first five growing seasons for the second 10 feet of elevation of any building or improvement. If the building is below the final grade, such distance between the grade of the building and the final grade shall be deducted from the height to be screened.

H. Signs. Compliance with Section 88-64 with regard to all sign requirements for the C-3 Zone, except the area of ground signs is limited to a maximum of 80 square feet, and no such sign shall exceed 15 feet in height or 8 feet in width.

I. Lighting and Noise. Except as otherwise specifically stated herein, lighting and noise standards shall comply with State standards. HVAC equipment and other noise-generating equipment shall be provided with noise reduction systems that comply with state noise standards. Lighting shall comply with the standards set forth in Section 88-44(g) herein.

Section 4. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 5. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 6. This Ordinance shall take effect upon the filing thereof with the Hunterdon County Planning Board after final passage, adoption, and publication in the manner prescribed by law.

ORDINANCE (PROPOSED)

AN ORDINANCE CREATING THE MF-1 ZONING DISTRICT

WHEREAS, the Town of Clinton filed a Declaratory Judgment Action in the Superior Court of New Jersey, Hunterdon County, captioned IMO Town of Clinton, Docket No. HNT-L-304-15 (the “Declaratory Judgment Action”), in furtherance of the Supreme Court’s March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”); and

WHEREAS, Clinton Moebus 34, LLC is the owner of Block 14, Lot 32, which has been subdivided into three lots: Block 14, Lots ____, ____, and 32; and of Block 25, Lot 19;

WHEREAS, pursuant to a Consent Order filed on or about October 14, 2015, CM34 is a defendant-intervenor in the above-referenced Declaratory Judgment Action; and

WHEREAS, the Town of Clinton (the “Town”) entered into Settlement Agreements with Fair Share Housing Center on _____ and with CM34 on _____ (hereinafter the “Settlement Agreements”) that determine the Town’s affordable housing obligation and the mechanisms for how the obligation will be addressed; and

WHEREAS, the Settlement Agreements contemplate development of Block 14, Lot ____ with a noncontiguous inclusionary residential development; Block 14, Lot ____ with a commercial development; and Block ____, Lot ____ ten age-restricted affordable rental apartments; and

WHEREAS, the zoning amendments herein support the development of Block 14, Lot ____ as a residential development consistent with the Settlement Agreements; and

WHEREAS, the revisions to the zoning map, and creation of the Multi-Family (MF-1) Zoning District, are intended to follow the property lines of the newly created Block 14, Lot ____; and

WHEREAS, the Town’s Land Use Board adopted a Housing Element and Fair Share Plan, that comprehensively provides for the creation of affordable housing in the Town in a manner consistent with all applicable affordable housing statutes and regulations.

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

Section 1. Section 88-51(A) of the Code of the Town of Clinton (the “Code”) entitled “Zone Districts” is amended and supplemented to add the Multi-Family Housing (MF-1) District.

Section 2. Section 88-51(C) entitled “Map and schedule” is amended such that the boundary of the Multi-Family Housing (MF-1) District shall be applied to Block 14, Lot ____

Section 3. Chapter 88 entitled “Zoning” is hereby supplemented and amended to create the MF-1 District as follows:

§88-56.1 MF-1 Multi-Family Housing Zone.

A. Purpose. The Township hereby establishes the MF-1 Multi-Family Housing Zone to comply with the requirements and terms of a Settlement Agreement entered into on _____ between the Town and Fair Share Housing Center and to address the Town’s affordable housing obligation established therein. The ordinance creates design and bulk standards to ensure that multifamily housing in this zone is developed in a manner that is sensitive to the character of the surrounding area.

B. Permitted Uses. The following are principal permitted uses:

(1) Multi-family dwelling units

C. Accessory Uses. The following are permitted accessory uses:

(1) Accessory uses and structures customarily incidental to permitted uses.

(2) Sewerage and sewage treatment, water, fire protection, stormwater management and other utility facilities.

(3) Parking and loading in accordance with the requirements of Section 88-62.

(4) Signs in accordance with the requirements of Section 88-64.

(5) Normal residential storage structures.

(6) Other normal residential structures such as private swimming pools, fireplaces, trellises, lampposts and the like.

D. Density. There shall be no more than 56 dwelling units permitted on the property.

E. Impervious Coverage. The impervious coverage for the entire residential tract shall not exceed 35%.

F. Setbacks.

- (1) No building shall be within 50 feet of a tract boundary.
- (2) No structure shall be within 15 feet of an internal roadway.
- (3) No building shall be closer than 20 feet to another building.

G. Decks/patios shall be permitted behind each residential unit, extending no more than 10 feet from the rear of the structure. Provided screening criteria are met, the deck or patio may extend into a required buffer a distance of no more than 7 feet.

H. Maximum Building Height. No building shall exceed 2 ½ stories or 35 feet; however, in cases where walkout basements are proposed, the walkout basement shall not be considered a story nor fully included in the calculation of building height. For the purposes of calculating maximum building height, the average grade shall be measured from the midpoint of one side wall to the building wall facing the street line, extended along the wall facing the street line, then extended along the other side wall to its midpoint. In no case shall the building height measured from the lowest point of the finished grade along a walkout basement to a point one-half the distance between the top of the uppermost plate and the highest point of the roof exceed 45 feet.

I. Access to the Property shall primarily be through Route 31. Emergency and pedestrian access *only* can be provided via Central Avenue pursuant to an access easement, which restriction shall be a condition of any subdivision or site plan approval.

J. An overall theme of design and architectural mode shall be utilized within the development for the purpose of presenting an aesthetically desirable effect,

K. Mechanical equipment shall be screened from view of public streets and residentially zoned lots. Screening shall consist of plantings, fencing or other material found acceptable by the approving authority.

L. Landscape Buffer Requirements. A landscaped buffer and berm between the multi-family residential uses and existing single-family residential uses shall be installed to provide year-round screening of buildings, parking, service areas, and roadways from such residential neighborhoods. This buffer shall be designed to provide screening with a minimum of 85% opacity within three growing seasons for the first 10 feet of elevation of any building or improvement and seasonal (deciduous) screening with 25% opacity within the first five growing seasons for the second 10 feet of elevation of any building or improvement. If the building is below the final grade, such distance between the grade of the building and the final grade shall be deducted from the height to be screened.

M. Fences. The Land Use Board may require the installation of fencing of not less than four nor more than six feet in height, maintained in good condition, as part of site plan approval in order to effectively screen the property on any side which adjoins or faces premises situated in any residential zone. Provided, however, that a screening or hedge or other natural landscaping may be substituted if approved by the Land Use Board.

Section 4. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part there of directly involved in the controversy in which such judgment shall have been rendered.

Section 5. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 6. This Ordinance shall take effect upon the filing thereof with the Hunterdon County Planning Board after final passage, adoption, and publication in the manner prescribed by law.

SETTLEMENT AGREEMENT

THIS AGREEMENT is herewith made this _____ day of _____ 2018 by and between the **TOWN OF CLINTON**, a municipal corporation of the State of New Jersey, with its municipal office located at 43 Leigh Street, Clinton, NJ 08809, (hereinafter "CLINTON"), the **LAND USE BOARD OF THE TOWN OF CLINTON**, a duly constituted land use board under the laws of New Jersey, with its municipal office located at 43 Leigh Street, Clinton, NJ 08809, (hereinafter "LAND USE BOARD"), and **CLINTON MOEBUS 34, LLC** having an address at _____ (hereinafter "CM34").

WITNESSETH:

WHEREAS, Clinton has filed a Declaratory Judgment Action in the Superior Court of New Jersey, Hunterdon County, captioned IMO Town of Clinton, Docket No. HNT-L-304-15 (the "Declaratory Judgment Action"), in furtherance of the Supreme Court's March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the "Supreme Court Decision"), which was assigned to the Honorable Thomas C. Miller P.J. Cv.; and

WHEREAS, pursuant to a Consent Order filed on or about October 14, 2015, CM34 is a defendant-intervenor in the above-referenced Declaratory Judgment Action; and

WHEREAS, CM34 is the owner of certain property designated as Block 14, Lot 32 on the Tax Maps of the Town of Clinton and consisting of approximately 28 acres (the "Property"); and

WHEREAS, the Property is located along Route 31 and is bounded by the South Branch of the Raritan River on the West, a residential neighborhood located on Georges Place on the East, and a residential neighborhood on Center Street on the South; and

WHEREAS, the Property is currently zoned for OB-3 Office Research with a minimum lot size of 20 acres; and

WHEREAS, Clinton and CM34 have engaged in extensive settlement discussions; and

WHEREAS, through such settlement discussions, CM34 has stated that it desires to develop the property as a mixed-use project containing commercial development along Route 31 and residential development on the remainder of the Property with a 15% non-contiguous age-restricted affordable housing set-aside constructed off-site, and through such development, assist Clinton in Clinton's efforts to meet its affordable housing

obligations in connection with Clinton's Declaratory Judgment Action; and

WHEREAS, it is the intention of the Parties that once the Property is subdivided consistent with this Agreement, the Town will introduce the appropriate zoning ordinances to facilitate development of the Property in compliance with this Agreement; and

WHEREAS, CM34 has conducted extensive due diligence regarding the Property and any engineering and environmental constraints and acknowledges that it assumes the risk that the development contemplated herein is feasible.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations herein contained, the parties hereto, for themselves, their heirs, successors and assigns, hereby agree as follows:

1. Commercial Development.

a. In order to assist Clinton's efforts to comply with its affordable housing obligation, and as part of Clinton's compliance plan that shall be developed to address its affordable housing obligation under the Declaratory judgment Action, the Property shall be re-zoned to permit CM34 to develop as of right on not more than a thirteen (13) acre portion of the Property with frontage on Route 31, commercial development, in reasonable conformity with **Exhibit A** (the "Commercial Lot"). Clinton shall re-zone such portion of the Property pursuant to an ordinance in substantially the same form as attached hereto as **Exhibit B** to allow for such development within reasonable parameters, including, but not limited to the following bulk standards for the Commercial Lot:

- 55% impervious coverage limitation, based on the Commercial Lot not to exceed 13 acres. So long as there is 45% open space, a pad site may be 100% impervious.
- 30% floor to area ratio.
- 100-foot side-yard setback from the Property boundary for principal buildings; however, parking shall be permitted within 50 feet of the Property boundary of the Commercial Lot.
- 50-foot front-yard setback from the Property boundary for principal buildings; however, parking shall be permitted within 5 feet of the Property boundary along State Route 31

frontage, but shall in no case be any closer than 30 feet to the edge of pavement of State Route 31.

- 50-foot rear-yard setback, however, parking shall be permitted within 25 feet of the Property boundary.
- 15-foot minimum setback to residential uses that are part of the Property from a building. Parking may be located within 10 feet of the internal commercial to residential boundary of the Property.
- Landscaped buffer and berm between the commercial and residential uses installed to provide year-round screening of buildings, parking, service areas, and roadways from residential neighborhoods. This buffer shall be designed to provide screening with a minimum of 85% opacity within three growing seasons for the first 10 feet of elevation of any building or improvement and seasonal (deciduous) screening with 25% opacity within the first five growing seasons for the second 10 feet of elevation of any building or improvement. If the building is below the final grade, such distance between the grade of the building and the final grade shall be deducted from the height to be screened.
- Compliance with Section 88-64 with regard to all sign requirements for the C-3 Zone, except the area of ground signs is limited to a maximum of 80 square feet, and no such sign shall exceed 15 feet in height or 8 feet in width.
- Lighting and noise standards shall be in compliance with current municipal ordinances and state statutes and regulations.

b. In order to assist Clinton's efforts to comply with its affordable housing obligation, and as part of Clinton's compliance plan that shall be developed to address its affordable housing obligation under the Declaratory Judgment Action, CM34's development shall be subject to the statewide mandatory nonresidential development fee of two and one half (2½) percent of equalized assessed value for all commercial development constructed.

2. Townhouse Residential Development.

a. In order to assist Clinton's efforts to comply with its affordable housing obligation, and as part of Clinton's compliance plan that shall be developed to address its affordable housing obligation under the Declaratory judgment

Action, the Property shall be re-zoned to enable CM34 to develop as of right a portion of the Property, not to exceed sixteen (16) acres, inclusive of the open space dedication contemplated herein, with no more than fifty-six (56) for sale residential townhouse units in reasonable conformity with Exhibit C. In conjunction with the construction of the 56 for sale units contemplated, CM34 is required to construct off-site, in accordance with Section 11 of this Agreement, 10 age-restricted units, which units represent the required 15% affordable housing set-aside associated with the townhouse residential development. The Town's settlement with FSHC requires that 13% of all newly constructed affordable housing units be very-low income units. Therefore, two of the age-restricted units shall be very-low income units.

Clinton shall re-zone such portion of the Property pursuant to an ordinance in substantially the same form as attached hereto as Exhibit C to allow for such development within reasonable parameters, including, but not limited to the following:

- The impervious coverage for the entire residential tract shall not exceed 35%.
- No building shall be within 50 feet of a tract boundary.
- No structure shall be within 15 feet of an internal roadway.
- Decks/patios shall be permitted behind each residential unit, extending no more than 10 feet from the rear of the structure. Provided screening criteria are met, the deck or patio may extend into a required buffer a distance of no more than 7 feet. Therefore, resulting in a setback of no less than 43 feet between a deck and patio and adjacent residential property lines. Two-story decks shall not be permitted.
- Fences may be required at the discretion of the Land Use Board to screen the development from neighboring uses.
- Maximum building height of 2 ½ stories or 35 feet; however, in cases where walkout basements are proposed, the walkout basement shall not be considered a story nor fully included in the calculation of building height. For the purposes of calculating maximum building height, the average grade shall be measured from the midpoint of one side wall to the building wall facing the street line, extended along the wall facing the street line, then extended along the other side wall to its midpoint. In no case shall the building height measured from the lowest point of the finished grade along a walkout basement to a point one-half the distance between the top of the uppermost plate and the highest point of the roof exceed 45 feet.
- No building shall be closer than 20 feet to another building.

b. Access to this portion of the Property shall be through Route 31. Emergency and pedestrian access *only* can be provided via Central Avenue pursuant to an access easement, which restriction CM34 agrees shall be a condition of any subdivision or site plan approval. Clinton shall bear no obligation or responsibility to improve or maintain Central Avenue in connection with the development of the Property. It shall be responsibility of CM34 (or its successors or assigns) to maintain such access easement.

c. The roads within the residential development shall be private roads, and Clinton shall bear no obligation or responsibility to maintain such, except for any obligations set forth in the Municipal Services Act, N.J.S.A. 40:67-23.2 et seq.

d. Clinton shall provide services, or the appropriate reimbursement, to the residential development in compliance with the Municipal Services Act, N.J.S.A. 40:67-23.2 et seq. CM34 agrees that garbage shall be available for collection in the residential development via communal dumpsters and not individual trash cans.

e. Development of the residential units on the residential portion of the property contemplated by this Agreement may proceed independent of development of the commercial development contemplated by this Agreement, and independent of construction of the construction or installation of any traffic light that may be required as part of the commercial development of the Property. Development of the residential units may proceed in phases, at the discretion of CM34; but in no case in violation of the requirements set forth in Section 11 hereunder.

f. CM34, or its successor in interest, shall be responsible for administering the affordable housing units. The Town shall have no financial obligations under this provision to assure that the affordable units contemplated hereunder are eligible for credit pursuant to applicable COAH regulations (i.e. "creditworthiness"), and all associated expenses for administering the affordable units shall be solely borne by CM34, its successors, or assigns, which expenses include, but are not limited to providing an Administrative Agent at its exclusive expense to perform all administrative tasks. The administrative tasks include those responsibilities as set forth in N.J.A.C. 5:80-26.14 including, but not limited to, conducting an outreach process, conducting interviews with interested households, creating and maintaining a list of eligible households, determining income eligibility and all other activities to ensure that restricted units are rented to low- and moderate-income households. Developer shall also be

responsible for the costs of all funding applications including, but not limited to, low income housing tax credits, special needs trust funds, County HOME funds, Federal Home Loan Bank financing, construction and permanent financing.

The Parties acknowledge that the Town may have the obligation from time to time to generate information necessary to demonstrate the creditworthiness of the units. CM34 will cooperate with the Town and provide all monitoring and reporting requirements within fifteen (15) business days of the request.

3. Subdivision Approval. The Land Use Board is a signatory and party to this Agreement and hereby endorses this Agreement and its role in the process contemplated for development of the Property.

CM34 shall apply to Clinton's Land Use Board within one year of the date of this Agreement to subdivide the Property into the three (3) lots as set forth herein (1 commercial; 1 multi-family residential; 1 open-space, with cross-easements), in order to facilitate the development contemplated. The Subdivision Plan may vary up to 50 feet from the Concept Plan attached as Exhibit A.

With the exception of application items specifically required herein, the Land Use Board agrees to waive all requirements in connection with the subdivision application to initially create the commercial lot and the residential lot contemplated by this Agreement, including any requirements pertaining to the submission of reports in support or review of the subdivision application, or the preparation of any studies in support or review of the subdivision application. The applicant shall be required to submit only a plan, a metes and bounds description of the lots to be created by the subdivision, and the appropriate application and escrow fees. The applicant shall also be required to publish notice of the application and hearing in accordance with Town ordinances and the MLUL. This provision does not alleviate CM34 of the responsibility to submit all reports and studies and any other information required by Clinton's Land Use Ordinances at the time an application for site plan approval is filed with the Land Use Board. This provision also does not alleviate CM34 of the responsibility to post any required guarantees or escrow amounts in connection with the initial subdivision application or site plan application(s) contemplated by this Agreement.

CM34 agrees to be subject to an access easement of 30 feet from Route 31.

The Land Use Board shall issue its decision on CM34's initial subdivision application, including a memorializing resolution, within 120 days of the filing of CM34's application.

4. Adoption of Zoning Ordinances. Within forty-five (45) days of the approval of the above-referenced subdivision, Clinton shall introduce an ordinance to re-zone the newly created lots, in accordance with this Agreement and in substantially the same form as attached hereto, subject to the standards set forth in Sections 1-3 above (the "Zoning Ordinances"). The Mayor and Council shall adopt the Zoning Ordinances within 60 days of its introduction.

Following its adoption, the Zoning Ordinances shall not be amended or rescinded, without written approval of CM34, or order of the Court for a period of at least ten (10) years.

So long as such application is in accordance with this Agreement and Exhibit A, failure to grant subdivision approval in accord with the subdivision application and plan submitted by CM34 shall constitute a breach of this Agreement and a voiding of a material and necessary condition of the Land Use Board's obligations under this Agreement. In addition to any and all other remedies in law and in equity, the Land Use Board hereby stipulates that CM34 shall be entitled to specific performance of the granting of subdivision approval as a remedy from the Superior Court.

Failure to adopt the Zoning Ordinances in a form substantially similar to that attached as Exhibit B hereto shall constitute a breach of this Agreement and a voiding of a material and necessary condition of Clinton's obligations under this Agreement. In addition to any and all other remedies in law and in equity, Clinton hereby stipulates that CM34 shall be entitled to specific performance of the re-zoning, as a remedy from the Superior Court.

5. Non-applicability of Inconsistent Municipal Ordinances. In the event, and to the extent, that any other land-use regulations, or any other ordinances, standards, or regulations of Clinton applicable in any manner to the CM34 Property, whether existing presently, or hereafter adopted, are inconsistent with the Zoning Ordinance adopted in compliance with this Agreement, such other ordinances, standards, and regulations shall not be applicable to the Property, and the standards and provisions set forth in the Zoning Ordinance shall apply to the development of the Property. Clinton shall waive, or amend, if necessary, any such inconsistent standards, ordinances, or regulations. The development standards as set

forth in the Zoning Ordinance shall be applicable to the CM34 Property and its development in order to effectuate the objective and intent of this Agreement. To the extent there is any inconsistency between the standards set forth in the Zoning Ordinances, which are attached hereto as Exhibits B and C, and in any other regulations, ordinances, or provisions of Clinton applicable to the Property, now or existing or hereafter adopted, the provisions of the Zoning Ordinance shall supersede all other inconsistent provisions and shall control development of the Property.

6. Approvals Required. Site plan, subdivision, and other necessary land development approvals by the Clinton Land Use Board and all other necessary outside governmental approvals are required. CM34 shall apply for preliminary site plan approval within 1 year of the effective date of the re-zoning of the Property in accord with the Zoning Ordinance.

7. Open Space Preservation / Deed Restriction. The portion of the Property not developed, as approximated on Exhibit A, shall be donated to Clinton and deed-restricted as public open space. However, such open space shall be considered part of the Property for calculating FAR and impervious coverage for the residential and commercial developments contemplated herein. The portion of the Property located between the residential development and Georges Place shall be deed-restricted as an open space common element of the residential community. The portion of the Property located west of the residential development and adjacent to the waterway and the portion of the Property located between the residential development and Central Avenue, shall be deed restricted as open space available to the public, as depicted on Exhibit A. Notwithstanding the above provisions pertaining to the dedication of open space, nothing herein shall prohibit CM34 from donating or selling a portion of the Property to a non-profit or government entity to be restricted for use as open space, and such sale or donation shall satisfy the deed restriction of property for open space contemplated in this Agreement. If requested by CM34, Clinton shall assist CM34 in its application for a tax deduction for the donation of any part of the Property.

8. Necessary Infrastructure and Water Availability. CM34 shall be responsible for the design, permitting, and construction of all infrastructure improvements that are necessitated or required for development of the Property, including any off-tract improvements. Required infrastructure improvements will be designed in connection with the preliminary

site plan and subdivision application(s). Review of proposed infrastructure improvements by Clinton professionals shall be funded through any escrow account established pursuant to such subdivision or site plan applications. Clinton makes no representations regarding the availability of water to serve the proposed developments, and CM34 acknowledges that if water is not available to serve the proposed developments, CM34 shall seek to purchase water allocation on the market. Clinton shall not unreasonably object to any such purchase of water availability. CM34 shall be responsible for making any required applications for sewer and/or water reservation.

CM34 will immediately request a will serve letter for sewer and water.

9. Municipal Obligation to Cooperate. In addition to Clinton's and the Land Use Board's acting in accord with N.J.A.C. 5:93-10.1 et seq. to reduce and eliminate all cost generating fees and expenses associated with the development contemplated for the Property, the Parties recognize that CM34, and the development contemplated by this Agreement, require approvals from other governmental agencies and bodies, including but not limited to those at the county, regional, State, and federal levels, which have jurisdiction over the provision of sewer and water service for development of the property, and that to construct its proposed project, CM34 will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, such as, by way of example only, Clinton, the Land Use Board, the County of Hunterdon, the Hunterdon County Planning Board, the New Jersey Department of Environmental Protection, New Jersey Department of Transportation, and the applicable Soil Conservation District. Clinton, including all of its respective members, officials, employees, consultants, agents, and representatives, agree to cooperate with CM34, through action, word, and deed, including the execution of any writing, resolution, plan, application, or document needed to assist and support CM34 to obtain all necessary approvals, including all government approvals for the proposed sewer treatment facility and potable water system improvements, in order to develop the Property, including but not limited to revisions or amendments to its sewer service areas, and cooperation with any efforts by CM34 to obtain sufficient capacity and quality of water to serve the residential component contemplated for the Property. However, such cooperation from Clinton and the Land Use Board shall not include any financial obligation or ownership obligation by Clinton or the Land Use Board, although, Clinton may determine, and Clinton shall be permitted, to take ownership

interest in any such sewer treatment facility and/or water system and system improvements, upon consensual agreement between Clinton and CM34.

Clinton and the Land Use Board agree~~s~~ to cooperate with CM34, through action, word, and deed, including the execution of any writing, resolution, plan, application, and/or document needed to assist and support CM34 with respect to any applications for approval of any wastewater management plan amendments, section 208 plan amendments, or any other outside approvals necessary to construct the project improvements as contemplated for the development under this Agreement. If a wastewater management plan amendment is required to obtain the approval of CM34's sewer applications, CM34 shall pay the cost for these applications or reimburse Clinton for these costs upon presentation of certified invoices for such costs. Upon such payment, CM34 shall be entitled to reserve its rights to contest the magnitude of the costs before an appropriate administrative tribunal with jurisdiction, or the Superior Court of New Jersey, Law Division, under a procedure similar to the procedure in the MLUL, N.J.S.A. 40:55D-53.2a ("Applicant notification to dispute charges; appeals; rules, regulations"), which provides for the challenge of professional fees placed in escrow.

Notwithstanding the foregoing, Clinton and the Land Use Board shall not be obligated to expend any funds to obtain, or assist in obtaining, the required approvals, except for the costs of municipal employees, as is ordinary and customary in the conduct of Clinton's and the Land Use Board's business, and except that Clinton and the Land Use Board shall be financially liable for their counsel and professional consultants in connection with the drafting review and execution of this Agreement, and the fees of counsel and professionals associated with the review of and hearings on the Zoning Ordinance and Master Plan amendments contemplated by this Agreement. CM34 shall be responsible for all professional review fees authorized by applicable statutes, regulations, and Town of Clinton ordinances for the subdivision and land use application(s) contemplated by this Agreement. The obligation to cooperate is subject to the obligation of CM34 to make timely payment of all real property taxes, and any other relevant fees due and owing during the term of this Agreement.

10. Court Approval and Contingencies. This Agreement and the satisfaction of the obligations of Clinton and of the Land Use Board shall be made a material and integral part of Clinton's compliance plan that is contemplated to be presented to the Court in the Declaratory Judgment Action, and this Agreement and

the satisfaction of the obligations of Clinton and of the Land Use Board shall be made a material and integral part of any settlement Clinton enters into with Fair Share Housing Center ("FSHC") in connection with the Declaratory Judgment Action.

This Agreement shall be contingent upon the approval by the Superior Court of a settlement of the Declaratory Judgment Action and the execution of a settlement agreement between Clinton and FSHC.

Any determination of fairness made by the Superior Court and any judgment of compliance and order of repose entered by the Superior Court in the Declaratory Judgment Action shall include a determination and condition ordering Clinton to satisfy and implement its obligations of re-zoning and cooperation under this Agreement as a material and integral part of any such determination or Judgment, if Clinton has not already done so.

11. Construction of age restricted units at 23 West Main Street or Adjacent Property.

a. CM34 is the owner of certain property located at 23 West Main Street and designated as Block 25, Lot 19 on the Tax Maps of the Town of Clinton, Hunterdon County. As a condition of this Agreement, CM34 shall construct 10 age-restricted affordable housing units at 23 West Main Street, which units shall be rental units and restricted in occupancy to very-low, low, and moderate income individuals aged fifty-five (55) and over. Such units represent the required 15% affordable housing set-aside of development proposed on Block 14, Lot 32. These affordable housing units shall be constructed in accord with the zoning standards set forth on **Exhibit D**.

b. The construction of a building on 23 West Main Street to accommodate the 10 age-restricted affordable housing units shall meet all applicable historical preservation design standards.

c. **Phasing of Construction.** CM34 shall be required to complete and obtain Certificates of Occupancy for the 10 units at 23 West Main Street before being permitted to obtain Certificates of Occupancy for more than 50% of the market-rate housing units on the Property. Therefore, CM34 shall be permitted to construct any portion of or all the 56 market rate units on the Property prior to constructing the 10 affordable units. However, CM34 shall only be able to obtain Certificates of Occupancy for 28 of the market-rate units prior to constructing and obtaining Certificates of Occupancy on the 10 affordable units.

d. **Ability to Construct Affordable Units on Adjacent Property.**

In lieu of constructing 10 affordable housing units on its property at 23 West Main Street, CM34, at its sole discretion, may contract to have 10 affordable housing units constructed on adjacent property within the Town's Riverside Redevelopment Area as part of a residential development on that adjacent property, and such units shall be rental units and restricted in occupancy to very-low, low, and moderate income individuals fifty-five years and older. The aforementioned schedule (percentage market rate units with Certificates of Occupancy in relation to affordable units completed) shall apply to these 10 affordable housing units on the adjacent property in connection with and relation to CM34's development of the 56 market rate units on its Property, as contemplated in this Agreement.

e. **Condition of Site Plan Approval.** CM34's agreement to construct the 10 affordable units shall be a condition of any site plan approval regarding the 56 market-rate units and shall be binding upon CM34's successors or assigns.

12. **No Objection to Amended Fair Share Plan; Payment of Fees.** By executing this Agreement, CM34 agrees not to object to any settlement reached between Clinton and Fair Share Housing Center or to any compliance plan that is a result of such settlement or at any resulting fairness or compliance hearings, provided this Settlement Agreement is made a material and integral part of any settlement with FSHC and any compliance plan of Clinton.

As part of a settlement between the Town and FSHC, FSHC has requested a payment of their attorney's fees from the Town. The Town has agreed to pay to FSHC the amount of \$3,000 and CM34 has agreed to also pay to FSHC \$3,000.

13. **Appeals.** In the event an appeal is filed by a third party from entry of a Final Judgment of Compliance relating to the provisions of this Settlement Agreement or from any other action taken pursuant this Settlement Agreement, CM34 shall have the right to defend the action, intervening if necessary to do so. Clinton shall also defend in any appeal from adoption of the Zoning Ordinance contemplated herein as well as in any appeal where CM34 is not permitted by the court to intervene with full rights to brief and argue the appeal. In that case, CM34 shall reimburse Clinton for all reasonable attorney's fees expended in defending such action.

CM34 shall also have the right to appeal any decision of NJDEP or the Highlands Council if CM34 determines such decision will detrimentally affect the development of the Property as

proposed under this Agreement. Clinton will not oppose any such appeal, but will not have any obligation to participate in such proceedings. However, consistent with its obligations to cooperate, Clinton shall endorse CM34's application to the Highlands Council and take such other steps as the Highlands may require of it as a municipality.

14. Agreement Binding and Enforceable. Upon execution, this Agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns. This Agreement shall be enforceable in the Law Division of Superior Court.

15. Miscellaneous.

a. The Parties hereto hereby represent and warrant to each other that the execution and delivery of this Agreement by the designated signatories hereto has been duly authorized by all necessary and appropriate actions and that this Agreement is therefore binding upon each of the Parties hereto.

b. The Parties hereto hereby covenant and agree to cooperate with each other in good faith and in a timely manner to implement the provisions of this Agreement and to satisfy the contingencies set forth herein.

c. This Agreement may only be modified by a writing signed by authorized representatives of each of the Parties hereto.

d. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey sitting in Hunterdon County, New Jersey, and the Parties hereby waive all objections to such venue.

e. In the event of a default by any party as to any term or condition of this Agreement, the other parties shall have the right to pursue all remedies that they may have in law or in equity against the defaulting party, including but not limited to specific performance. The failure of a non-defaulting party to immediately pursue such remedies upon the occurrence of an event of default shall not constitute a waiver of the non-defaulting parties' right to take such actions as it deems necessary to pursue remedies based upon such default.

IN WITNESS WHEREOF, Property Owner has executed this Agreement the date and year above first appearing.

[SIGNATURE PAGE FOLLOWS]

CLINTON MOEBUS 34, LLC

WITNESS :

By: _____

Name: _____

Title: _____

Clinton Moebus 34, LLC

TOWN OF CLINTON

WITNESS :

By: _____

Cecil Covino, Clerk

Janice Kovach, Mayor

TOWN OF CLINTON LAND USE BOARD

WITNESS :

By: _____

Allison Witt, Secretary

Craig Sailer, Chairman

RESOLUTION #111-18 A – EXECUTIVE SESSION – LITIGATION

Upon finalizing the resolutions and documents, a motion was made by Ms. Dineen, seconded by Ms. Karsh to re-enter Executive Session at 9:56 p.m. to discuss a matter of litigation. Topic of High Bridge, CTSA litigation, no action is anticipated on this matter.

Vote all ayes
Motion carried

RESOLUTION #111-18 A

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 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: Land Acquisition 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

ADJOURNMENT: Upon returning to the regular council meeting and no action to be taken, a motion was made by Mr. Smith seconded by Ms. Dineen to adjourn the meeting at 10:49 p.m.

Cecilia Covino, RMC/CMC, Municipal Clerk

Mayor Janice Kovach