



## **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 June 20, 2023 at 7:30pm. The meeting of the Town of Clinton Land Use Board has changed the location to the Clinton Fire Department at 1 New Street Clinton NJ 08809.

Chairman Sailer called the meeting to order at 7:30pm 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, Mayor Kovach, Mr. Bruno, Mr. Carberry, Mr. Devita, Ms. Dineen,  
Mr. Lubsen, Mr. Smith, Mr. Snider, Mr. Viotto

Absent:

#### **Approval of Minutes:**

A Motion was made by Mr. Carberry, seconded by Mr. Viotto to approve the June 6, 2023 minutes.

**All Ayes.**

**Motion Carried**

**Abstain: Bruno, Dineen, Devita Lubsen**

**Mr. Bruno recused himself from the Hearing due to a conflict of interest.**

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

Attorney Howard Apgar, Mr. Wayne Ingram, Professional Engineer and Planner from ELP, Mr. John Rea, Traffic Engineer, Mr. Bhaskar Halari consulting Engineer and principal and Mr. Steven Lang Principal were present and sworn in.

In addition, Fire Marshal Jack Daniels and Fire Chief Jeff Hedden were present.

The following items were submitted into evidence:

- A1 Application Preliminary & Final Subdivision & Preliminary site plan application
- A2 Affidavit of Service & Proof of Publication
- A3 Town of Clinton Clerk's certified 200-foot list 11-13-2020
- A4 Tax Certification dated 5/11/2023
- A5 Major Subdivision Plan & Site Plan dated 12-3-2020 prepared by Engineering & Land Planning latest revision 5-24-2021
- A6 Final Subdivision Plan dated 12-3-2020 prepared by Engineering Land Planning revised 5-24-2021
- A7 Landscape & Tree Preservation plan prepared by Engineering & Land Planning dated 1-15-2021 revised 5-25-2021
- A8 Hunterdon County Planning Board Development review application
- A9 Karstic Geology Investigation report prepared by Engineering & Land Planning dated 3-5-2020 revised 5-24-2021
- A10 Freshwater Wetlands Letter of Interpretation report prepared by Engineering & Land Planning dated 10-30-2017
- A11 State of NJ LOI dated 5-4-2018
- A12 Stormwater Management report prepared by Engineering & Land Planning dated 5-24-2021
- A13 Stormwater Management Supplement prepared by Engineering & Land Planning dated 1-30-2021
- A14 Stormwater Management Maintenance Manual prepared by Engineering & Land Planning dated 5-24-2021
- A15 Surface Infiltration Basin Field Manual prepared by Engineering & Land Planning
- A16 Application for soil erosion and sediment control plan
- A17 Title Insurance
- A18 Architectural rendering for Taco Bell prepared by Weiner Architecture Group LLC dated 7-1-2020
- A19 State of NJ DEP Permit dated 4-29-2021
- A20 ELP response letter to May 1, 2021 Van Cleef report dated 5-24-2021
- A21 Clinton Fire Ladder tracking plan dated 12-3-2020 revised 5-24-2021
- A22 Tractor Trailer tracking plan dated 12-3-2020 revised 5-23-2021
- A23 Town of Clinton Ordinance 2019-11
- A24 Settlement agreement Dated 10-30-2018
- A25 Colored Rendering of site plan "Moebus Site Plan" dated 6-10-2021
- A26 Revised Preliminary & Final Subdivision Plat prepared by ELP 5-24-2023 revision date 4-28-2023
- A27 Revised Final Subdivision Plan prepared by ELP 5-24-2021 revision date 4-28-2023
- A28 Revised Major Subdivision & Preliminary Site Plan pages prepared by ELP revised 4-28-2023
- A29 Revised Major Subdivision & Preliminary Site Plan pages 3-5, 23 & 24 prepared by ELP revised 3-6-2023
- A30 Revised Landscaping plan prepared by ELP revised 1-10-2022
- A31 Boundary & Topographic survey prepared by ELP revised 1-10-2022
- A32 Geophysical Investigation report prepared by Concept Engineering-dated 12-23-2022
- A33 Earthwork Analysis Plan prepared by ELP revised 1-18-2023
- A35 Surface Infiltration Basin Field Manual prepared by ELP
- A36 SWM Report prepared by ELP dated 1-16-2023
- A37 Supplement to SWM report prepared by ELP dated 1-18-2023
- A38 SWM Manual prepared by ELP dated 1-18-2023
- A39 Traffic Study prepared by McDonough & Rea Assoc. dated 3-3-2022 revised 1-27-2023
- A40 Colored rendering of Taco Bell
- A41 ELP response letter to R. Clerico of May 1, 2021 dated 1-24-2023
- A42 Fire truck turning plan prepared by ELP dated 3-6-2023
- A43 Response Letter to Fire Marshall letter of 1-30-2023
- A44 Deed information showing access to Central Ave.
- A45 Revised Preliminary Major Subdivision & Preliminary Site Plan by ELP revised 4-18-2023
- A46 Revised Final Subdivision Plan Prepared by ELP revised 4-18-2023

- A47 SWM report prepared by ELP dated 4-18-2023
- A48 SWM Maintenance Manual by ELP dated 4-24-2023
- A49 Soil Investigation Prepared by ELP dated 4-18-2023
- A50 Traffic Report prepared by McDonough & Rea Associates dated 4-24-2023
  
- A51 Typical retaining wall design prepared by Bern Oles dated 4-18-2023
- A52 NJ DOT Letter of Completeness dated 4-19-2023
- A53 Court ordered Settlement Agreement
- A54 Town of Clinton C-5 Ordinance # 19-12
- A55 Colored rendering of sheet 2 of the site plan
- A56 Colored rendering of sheet 3 of the site plan
  
- B1 Robert Clerico, Van Cleef Engineering report dated 5-1-2021
- B2 James Kyle, report dated April 30, 2021
- B3 James Kyle report dated 6-14-2021
- B4 J. Daniels. Fire Marshal review comments dated 2-26-2021 updated 6-11-2021
- B5-A Robert Clerico revised report # 3 dated 9-20-2021
- B5-B Robert Clerico revised report # 4 dated 3-17-2023
- B6 Robert Clerico revised report # 5 dated 6-16-2023
- B7-A J. Daniels, Fire Marshal review report # 3- dated 9-25-2021
- B7-B J. Daniels, Fire Marshal review report # 4 dated 1-30-2023
- B8 Suburban Consulting water application review 1-27-2022
- B9 Town of Clinton Environmental report# 2 revised 2-16-2022
- B10 J Kyle, report revised report # 3- dated 6-16-2023
  
- OA1 Highlands Consistency Determination- May 28, 2021
- OA2 Highlands Consistency Determination 1-19-2022
- OA3 Hunterdon County Soil Conservation- Dated 2-23-2021
- OA4 Hunterdon County Planning Board letter- dated 1-9-2023
- OA5 Hunterdon County Planning Board Letter dated 3-8-2023

Attorney Apgar advised the board the plans include a three- lot subdivision with three commercial uses and 56 townhomes. The project is a result of a settlement of a law suit to satisfy the Town's affordable housing obligation and as part of the consent order an ordinance creating the C-5 zoning district was adopted by the Municipality.

Mr. Wayne Ingram went over the site layout. The property which was farmland is limited by the floodplain area by the south branch, there is a 300-foot riparian, wetlands and highlands buffer on the site. The north portion of the site consists of 7.3 acres, it will have three commercial pads a gas station convenience store; food market, and a fast-food Taco Bell restaurant. The residential area will be located in the rear of the property, the plan proposes 11 buildings which will vary between three and six units per building. The units will be for sale market units and the affordable housing will be provided off-site. The south area of the site will provide emergency access off Central Avenue.

The applicant is seeking preliminary and final subdivision and preliminary site plan approval. The proposed plan creates three lots; a 7.3 acres lot in the C-5 zone; 9.1-acre lot in the residential zone and the remaining portion will be dedicated as open space. The applicant is also seeking a variance relating to the lot size in the residential portion of the site. It was also discovered that a bald eagle's nest exists on the northwestern portion of the site and as a result a 1,000- foot buffer restriction off the nest was created which restricts construction activity within the 1,000 -foot buffer during January 1- July 31.

Mr. Ingram stated that a majority of the review comments in Mr. Clericos' letter have been addressed and the remaining comments the applicant agrees to comply with. The stormwater management basin will be located to the south of the supermarket, the gas utilities will run off Route 31, water will come in off

Route 31 and Central Avenue, the lighting will have no road spillage and complies with the Town Ordinance. Mr. Ingram stated he will defer the landscape comments to the Landscape Architect. In regard to parking, they propose to land bank some of the stalls, we do not want to over build the site but want to factor into the design the additional parking if needed in the future. The parking and traffic are being deferred to the Traffic Engineer.

The seven variances in Mr. Kyle report have been narrowed down to four variances:

1. Variance for minimum lot area in the residential parcel- 15 acres is required and 9.10 acres proposed.
2. Variance to eliminate the loading space from the fast- food restaurant.
3. Variance to allow two ground signs adjacent to the entryway, where only one is permitted
4. Variance to allow the ground signs closer than 10 feet to the property line along Route 31.

In regard to Mr. Clericos' letter there are three areas of concern, the traffic and site access testimony will be deferred to the Traffic Engineer; the stormwater management the applicant will comply with all the comments; and in regard to the Geo Tech the design work will comply. The elimination of the sidewalk will require an RSIS waiver, Mr. Ingram stated they are trying to reduce the impervious coverage and the sidewalk serves no purpose on this side of the site the elimination will provide a bigger buffer area. The trash enclosure area can be enlarged but they will defer this to the final site plan once a tenant has been secured. Mr. Ingram advised the board they have applied for water and sewer but were advised by the town that a reservation can only be made after they receive site plan approval. Mr. Ingram testified they have no objections to satisfying all of the outside agency approvals.

Mayor Kovach stated it would be helpful for Mr. Ingram to go through each line item on Mr. Clericos' report so we can all have an understanding of what the applicant is agreeing to. Mr. Ingram went through the line items that pertained to him and testified the applicant intends to comply with Mr. Clerico's report, the traffic, landscaping and Geo Tech items are being deferred to the applicant's professionals at their time of testimony. A discussion ensued regarding if this application was grandfathered in under the old stormwater regulations, Mr. Apgar stated this is not a new application therefore we are exempt from the new stormwater rules. Mr. Ingram added the new stormwater regulations would create a lot more disturbance and a completely different design. Mr. Ingram also added in regard to the stormwater and impervious coverage the applicant is willing to bank more parking stalls to reduce the impervious coverage. Mr. Ingram advised the board they received a report from the Fire Marshal that the plans as submitted were acceptable. Attorney Razin commented since a lot of the items are being deferred to the Final Site Plan submission she is inquiring if the applicant is willing to notice for the Final Site Plan submission, after a little hesitation Mr. Apgar agreed to provide legal notice of the filing and hearing date.

Mr. Smith asked the applicant to explain the phasing of the project, Mr. Ingram stated the residential units will be phased, we can only obtain Certificates of Occupancy for a certain amount of the residential units and additional certificates can only be received when the 10 affordable housing units are completed and the Certificate of Occupancy have been obtained. We plan to start with the residential units, install the utilities and the stormwater management system for phase I and then move onto the commercial, there likely will be three developers for the commercial and one developer for the residential.

Mr. Carberry inquired about the 1,000-foot buffer and if they have tenants for the commercial use. Mr. Ingram stated the 1,000-foot buffer from the Eagles nest restricts timeframes of construction only during certain times of year. The buffer restriction falls between January -July 31 in which no work within the 1,000-foot buffer can happen, activity is limited to a six-month window. Mr. Ingram stated at this time we only have one tenant which is the Taco Bell and once we secure the other tenants we will come back to the board for final approval.

Mr. Jack Daniels, Fire Marshal inquired about the offsite water improvements, Mr. Ingram stated the offsite water connection will be off of Route 31 and Center Street, the line on Center Street will be upgraded, in regard to the Fire Hydrants there are no plans to change the configuration of the offsite hydrants that exist now.

Mr. Kyle went through some of the items on his report and asked for clarification if the Taco Bell plans to have outdoor seating, the tot lot area, signage, EV Spaces and the affordable housing obligations. Mr. Ingram stated he would need to confirm the details on outdoor seating and the tot lot which would be part of the final application. In regard to the signage, he can provide the details for the Taco Bell but once the tenants are secured the signage may change, they may need to add a third free standing sign the details and any additional variances will be part of the final site plan. Mr. Kyle stated the new EV Ordinance requires EV spaces within the multifamily areas and make ready spaces in the commercial area, which will need to be added to the plan. Mr. Kyle stated under the MLUL providing EV spaces gives you a two for one credit on required number of parking spaces up to 10% of credit in total. Mr. Kyle stated under the settlement agreement they can only obtain 28 Certificates of Occupancy for the townhomes and any additional can only be obtained after the affordable housing off site units are completed. Mr. Kyle requested the phasing needs to be added to the plan sheet. Mr. Ingram stated they are looking to include 30 townhomes in Phase I but with the understanding they will only be able to obtain the 28 Certificate of occupancy under phase I the note will be added to the plan. Mr. Kyle advised the applicant they will also have to provide a non-residential fee to the town for the commercial portion, 50% is due at the time of building permits and the balance is due before the CO is issued.

Mr. Ingram went over the variance relief requested. The applicant is seeking four C-2 Variances:

1. Lot area where 15 acres is required and 9.10 acres is provided on the residential lot. Mr. Ingram stated he only see the positive criteria with the reduced lot area which leaves more open space on the site.
2. Not providing an off-street loading space for the Taco Bell has no negative impact, a fast-food restaurant typically does not have a loading zone, and adding a loading space will increase the impervious coverage which is a detriment. The positive criteria are they are not adding more impervious coverage.
3. The proposed signs at the two access points provides people a visual of where to turn in and the amount is not an excessive amount on a 1000 front frontage, the signs are critical for safety,
4. The ground signs will be closer than 10 feet, this lot configuration is strange and the proposed location is closer to the street to be seen and serves the purpose of providing adequate directions to people engineering the site, this is important for a safe traffic pattern.

Mr. Clerico asked the applicant to define the phasing on the plan, he is concerned with the overlapping of infrastructure on the phasing and requested the applicant provide a detail on the phasing and who is responsible for what, Mr. Ingram agreed.

Mr. Daniels inquired what phase is the construction of the water line in and if the fire vehicle circulation plans was designed with the onsite parking spaces filled, Mr. Ingram replied the water line will be in Phase I and yes, the circulation plan was designed with the stalls filled.

#### **Public Comments:**

Graham Long- 26 Halstead Street- Questioned open space, if a pathway would be provided, pollution and trash going into the river and trash behind the buildings. Mr. Ingram went over some of the concerns and stated the site meets the state requirements the trash will be contained within containers.

Lisa Intrabartola, 19 Georges Place- Questioned the wall, buffering, location of the Taco Bell, hours of operation of the Taco Bell, the dumpster location, limestone and the impacts of blasting, sink holes, and if they would consider switching the location of the Taco Bell. Mr. Ingram replied buffers will be installed on site, the hours of operation will comply with the town ordinance, the dumpsters will be inside enclosures and comply with the ordinance, the limestone and blasting will be deferred to the Geo- Tech Engineer, and the relocation of the taco bell is a substantial change that we are not considering.

Mr. Jonathon Wall 21 Water Street- Questioned the impact on the South Branch and the flooding impacts and inquired if it would be wise for the town to go back to the court for reconsideration.

Mr. John Bohnel- 76 Center Street- Inquired about the affordable housing the number of units and if plans were submitted. Attorney Apgar stated there will be 10 affordable units that will be located off-site and providing the plans is not under the settlement agreement, no plans have been submitted.

Mr. Angelo Yacone- 25 Georges Place- Stated he was right on the corner and concerned with the headlights shining directly in his backyard and questioned if they can minimize the impact of cutting down the trees and leaving the existing tree line alone. The architect design shows the clearing all the trees which will affect my quality of life and requests the trees in the backyard be left in place to provide a visual buffer. Mr. Ingram stated he will look into his concern, the site was designed to accomplish the grading but we can look into your concerns and see what we can come up with. Mr. Kyle added the board will need to look at the preservation of the trees and we may have to supplement some, we can address this when we hear from the landscape architect.

Nicole Ayers 18 Fairview Avenue- Questioned the retaining walls, direct access to the open space, light pollution on the west and south side of the site, relocating the Taco Bell, impervious coverage, porous pavement, compacted clays on the site, land contamination from the gas station leaking into the river. Mr. Ingram stated the light fixtures meet the ordinance standards all the fixtures will be shielded and facing downwards to prevent light spillage, due to the eagles nest the commercial property was shifted over, there are no proposed changes to the existing layout, the maximum impervious coverage permitted by ordinance is 55% the applicant is at 38.2% for commercial pads, the stormwater system will be specifically designed for the gas station, the tanks, oil separators are typical state mandates that are designed for gas station and meet state regulations.

Due to the time frame the meeting was carried to July 18, 2023 at 7:30pm – Questions for Mr. Ingram will resume at the next meeting.

**Voucher approval:**

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

**All Ayes.          Motion Carried.**

**Adjournment:**

A Motion was made by Mr. Carberry, seconded by Mr. Viotto to adjourn the meeting at 10:10pm.

**All Ayes.          Motion Carried.**

Respectfully submitted,

Allison Witt  
Land Use Administrator