



TOWN OF CLINTON

INCORPORATED APRIL 5, 1865

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Land Use Board Minutes

Minutes of the Town of Clinton Land Use Board meeting held on March 19, 2024 at 7:30pm. The meeting of the Town of Clinton changed the location to the Clinton Fire Department at 1 New Street Clinton NJ 08809.

Chairman Sailer called the meeting to order at 7:40pm and read the "Statement of Adequate Notice" and the "Administrative Statement".

Adequate notice of this meeting has been provided indicating the time and place of the meeting with the proposed agenda, which notice was posted, made available to the newspapers and filed with the clerk of the Town of Clinton in accordance with Section 3(d) of the Public Laws of 1975".

"Meetings are held on the first Tuesday of each month. Applications must be filed at least 21 days prior to the meeting date. In order to ensure that all applications receive complete and thorough consideration of the board, all meetings will adjourn no later than 10:00pm with all items not concluded to be carried over to the next month's agenda".

Attorney Katie Razin, Mr. Robert Clerico and Mr. Jim Kyle were present.

ROLL CALL:

Present: Mr. Sailer, Mr. Carberry, Mr. Devita, Ms. Dineen (arrived at 7:45pm), Mayor Kovach, Mr. Lubsen, Mr. Smith, Mr. Snider, Mr. Viotto.

Absent: Mr. Bruno

Approval of Minutes:

A Motion was made by Mr. Carberry seconded by Mayor Kovach, to approve the February 20, 2024 minutes.

All Ayes.	Motion Carried
Abstain:	Bruno

Public Hearing # 8- Clinton Moebus 34 LLC "Clinton Commons"- Preliminary and Final Subdivision for a 3 lot Subdivision and Preliminary Site Plan approval for Block 14 Lot 32 – 65 ½ Center Street:

Attorney Howard Apgar, Attorney Matthew Fiorovanti from Giordano, Halleran & Ciesla, Mr. Wayne Ingram, PE, and Mr. Bhaskar Halari consulting Engineer and Principal were present.

The following items were submitted into evidence:

A68 Eagles nest location plan prepared by FPA dated 3-6-2024

A69 Letter from Attorney Matthew Fiorovanti from Giordano, Halleran & Ciesla dated 3-15-2024

Chairman Sailer advised the board tonight we will finish with public testimony and comments:

Public Comments: the following members spoke and were sworn in.

Nicole Ayers 18 Fairview Avenue; Susan Courtney 67 Center Street; Rick Woodman 46 Center Street; Daniella Johnson 17 Water Street; Fellenza Maliqi 4 East Main Street; Amy Devita 17 Halstead Street; Philip Weaver 40 Halstead Street; Will Miska 146 Center Street; David Wiant 78 Center Street.

The public spoke about their concerns – flooding; development using old stormwater regulations; water runoff; impervious coverage; effects on the community; traffic and safety concerns; increase in students and increase of taxes; infrastructure concerns; sinkholes; blasting; impacts on wildlife; location of the fast food in close proximity the residential homes; environmental impacts; affordable housing plans; historic value to Clinton; overflow of the river; diminishing of serenity in the area; concerns with the impact to Clinton; public health and safety concerns; new eagles nest location. The public stated this adds no historic value, the public health and safety are at risk by using the old stormwater they urged the board to deny the application.

Mr. Kyle stated as a follow up to last meeting a plan has been submitted showing the new eagle nest which is located further north of the site, the Highlands will need to review and confirm.

There being no further comments or testimony the meeting was closed to the public.

Mr. Devita advised the board due to his wife speaking tonight and in order to avoid a conflict he is recusing himself from the rest of the meeting.

Attorney Apgar stated he is a long-time resident of the town and the Town of Clinton is important to him. The second eagles' nest was plotted on the plan it will be reviewed by fish and wildlife and the highlands; he does not believe it will affect the boundary line restrictions. In regard to flooding Mr. Apgar stated he does not dispute the concerns but Clinton is a river town, this is not something new the properties along the river are all located in a flood zone. We are required by law to reduce the existing flow coming off the property the detention basin is designed to do this, this developer will make the runoff down slope less this development will make the situation better. Mr. Apgar stated the 1975 doctrine of Mt Laurel has evolved and in 2015 the doctrine made it clear that towns cannot ignore Mt. Laurels' ruling, affordable housing must be built within its borders. The Town of Clinton has an obligation to provide affordable housing and this development is in conformance with the settlement agreement, no one wants to provide affordable housing.

Mayor Kovach interrupted Attorney Apgar she objected to his statement, the Town of Clinton has always provided affordable housing, we have never said no to affordable housing, what we have said no to is overdevelopment and do not say the Town of Clinton does not want affordable housing.

Attorney Apgar stated the point is this property is included in the towns Fairshare Plan for the third round, the town made an agreement with the court which resulted in an ordinance and this project was designed with the ordinance in mind. We have submitted plans which have been reviewed by the board's professionals, we have complied with the professional review comments this project is conforming we have received all of the outside agency approvals, all witnesses have been cross examined, the public has had an opportunity to ask questions and provide comments and at this point we are done.

Attorney Matthew Fiorovanti who was retained by the applicant stated he was here tonight to educate how the housing doctrine applies to this application and proceeded to read a section of the agreement. The town has to meet their fair share obligation, the town agreed to this development, the project will be used to satisfy the affordable housing obligation and an agreement was entered into in 2018. The Land Use Board agreed to the written agreement in 2018 that states Clinton agreed to rezone the property to permit

the development, this board has a contractual obligation to approve this development. The town took the settlement agreement and applied it to the round III obligation, tonight I am here to educate the board on

the reality, this board agreed to this contract, you have a contractual court obligation to satisfy the Towns Affordable Housing Agreement. Attorney Razin clarified that section 3 of the agreement relates to the subdivision approval and section 6 does not specifically list the site plan but states we are obligated to cooperate.

Attorney Apgar stated we are done with this application we request the board grant the Preliminary and Final Subdivision approvals and Preliminary Site Plan approval.

Attorney Razin prepared a statement for the board which was read into the record:

“In 2015, like many municipalities in the State, the Town of Clinton filed a Declaratory Judgment action in Superior Court relative to its obligations to provide a reasonable opportunity for development of affordable housing. Clinton Moebus 34 was an intervenor in that declaratory judgment action.

In an effort to settle the litigation with Clinton Moebus and with Fair Share Housing Center, an advocate throughout the State of New Jersey on behalf of affordable housing, and in an effort to address its affordable obligation, the Town and Land Use Board entered into a settlement with Clinton Moebus to be approved by the court.

The settlement provides that Clinton Moebus seeks to develop this subject property as a mixed -use project containing commercial development along Route 31 and residential development along the remainder of the property with a 10- unit affordable set aside to be constructed off-site. Through such development, it will assist Clinton in its efforts to meet the Town’s affordable housing obligation in connection with the filed Declaratory Judgment action.

In connection with the settlement, the Town had the obligation to adopt new zoning for the property. In addition, the Land Use Board has, in essence, under the agreement, an obligation to grant approval of the subdivision to avoid being in breach of the Settlement. Clinton Moebus previously applied for subdivision relief in connection with the Settlement Agreement and was approved, but the subdivision was never perfected. The Land Use Board also an obligation to cooperate with the Town and Clinton Moebus in securing its approvals. Clinton Moebus has also a number of obligations it has to fulfill, as well.

In sum, the affordable housing units which are to be developed in connection the proposed development here – albeit at a different location – were stipulated to and approved by the court as part of the Town’s affordable housing plan. And this Board has certain obligations, pursuant to the Settlement, to see that it does not interfere with the development or act uncooperatively”.

Mayor Kovach stated “we have heard testimony from the professionals representing the applicant and testimony from residents and interested parties. There are several points I would like to make, the first is this project first came about in 2015 when the owner posted online renderings of a development that included 247 garden apartments and 5 pad sites without ever coming to the town. We then spent several years in court negotiating with the developer and Fair Share Housing for the town to meet its affordable housing obligation”.

“Second the town attempted to purchase the Music Hall property to address its obligation through a 100% affordable project. Because the town is required to do all business in public the music hall property was purchased from under us by the owner of the Moebus property”.

“Third, after several years in the courts a settlement was reached and approved by the court in October 2018. The owner would be allowed 3 pad sites, 56 for sale townhomes, property dedicated to the town for open space and the affordable obligation, as an age restricted project, built on the Music Hall property. All three parties to the settlement had certain obligations to meet. The Town had to adopt a zoning ordinance to enable the development. The owner had to meet certain time requirements and

develop a plan to meet the requirements of the settlement and ordinance. It also had to obtain all required approvals, including outside agency approvals from Highlands, NJDEP and NJDOT. The Land Use

Board also had certain obligations imposed upon it”.

“The owner/applicant initially applied for subdivision approval in connection with the settlement agreement, but never perfected the subdivision approval. They let that approval lapse. So, from a timeline perspective there is not compliance with the settlement agreement from the owner. The subdivision request was then brought as part of the application, which, along with the site plan request, was amended and modified several times by the applicant before the Board had the chance to substantively review the application”.

“The agreement bound this board to approve the subdivision application – our agreement did not bind this board to approve a particular site plan application. While we are parties to the agreement and agreed to endorse the development of the property, there was no obligation to approve site plan. The applicant was required to apply to the board for the approvals and go through the application process”.

“This Board has listened to all the testimony of the applicant and its own professionals. It has also considered and weighed heavily the comments of the members of the public. We are bound to consider the terms of the settlement agreement that the court has approved, I also feel there were comments made that very much relate to the public health, safety, and welfare of this community which must be considered. With that I would like to make two separate motions on the two aspects of the applications”.

A Motion was made by Mayor Kovach, seconded by Mr. Smith to approve the preliminary and final subdivision with the following conditions:

- There is one variance associated with the subdivision request from §88-56.1B for minimum lot area, where 15 acres is required and 9.10 acres is proposed for Lot 32.02
- The portion of the Property not developed and referenced during the hearing shall be donated to Clinton and deed-restricted as public open space
- The applicant shall be subject to an access easement of 30 feet from Route 31
- All other development related requirements of the Settlement Agreement shall be incorporated by reference
- Applicant shall comply with the conditions relative to subdivision set forth in the memos of Mr. Clerico, Mr. Kyle and any other town official

Board discussion

Mr. Carberry expressed concerns with the process for the offsite affordable housing and since the agreement a lot of things have changed, the phasing plan presentation was cloudy, the tenants are unknown, the NJ DOT permit has not been approved, there are concerns with flooding the application was not well put together and as it is hard to support.

Mr. Snider echoed the sentiments and stated he is confused on what we are obligated to do.

Mr. Smith stated this is a symptom on what is happening in the state, we are obligated to do our fair share housing we should go ahead with the subdivision.

Mr. Lubsen commented we should go ahead with the subdivision approval per the agreement.

Mr. Viotto agreed with the subdivision.

Ms. Dineen agreed with the subdivision with accordance with the law

Roll Call Vote:

Ayes: Carberry, Dineen, Kovach, Lubsen, Smith, Viotto, Sailer, Snider, Smith

Nay:

All Ayes.

Motion Passed.

Mayor Kovach stated “before I make the second motion I would like to state for the record. I understand my obligations, as mayor I have an obligation to the residents of this community to ensure their health and public safety. That is a responsibility I take very seriously. I also have an obligation to protect the town legally, yes that does mean property owners have rights as well. But understand this the town and land use board entered an agreement with the applicant to endorse the development of the property as described in that agreement dated 2018. This was approved by the court and prevented further litigation and potentially other impactful results. We also made clear that we expected the property owner to do all possible to be a good neighbor and ensure the wellbeing of our community”.

“While the applicant can couch its position however it would like but the applicant heard all the passionate testimony a month ago and waited until the Friday evening before our hearing to send a letter that told us “Our obligations”, should not be “constituted as a threat” and to call you if there are any questions. We are not stupid individuals, even though you seem to think so, and you should also know that I don’t take kindly to threats made against the residents or the individuals who voluntarily serve on this board. This is a community that people have made their home and have asked you to understand the fear of damage and destruction of their property based on your plans”.

“I make motion to approve the preliminary site plan application, I have my own conditions to add but first. I would like Katie to list the conditions that were documented throughout the hearings”.

The motion was made by Mayor Kovach, seconded by Mr. Carberry, to approve the Preliminary Site Plan with the following conditions:

Site Plan Conditions:

There is one variance associated with the site plan from §88-62C (1) where at least one off-street loading space measuring 14’x60’ is required and not provided for the proposed fast-food restaurant.

There are two variances for signage referenced in our planner’s memo – However, the board hasn’t been provided with a signage plan or any final details or testimony as to same so these should be deferred to any request for final site plan-. Bulk variance from §88-64E (6) to permit more than one ground sign, as three or more are proposed. Bulk variance from §88-64E(6)(e) to permit ground signs closer than 10’ to the property line along Route 31

Conditions that were discussed over the course of the hearing process:

- The applicant shall construct 10 affordable housing units off site at 23 West Main Street which meet the requirements of the settlement agreement as to the affordable housing requirement and historical preservation requirements.
- Construction of the residential units on site shall be in accordance with the settlement agreement in that COs for only 28 of the 56 units will be issued prior to constructing and obtaining COs for the 10 affordable units
- All other development related requirements of the Settlement Agreement shall be incorporated by reference
- Emergency and pedestrian access only can be provided via Central Avenue pursuant to an access easement, with primary access via Route 31
- 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

- The Applicant shall be responsible for making any required applications for sewer and/or water reservation
- Specific property issues
 - 19 Georges Places – plant some lower material for visibility of the trees in the distance
 - 34 Georges – keep as much of the vegetation as possible / install evergreens and provide 6-foot fence on the north side
 - 93 Center Street – plant extra evergreen tress for buffering; applicant will review potential for adding French drain or other improvements to prevent drainage issues; will meet with property owner on these issues and grading
 - 25 Georges place – plant a lower level of evergreen shrubs to add a second layer of buffering
- EV spaces and make ready spaces to be added to the plan if not done so already
- Submit fire circulation plans to satisfaction of Fire Marshal
- Fire hydrants must be active before any wood is delivered to the site
- Add significant landscaping between the development and the cemetery, and fence along cemetery line.
- Adjustments to landscaping will be made in the field in accordance with meetings with the planner and neighboring residents; applicant will meet with homeowners in field, particularly along Georges place
- Two -year maintenance bond on landscaping
- Homeowner documents will require that buffering plantings remain in place
- Landscaping shall match the site plan approval and per the resident discussions and stipulations with the applicant's engineer and professional team
- Monitoring of vibration impacts shall be in place with regard to certain homes within proximity to the construction area (Georges and Center). The applicant shall provide info on what monitoring system it intends to use to the Town engineer.
- Monitoring of vibration impacts shall be in place with regard to sewer and water mains in proximity to the development
- Confirmation and review of phasing with Mr. Clerico to his satisfaction before it is implemented
- Meeting with Fire Marshal to review fire related items.
- Applicant will stake the corners of the property
- Construction time limits due to buffer restrictions and eagles' nests
- Document the second nest with highlands council and NJDEP as required
- Outside agency approvals will be obtained including from NJDOT, NJDEP, County of Hunterdon, County of Hunterdon Planning board, Soil Conservation District
- Construction shall occur on site in accordance with settlement and requirements to construction affordable units off site
- Applicant shall comply with the conditions set forth in the memos of Mr. Clerico, Mr. Kyle, the Fire Marshal and any other town official

Mayor Kovach added three additional conditions:

- The applicant must go back to DEP and the Highlands and prove that the additional eagle's nest has been accounted for and the requirements that DEP and the Highlands established initially address the second nest and if not, what will be done to ensure the protection of the second nest.
- The stormwater design is based on rules from two (2) versions ago. The next two conditions are that the stormwater plans are redesigned to address green infrastructure requirements and the enhanced rainfall requirements of the most stormwater regulations which have been adopted. When this agreement was completed, we had not experienced the flooding that we have seen recently, and your project should meet the current stormwater obligations in this regard

Mr. Carberry stated he would like to see the conditions in black and white, Attorney Razin stated this is just the preliminary site plan and when they come back for the final the details will be finalized.

Mr. Lubsen inquired about the offsite affordable housing; Mr. Kyle stated they are not linked together the only link is the number of Cos that can be issued before the affordable housing is built.

Ms. Dineen stated the most important is the stormwater and she supports that as a condition of approval.

Roll Call Vote:

Ayes: Dineen, Kovach, Lubsen, Smith, Viotto, Sailer, Snider, Smith

Nays: Carberry

7-1 Motion Passed.

Voucher approval:

A Motion was made by Mayor Kovach, seconded by Mr. Carberry to approve the vouchers:

All Ayes. Motion carried.

Adjournment:

There being no further business a Motion was made by Mayor Kovach, seconded by Mr. Carberry to adjourn the meeting at 9:45pm.

All Ayes. Motion carried

Respectfully submitted,

Allison Witt.
Land Use Administrator