ML2 Clinton. 29-Oct-85

- Order of Approving Settlement + Providing Conditions for Entry of Judgment of Compliance as to Town of Clinton.
- Planner's report.

p. 168.

ML 0007690

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STEPHEN SKILLMAN, J.S.C.

October 29, 1985

FILE NO.

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JUDGE STEPHEN SKILLMAN

The Honorable Stephen Skillman
Judge, Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08901

Re: Clinton Associates v. Town of Clinton
Docket No: L-019063-84

Dear Judge Skillman:

In accordance with Your Honor's decision from the bench of October 28, 1985, please find enclosed an original and two copies of an Order Approving Settlement and Providing Conditions for Entry of Judgment of Compliance as to Town of Clinton. By carbon copy of this letter, all parties who participated in the hearing are receiving a copy of this proposed form of Order.

Thank you for your personal attention to this matter.

Respectfully submitted,

Guliet D. Hirsch

GDH/sr
cc: Richard Cushing, Esq.
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Be ra, Esq.
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W. READING GEBHARDT
1919-1980

November 5, 1985

Honorable Stephen Skillman
Superior Court Judge
Court House
New Brunswick, N.J. 08903

Re: Clinton Associates vs. Town of Clinton
Docket No. L-019063-84 P.W.

Dear Judge Skillman:

I have the form of Order submitted by Ms. Hirsch. The form is generally acceptable. However, the one area of concern that I have is the time period for the award of contracts described in Paragraph 2b. I would like to discuss this more fully with the Mayor and Council and the auditor to make sure that the 45 day time period is adequate. You will recall that you mentioned that we could discuss this more extensively if it presented a problem.

I would have no objection to your signing the Order as long as it is understood that an adjustment could be made in this time frame if necessary.

Very truly yours,

RICHARD P. CUSHING

RPC:jw

cc: Guliet D. Hirsch, Esq.
Mr. Philip Caton
Mayor & Council, Town of Clinton
R. Dale Winget, Esq.
Benjamin L. Serra, III, Esq.
Mt. Laurel Committee (to be distributed by Lois Terreri)

2nd copy

Judge Skillman

R.Dale Winget
P.O. Box 968
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Attorney for Ruland, Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
HUNTERDON/MIDDLESEX COUNTY
DOCKET NO. L-019063-84
(Mount Laurel II)

CLINTON ASSOCIATES,	:	OBJECTIONS OF RULAND, INC. TO THE PROPOSED SETTLEMENT AGREEMENT
PLAINTIFFS,	:	
vs.	:	
TOWN OF CLINTON, ET ALS.	:	
DEFENDANTS.	:	

TO: THE HONORABLE STEPHEN SKILLMAN,
JUDGE, SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY COURT HOUSE
NEW BRUNSWICK, NEW JERSEY 08903

Dear Judge Skillman:

Please accept this letter and attached report as the response of Ruland, Inc., owner of property designated on the Tax Map of the Town of Clinton as Block 29, Lot 8-C, to the Notice of Proposed Settlement filed in the above entitled and numbered cause, copy of which has been served on me as attorney for said land owner. Said property is within Tract "B" as described in the Master Plan Update and within the proposed new R-1-A Zone.

I should say at the outset that Ruland had no objection to the proposed settlement, as originally constituted. It does object, however, to the proposed modifications of that settlement which were occasioned by the Report on the Compliance of the Town of Clinton with Mount Laurel II, dated August, 1985, prepared by Philip B. Caton, AICP, hereafter referred to as "Caton Report", at the request of Your Honor.

As the Court is no doubt aware, the Town of Clinton has undertaken to revise not only Tracts "C" &"G" (to respond to the low and moderate housing need), but also to revise the zoning on every other vacant and developable tract of 5 acres or more in the Town (excepting Tract A which is to remain the same - Industrial). This would seem to be consistent with the decision in Mount Laurel II (Southern Burlington County, N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) wherein it was stated:

> Municipalities may continue to reserve areas for upper income housing, may continue to require certain amenities in certain areas, may continue to zone with some regard to their fiscal obligations: they may do all of this, provided that they have otherwise complied with their Mount Laurel obligations. (at page 260)

Mr. Caton is concerned, however, with the impact the proposed revisions in other zones will have on the Town's ability to meet its fair share of the Mount Laurel housing need. Caton Report, at p.36. Mr. Caton's "concern" has resulted in his recommendation that the proposed zoning ordinance revisions which the Town had heretofore adopted should be amended in several respects, including amendment of the R-1-A zoning concept in one of two ways: (See page 39 of Caton Report).

(1) leave the R-1-A zoning essentially intact with the addition of a mandatory set-aside requirement; or

(2) leave the R-1-A zone district free from any lower income housing requirement but allow a net density of 4 dwelling units per acre or a gross density of 1.4 dwelling units per acre.

The Town of Clinton, following receipt of the Caton Report, has opted to implement the second approach, and has revised the proposed amendment to the Town of Clinton Land Use Ordinance, Article VII, Section 88-52, G, so as to restrict the utilization of the Tract B properties, which are in the growth area established by the State Development Guide Plan and which are served by public sewers and water, and to impose upon them development requirements which are so onerous or burdensome as to make development thereof unfeasible.

Meanwhile, the Town has allowed Mount Laurel units on the Plaintiff's property, which is outside the growth area and in an environmentally sensitive area, at a net density of 12 dwelling units per acre.

It should be noted here that Ruland initially appeared before the Town Planning Board on December 7, 1982, for an informal discussion concerning rezoning of its tract so as to

permit cluster development. On March 7, 1984, it again established contact with the Town to request the opportunity to present its tract for Mount Laurel housing consideration. There were various discussions with Town officials and its professionals in the following months and extending to the time of adoption by the Planning Board of the proposed ordinance amendments, during which time consideration was given to intervening in the present action. However, as a consequence of the good faith efforts of the Town and its professionals, and with some input from Ruland and its professionals, a result was obtained which was mutually acceptable to all (except Mr. Caton). The result is reflected in the proposed ordinance.

In effect, Ruland is now being penalized for having sought to make a good faith effort to resolve out of court, its zoning matters. For the Town, working with its consultants, had agreed to a proposal for the mutual benefit of all concerned, only to turn its back on the land owner when confronted with the options presented by Mr. Caton.

I will attempt hereafter, without unduly repeating what is set forth in the Caton Report and in the 1984 Master Plan Update, dated December 4, 1984, prepared by Elizabeth C. McKenzie, P.P. hereafter referred to as the "McKenzie Report," to point out what I consider to be errors in which this Mount Laurel Court should be interested in its analysis of the compliance technique here employed. I call attention to the attached Planner's Report prepared by R.J. Tindall and Mary Winder, both professional planners, which succinctly makes a case for approach #(1) enumerated above which is one of two primary approaches which we urge upon the Court. The other approach is to leave the proposed relevant section of the ordinance in the form in which it was originally adopted.

On the basis of Mr. Caton's analysis, he determined the Fair Share of the Town of Clinton for compliance by 1990 to consist of 105 units. Caton Report, p.9. The Master Plan Update calculated the Town's lower income obligation by 1990 to be 90 units. The compliance program embodied in the Master Plan Update provides for only 69 of the 90 units, or a shortfall of 21 units from the Update or 36 units from Mr. Caton's calculated need. The Master Plan Update suggests that the need for the "21" remaining units would be better addressed near the end of the decade (when there would be no more available land?).

The Town of Clinton, in proposing to provide for only 69 Mount Laurel units, leaving a shortfall of at least 21 units, attempts to justify that as an "adjustment to its fair share" as a reward for having negotiated a settlement and having adopted a proposed form of ordinance after having been sued by the Plaintiff. As Mr. Caton observes, at page 20 of his Report, the

real question is whether a fair share adjustment of 30-36 units is warranted. Finally, he allows for 20% adjustment which reduces the Fair Share number to 81-86 units, a short fall of from 12 to 17 units. Caton Report, p. 22.

Even the reduced figures are suspect from several perspectives. For example, the Town's proposal to provide for the majority of its Indigenous Need through a program of rehabilitation of deteriorated housing (11 units) was not well supported as no such plan had yet been formulated. Caton Report, p. 30. Moreover, he pointed out, at page 31, that no municipality can be guaranteed public funding for housing rehabilitation

Another 4 units were to be picked up, according to the Master Plan Update, by creation of accessory apartments. Again no administrative plan had been worked out and it was acknowledged that the conversions would likely involve moderate, not low income tenants. Caton Report, p. 32.

Thus, if either or both of the latter two programs failed, the short fall would be even greater than projected. Mr. Caton further points out there is a question as to whether or when development in either of the two office/business zones (Tracts "E" and "F") along the northerly side of Route 31 would occur, without which development there would be no financial contribution to the proposed Clinton affordable housing trust fund. Caton Report, p. 36.

Mr. Caton suggests that tracts "D" and "H, both of which are proposed for rezoning to office/business, should be considered to make up the shortfall of 21 Mount Laurel units he has determined exists. (Caton Report, pp. 37,38). It should be noted that the Town's planning consultant, Elizabeth C. McKenzie, P.P., has recommended Tract D, which lays along the southerly side of Route 31, for office development because of traffic hazards in the so-called "dead man's curve" area and the demand of prospective purchaser/developers which create a very real prospect that office or business use is what the property will be used for. (McKenzie, p. 44) The property has no access or frontage except on Route 31. Tract H is outside the growth area in the extreme North end of Town and is contiguous to a Highway Commercial zone in Clinton Township running along Route 31. (Planner's Report, Clinton Associates v. Town of Clinton, et al., prepared by Elizabeth C. McKenzie, P.P. August 30, 1984).

Thus, it would appear that neither Tract D nor Tract H should be considered very strongly in picking up any shortfall, except and unless no other viable sites are available.

Moreover, as is also pointed out in the McKenzie report, due

o its location, its accessibility, its history, and its development, Clinton is essentially the hub of northern Hunterdon County, and functions as a service and business center for not only its own residents, but also for the burgeoning population of the surrounding municipalities. (At page 1) However, the downtown area is plagued with problems of traffic congestion and parking. It is reasonable to surmise that some of the burden for commercial services could be accomodated in Tracts D & H if they are not residentially zoned.

Finally, Mr. Caton is concerned with the proposed zoning of Tracts B and I, both of which are proposed to be rezoned in a new R-1-A zone in which single-family and single-family attached housing would be allowed utilizing a clustering concept. (See Caton, p.38) He perceives that such zoning would place the Mount Laurel housing zones (PRD-Tract C and PUD-Tract G) at an economic disadvantage. A cursory review of the respective zones will show that such is not the case.

In the first place, a portion of Tract G is set aside for commercial use. None of Tract B is commercial. The housing standards in the R-1-A zone are greater than in the PUD/PRD zones: for example you can build only single-family detached or single-family attached in R-1-A, whereas in PUD you can have only multi-family and in PRD a strip of single-family homes along the ntiguous single-family zone is proposed with the remainder to e multi-family. Multi-family buildings may contain as many as 24 dwelling units and be as many as three stories in height. Laundry facilities may be provided in each building. In the R-1-A zone the maximum number of units per building is 8, each dwelling unit and each combined complex of dwelling units shall have compatible architectural themes with variations in design, varying unit widths, staggering unit setbacks, changing roof lines, etc. Each unit must have its own laundry and dryer facilities and at least a one-car garage.

There are numerous other restrictions and cost-generating provisions contained in the R-1-A zoning ordinance proposal which are not applicable to the PUD and PRD Mount Laurel housing elements, and which would prevent the R-1-A from competing with the PUD and PRD housing units. As is pointed out at page 41 of the McKenzie report, the probability that a major development on Tract B would necessitate the widening and improvement of Leigh Steet is a substantial deterrent to the construction of affordable housing at a density level which reasonably reflects the tract's environmental limitations.

There is nothing in the Mount Laurel case to remotely suggest that there will not be other developments within a municipality which will be competing in the same market place as e market-rate units upon which the Mount Laurel obligation may

have been placed, for whatever reason. As a matter of fact, we do not at this moment have any idea what the market-rate units to be developed in either the PUD or PRD zone will be like in size or in price. Neither do we know what market will be targeted by developers in the R-1-A zone.

The only concern, as enunciated by the Court in Mount Laurel II., at page 202, is or should be:

> Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation to satisfy the constitutional requirement;.....Further, whether the opportunity is "realistic" will depend on whether there is in fact a likelihood...that the lower income housing will actually be constructed.

Indeed, the Municipal Land Use Law, N.J.S.A. 40:55D-2, states the purposes of the Act a being, in part, "to provide sufficient space in appropriate locations for a variety of ---residential---uses and open space, both public and private---in order to meet the needs of all New Jersey citizens---." In the State Development Guide Plan, at page 86, the overall strategy of the Guide Plan is declared to be within growth areas to "encourage housing development in proximity to jobs, commercial areas and public transportation," and "provide a variety of housing types so that households of varying sizes and incomes can find suitable housing---."

Mr. Caton is so concerned with this aspect of the proposed R-1-A zoning that he expends considerable time and effort (See page 39) in comparing the net density (excluding flood plain lands) of Tract B with the gross densities of the PUD and PRD zones. If, in fact, we were talking about the same types of housing and identical requirements for improvements, as well as similarly situated tracts, perhaps there would be some merit to his contention. But such is not the case. He is comparing apples to oranges. The issue is whether the Mount Laurel housing will realistically be built on Tracts C & G, not whether developers in other zones may or may not be able to produce competitive market value units.

Continuing for a moment on the subject of net densities versus gross densities: gross density is almost equivalent to net in both the PUD and PRD, unless you factor in the commercial area in the PUD. And the gross density of 2.6 units in the R-1-A is hardly equivalent to the gross densities in the PUD and PRD zones. The Town's planner and planning board, as well as the owner/developers of the Tract B properties knew and understood

the economic realties of developing the respective lands and premises. There were many considerations. The 2.6 D.U. density was determined to be a minimum below which it became unfeasible to develop, regardless of what considerations prevailed to influence development in other tracts for other uses.

Mr. Caton did suggest, at page 39, that one approach to correct the inequity which he perceived was to leave the R-1-A zoning essentially intact with the important addition of the mandatory set-aside requirement so as to provide for the perceived shortfall of 21 to 24 Mount Laurel units. As has been noted above, Ruland offered in March, 1984, to make its property available for that purpose, and it is still available if the municipality and the Court deem that appropriate.

In view of the mandate found in the Mount Laurel II opinion, at page 244, generally to channel the entire prospective lower income housing need in New Jersey into growth areas, one has to wonder if the proposed settlement here, which results in a significant number of the Mount Laurel units being provided outside the growth area (Tract G), should be approved at all when there are other lands (such as Tracts B & D) which lay within the growth area and are available albeit with some constraints. See also footnote 13 to the Mount Laurel II opinion for a statement from the State Development Guide Plan on this point.

According to the Court in Mount Laurel II, there is a need to "overzone" for lower cost housing in order to achieve "any likelihood" of its actually being built. At page 270. It may well be that the Tract B properties, particularly that of Ruland, should be looked at not only because of the shortfall detected by Mr. Caton, but also because of the need to "overzone" in order to assure that the housing will occur.

The Mt. Laurel Court, at page 284, said: "The master will work closely not only with the governing body, but with all those connected with the litigation, including Plaintiffs, the Board of Adjustment, Planning Board and interested developers. [emphasis supplied] In this case Ruland, through its attorney and planning consultant, met with Town officials, its attorney and planning consultant over an extended period of time to work out the zoning problems to their mutual satisfaction. When the Town submitted a proposal for rezoning of the Tract B properties to R-1-A, Ruland found such to be acceptable and thus did not intervene in the instant action. In spite of the fact that these negotiations took place and presumably were made known to the master, he never made any effort to work with Ruland or its professionals, as might have been contemplated, in order to determine the consequence of his recommendations.

In summary, Ruland contends that its proposed development is

not likely to be competitive with the PUD and PRD market units because the housing types (single-family attached and multi-family) will be different, as will an array of standards and conditions applicable to each. Problems incidental to each tract will be different. Some Mount Laurel units could be accommodatd very well on Ruland's property without increasing density while at the same time cutting down on land coverage because of the smaller units that would be built.

Respectfully submitted,

R. Dale Winget

Dated: October 16, 1985 R. Dale Winget

cc: Richard Cushing, Esq. (w/enc)
Guliet D. Hirsch, Esq. (w/enc)
Philip B. Caton, AICP (w/enc.)
Middlesex County Clerk (w/enc.)

PLANNERS' REPORT

Response to the "Report on Compliance on the Town of Clinton with Mount Laurel II" by Philip B. Caton, AICP for the Honorable Stephen Skillman, JSC, Superior Court of New Jersey, Middlesex County Courthouse.

Prepared October 4, 1985

R.J. Tindall P.P. 1492
Mary Winder P.P. 1921

TABLE OF CONTENTS

EXECUTIVE SUMMARY

We recommend that the Ruland Tract, which comprises the majority of Tract B as identified in the Town of Clinton Master Plan Update, be rezoned R-1-A as proposed with the addition of a mandatory set-aside requirement.

The Compliance Report for the Town of Clinton indicates that there is a minimum shortfall of 12-17 units of low and moderate income housing.

A revised site plan has been prepared that shows 24 Mount Laurel units and 100 market units. (The revised concept plan accompanies this report.) This amount would more than make up for the shortfall.

The site lies within a Growth Area as designated in the State Development Guide Plan and has all necessary infrastructure available.

Access is provided by means of Leigh Street which has been improved from the center of the Town to the site.

The capacity of the Town of Clinton Sewerage Treatment Plant was considered in the Master Plan Update and was found to be adequate to serve development on this site at a gross density of 2.6 dwelling units per acre. A trunk line traverses the site.

Potable water is available via a water main which runs along Leigh Street.

RULAND TRACT PROPOSAL - TOWN OF CLINTON

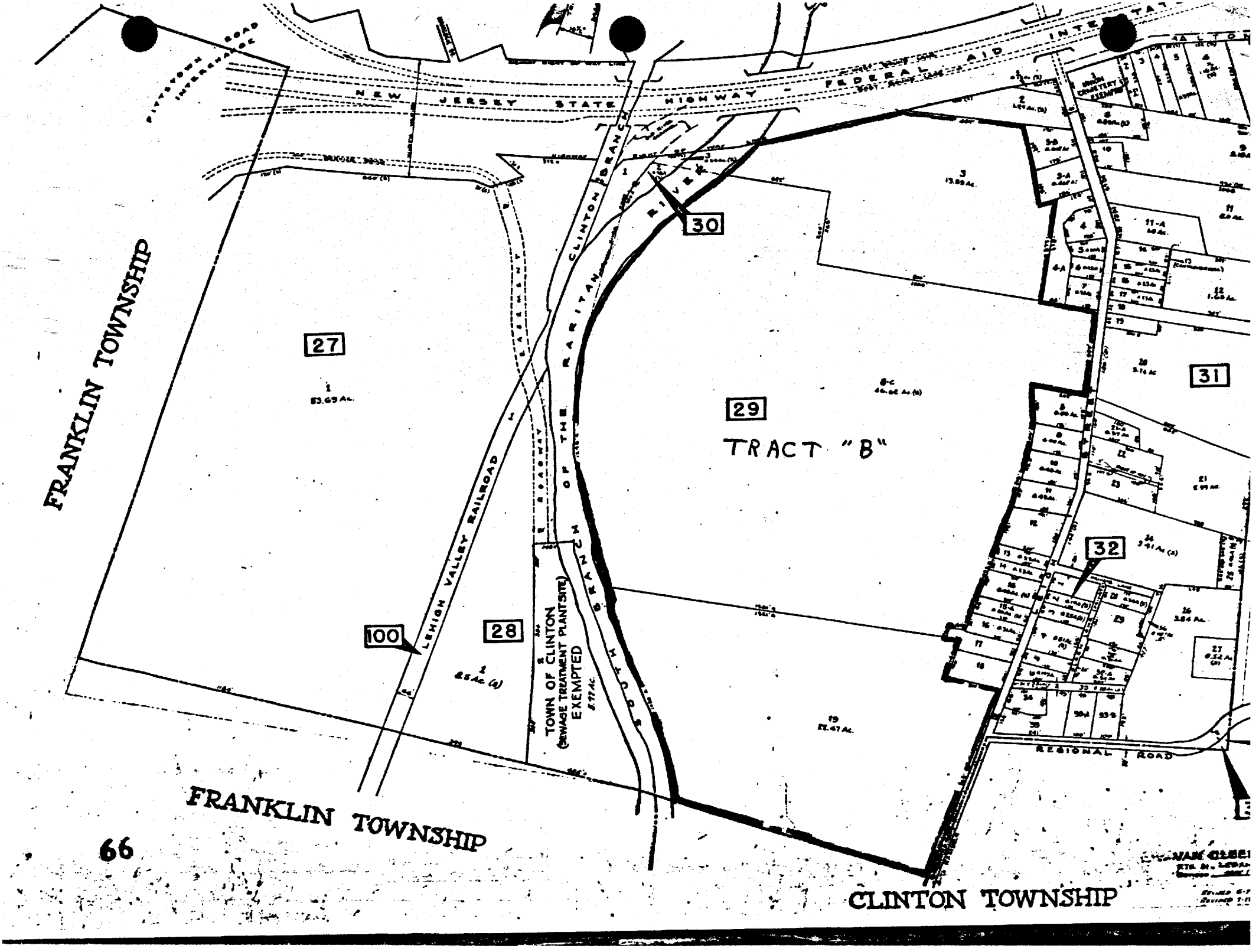
Introduction

The subject of this report is the proposed zoning of the Ruland Tract in the Town of Clinton (Lot 8C, Block 29 and Lot 2, Block 30). This tract comprises most of the area identified as Tract B in the Town of Clinton Master Plan Update of December 1984 and the Report on the Compliance of the Town of Clinton with Mount Laurel II prepared August 1985. (see attached map)

The tract was formerly zoned R-1 and R-2. The Master Plan Update and associated implementing ordinance recommended a new zoning category to be known as R-1-A. This category would permit single family detached and attached houses at a gross density of 2.6 dwelling units per acre. Subsequently, the Compliance Report recommended that Tract B be returned to the R-1 and R-2 zoning classifications albeit with the addition of an option that would permit clustering.

In conjunction with the master planning and zoning activities in the Town of Clinton, a conceptual plan was prepared for the Ruland site that complied with the new proposed R-1-A zoning. The concept plan showed 122 townhouses. No housing was proposed for low and moderate income households as the proposed R-1-A zoning did not contain any Mount Laurel set-aside requirement.

This report recommends that the R-1-A zoning be retained for the Ruland tract and that a set-aside, or mandatory contribution agreement, be added, if these measures are needed to ensure that the Town of Clinton will be able to achieve an acceptable compliance plan.


NEW JERSEY STATE HIGHWAY - FEDERAL AID INTERSTATE
FRANKLIN TOWNSHIP
27
1
53.69 Ac.
LEHIGH VALLEY RAILROAD
EASEMENT
SOUTH BRANCH OF THE RARITAN RIVER
CLINTON BRANCH
30
29
TRACT "B"
31
32
100
28
1
6.6 Ac. (±)
TOWN OF CLINTON
(SEWAGE TREATMENT PLANT SITE)
EXEMPTED
5.77 Ac.
REGIONAL I ROAD
FRANKLIN TOWNSHIP
CLINTON TOWNSHIP
66

Regional Housing Market

The Clinton area is experiencing increasing development pressures as a result of the pending completion of Interstate 78 through the Watchung Reservation to the Garden State Parkway and Newark. The completion of this interstate link is increasing the demand for housing, office-research facilities and commercial development all along the Interstate 78 corridor.

In addition to the development of the EXXON research facility in Clinton Township; new office buildings are under construction in Lebanon Borough; and, Merck Pharmaceutical is planning a research and office complex on County Route 523 in Readington Township. The intersection of Interstate 78 and County Route 523 at Oldwick in Tewksbury Township is also zoned for office development. Foster Wheeler has zoning for an office park in Union Township on Interstate 78 to the west of Clinton; the Town of Clinton has zones along State Route 31 for office development; and, the Town is permitting office development on a tract which is being rezoned PRD in response to a Mount Laurel II suit.

All this office development will impact the market demand for housing in the region and specifically in the Town of Clinton. Several multi-family developments are under construction in the region and several are proposed. The recent sale of townhouses at Beaver Brook by Lanid emphasizes the strong demand for quality market housing in the region. It is reported that the first section of units put on the market were sold within a matter of a couple of hours.

Clearly, there is a strong market for housing, and particularly multi-family housing, in the region. The proposed development of the Ruland tract in townhouse development at a gross density of 2.6 dwelling units per acre was

a response to this demand. An Attached Housing Market Study for Clinton, New Jersey prepared by Fulton Research will be supplied, in conjunction with this report, detailing the demand for market housing in the region.

Description of the Ruland Tract

The Ruland tract lies between Leigh Street and the South Branch of the Raritan River. Lot 8C in Block 29 is the major parcel and consists of 46.62 acres. Lot 2, Block 30 is a 0.78 acre parcel across the river from the main tract.

The site is a cultivated farm with cash crops or hay on approximately one third of the site. The balance of the tract is a flood plain for the South Branch River and is currently undergoing revegetation via successional growth. It appears that this land had been pastured as recently as eight or ten years ago.

Adjoining vacant land consists of similar terrain with flood plain lands. The parcel of land to the north has a large pond that is located between the Ruland tract and Interstate 78. The tract to the south was an operating farm and may have utilized a portion of the Ruland tract for pasture.

To the west immediately across the river is the Town of Clinton Sewerage Treatment Plant and an active farm. A sewer trunk line traverses the site and crosses the river to the treatment plant.

To the east there has been subdivision activity along Leigh Street in recent years and the land has been subdivided into approximately 15,000 square foot lots for residential development.

Proposed Development of the Ruland Tract

As a result of the Town's approval in December 1984 of proposed amendments to the Town of Clinton Land Use Ordinance, the owners' planning consultants prepared a concept plan for development of the Ruland tract. (The concept plan accompanies this report). The ordinance permits a density of 2.6 dwelling units per gross acre in the R-1-A district that contains the Ruland tract.

The concept plan proposes one hundred and twenty two townhouse units on the 47.4 acre tract. The gross density is 2.6 units per acre, in keeping with the ordinance regulations, and the net density is less than 8 units per acre. The plan complies with all the requirement of the R-1-A zone.

Further, the plan recognizes the N.J.D.E.P. restrictions on development in flood hazard areas that stipulate a maximum of 20% fill either in the form of buildings or regrading. Several buildings are proposed within the flood hazard area, but no fill or grading for parking would occur. All ground floor elevations would be minimum of one foot above the 100 year flood hazard elevation. At the time of highest flood level, approximately sixteen units would have water at the edge of the garage and around the foundation walls.

Infrastructure Availability

Sewerage is available to the site via the trunk line which traverses the property. The capacity of the Town of Clinton Sewerage Treatment Plant was taken into consideration during the preparation of the Master Plan Update and associated zoning amendments, and found to be adequate to

permit a rezoning on this area to R-1-A with a gross density of 2.6 dwelling units per acre.

Potable water is available via an existing water main on Leigh Street.

Access is available to Leigh Street. This road has been improved from the site to the center of town.

Compliance Report Recommendations

The Compliance Report prepared by Philip B. Caton indicates that the Town of Clinton recommended that the zoning for this site continue as R-1 and R-2 even though the Town of Clinton needs "to provide the realistic opportunity for an additional 12-17 units through some viable mechanism." (CR at 37) This estimated shortfall has been calculated after permitting a 20% reduction from the Caton fair share range of 99-105 units in recognition of the Town's voluntary compliance. Further, the number 12-17 is predicated upon the Town's firming up it's proposals with respect to both a housing rehabilitation program and an accessory apartment conversion program. These two methods of providing housing were credited with supplying a potential 11 and 4 units, respectively. Failure to move either or both of these housing programs to the extent proposed in the Town's compliance package would increase the shortfall number beyond the Caton estimate of 12-17.

In any event, given the shortfall, Caton notes that "accordingly, one alternative open to the Town is to rezone an additional tract(s) for residential development with a mandatory set-aside for low and moderate income units." (CR at 37) He further notes that "It is not the intent of this analysis to specify which mechanism and what location would be most appropriate."

However, the suggestion is made that tracts such as D and H (see attached map), which are currently zoned residential, R-1 and R-2 respectively, be considered for inclusionary housing before they are rezoned to office use as proposed in the Master Plan Update. (CR at 38)

The Master Plan Update had recommended the rezoning of tracts D and H to office use in light of the growing demand for office and commercial space in the Clinton area as evidenced, in part, by the interest of several potential purchasers in this type of development. (MPU at 44) Further, the location on State Route 31 makes these tracts particularly suitable for non-residential development.

Coincident with the recommendation to use tracts D and H for residental development with Mount Laurel housing, the Compliance Report recommends that the zoning on Tracts B and I be reduced from the 2.6 dwelling units per gross acre recommended in the Master Plan Update and associated draft ordinances, and in fact, returned to the original R-1 and R-2 zone densities albeit with the addition of a cluster provision. Effectively, this would result in a gross density of approximately 1.4 dwelling units per acre, and a corresponding net density of 4 dwelling units per acre, based upon the Caton proposed development capacity calculation for Tract B of 117 dwelling units on the 84 total acres and 29 developable acres. (CR at 40)

In essence, the report suggests an upzoning of Tracts D and H, so that density bonuses may be provided for Mount Laurel housing, and a downgrading of the densities proposed for Tracts B and I. This balancing action would achieve two ends. First, it would keep the zoned development capacity of the Town at the figure that the Master Plan Update indicates is manageable in terms of sewerage capacity. Secondly,

it would reduce the proposed densities on Tracts B and I to a level at which "such development is not of a type which will compete with the market units on the sites selected for Mount Laurel II projects." (Caton at 38 and Master Plan Update at 42)

In effect, the recommended change would drop the zoned net densities on Tracts B and I to levels significantly lower than the net densities on Tracts C and G that the Town has proposed rezoning for residential development with mandatory 20% set-asides of housing for low and moderate income households. The proposed net densities on those tracts being 7.2 and 12 dwelling units per acre, respectively. Presumably, any rezoning of Tracts D and H for inclusionary housing, as proposed in the Compliance Report, would also be at net densities in the 7 to 12 units per acre range so as to provide a bonus to off-set the Mount Laurel housing requirement.

Proposed Tract B Rezoning for Mount Laurel

We recommend that the R-1-A zoning proposed for Tract B be retained and amended to include a mandatory 20% set-aside requirement. This would provide a straight forward response to the problem of making up the shortfall in the Mount Laurel obligation, and at the same time, would be consistent with the uses and densities proposed for the various tracts in the Master Plan Update and associated zoning amendments.

Imposition of a set-aside requirement would not increase the number of units that could be developed on the tract. The Master Plan Update assumed a 2.6 dwelling unit per gross acre for Tract B, and in assessing that projected development density in conjunction with all other proposed use and den-

sity changes, found that amount of development to be supportable with respect to community facilities and utilities.

Impact on Sewer Capacity

In the Master Plan Update all the proposed land use changes were evaluated against the sewerage capacity that is expected to be available in the Clinton sewerage treatment plant when the upgrading of that plant, which is currently underway, is completed. The proposed rezoning of Tracts B and I to R-1-A was specifically addressed. "Based on the assumption that residential development could, on average, demand sewerage treatment at the rate of 300 gallons per day per unit, it is recommended that the 110 acres in the R-1-A zones be developed at a density of 2.6 dwelling units per acre, for a total of 283 dwelling units utilizing about 85,000 gallons per day of sewerage treatment capacity." (MPU at 56)

Since the development capacity of Tract B zoned R-1-A is the same with or without Mount Laurel units, it is clear that adding a mandatory set-aside requirement to the R-1-A zoning will not pose any change in the impact on the sewerage system. The downzoning recommended in the Compliance Report for Tract B was related, at least with respect to utilities, to maintaining the same total Town-wide development capacity ceiling established in the Master Plan Update, if Tracts D and H were upzoned for Mount Laurel housing as recommended in the report.

Impact on School Capacity

The picture with respect to school capacity is less clear, primarily, because of the great uncertainty involved in projecting possible numbers of school children when the specifics of future housing development are not yet known.

Specifically, pupil generation rates are based on housing types and bedroom configurations, and accordingly, when the particulars of future housing development are not yet known, measures of school impact are necessarily broad brush.

The Master Plan Update acknowledges these projection problems, and therefore, indicates that the number of additional grade school pupils will probably fall somewhere in the relatively broad range between 202 and 293. Given this degree of projection uncertainty, the Master Plan Update acknowledges that "The capacity of the Clinton School could well be exceeded if the Town were developed in accordance with the recommendations of the Master Plan Update. However, the excess enrollment might not necessarily be unmanageable, according to the board of Education. For example, it is possible that additional classrooms could be constructed to serve a modest over-enrollment." (MPU at 59)

Clearly, any minor differences in the generation of school children that might result from the inclusion of Mount Laurel housing in the R-1-A zone, as compared with all market housing, is of no consequence given the uncertainty of the collective impact of future development on the school system.

Mount Laurel Dwelling Units

Application of R-1-A zoning with a 20% set-aside to the Ruland parcel, which comprises almost all the developable land in Tract B, would yield 24 dwelling units for low and moderate income households and 100 market units. This amount of Mount Laurel housing would more than meet the 12-17 unit shortfall that must be addressed if the Town is to be in compliance. Additionally, it would leave a margin to cover any additional shortfalls that may arise in the

still problematic rehabilitation and accessory apartment programs.

Housing types permitted in the R-1-A zone would also have to be broadened to include multi-family housing. As proposed the R-1-A zone permits single family detached and single family attached dwellings. Greater latitude in size and building type is necessary if the provision of Mount Laurel housing is to be economically feasible for the developer. Specifically, it will be necessary to include apartments as well as townhouse units.

An amended concept plan indicating twenty four clustered Mount Laurel units and 100 market units accompanies this report. The layout of buildings, parking and roadways is essentially the same as in the plan for 122 market units. Ten townhouse units at the edge of the flood plain have been removed and twenty four Mount Laurel apartment units have been located in the foot print space of twelve townhouse market units near the Leigh Street entrance.

The attached concept plan is subject to modification, and is provided here primarily for informational purposes. It is assumed that the actual layout of the development and the location of the low and moderate income units would be subject to decisions to be made by the Town of Clinton Planning Board and the developer.

This development could be undertaken as soon as approval could be granted. Completion could be expected in 1987 as a project of this scale could easily be built in a two year period. The low and moderate income units could be constructed concurrently with the market units and can be phased so that they are completed in conjunction with each section of the market units.

Comparative Density Standards for Mount Laurel Housing

A gross density of 2.6 dwelling units per acre and a net density of 8 dwelling units per acre is, in fact, relatively low for this tract, if it were to be developed with Mount Laurel housing. The proposed net density for the multi-family portion of Tract C, identified for Mount Laurel housing, is 10 multi-family units to the acre. This is 2 units higher than the 8 that is proposed for Tract B, if it were zoned R-1-A with no Mount Laurel housing requirement.

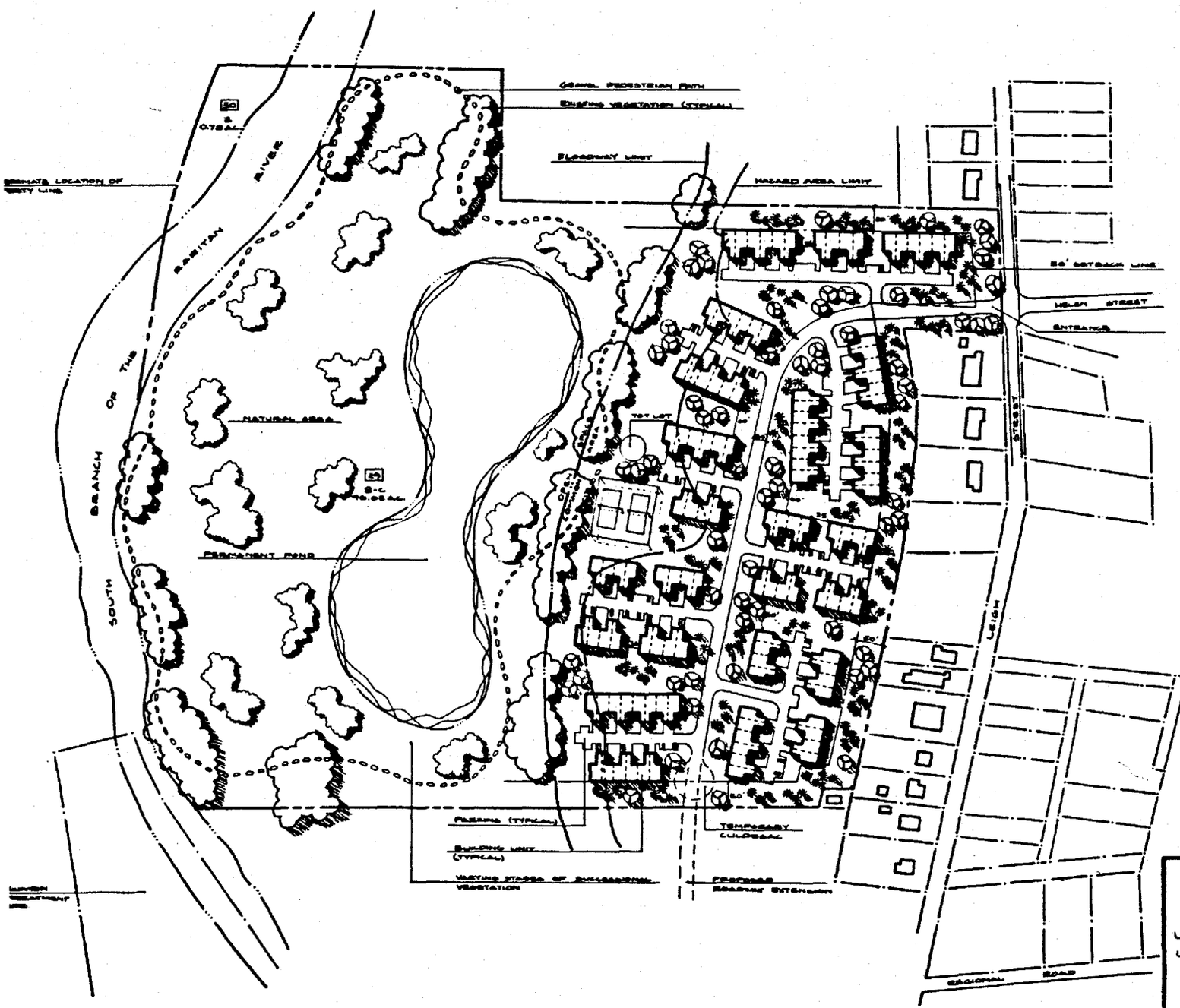
The other proposed Mount Laurel housing site, tract G, has a net density of 7 dwelling units to the acre in the residential zone. This relatively low net density for an inclusionary housing site has been set in recognition of certain environmental constraints on the site associated with the types of soils. However, office development is also proposed for this site partly to off-set the financial burden to the developer of providing Mount Laurel housing on this site.

In addition to the financial problem of providing Mount Laurel housing at a conservative net density of 8 dwelling units to the acre on the Ruland site on tract B, this proposed density does not fully recognize the value of the extensive open space acreage that exists in the flood plain areas of the site. This permanent open space area can effectively off-set, visually and recreationally, net densities higher than 8 dwelling units to the acre on the developable portion of the site.

In-Lieu Contribution

The Clinton Land Use Ordinance provides that, under certain circumstances, a developer of a Mount Laurel tract

may contribute $15,000 per required low and moderate income housing unit in lieu of construction thereof. If an in-lieu contribution were made for the Ruland tract, it would remove twelve ground area foot prints and decrease the development density. We suggest that this option be open to the developer of the Ruland tract and a $15,000 contribution per Mount Laurel unit be used to finance the provision of low and moderate income housing elsewhere in the Town.



LEGEND

PARCEL AREA TOTAL	(Based on tax maps)	47.40 Ac.
PERMITTED UNIT TOTAL		123
PERMITTED DENSITY		2.6 Units/Ac.
PROPOSED UNIT TOTAL		122
PROPOSED DENSITY		2.57 Units/Ac
PARKING SPACES INCLUDING GARAGE		303

Graphic Scale 1"=100'

0 50 100 200 400

CONCEPT SITE PLAN

FOR RULAND INC.

LOT 8C BLOCK 29
LOT 2 BLOCK 30

TOWN OF CLINTON HUNTERDON CO., N.J.

LAND PLAN CONCEPTS
P.O. BOX 248 PENNINGTON, N.J.
609-737-2284 08534

LARGE MAP

SUPERIOR COURT OF NEW JERSEY

Chambers of Judge Stephen Skillman

Court House, New Brunswick, N.J.

Marilyn:

This can be

filed away —

FILED

NOV 14 1985

STEPHEN SKILLMAN, J.S.C.

BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
(609) 924-0808
Attorneys for Plaintiff

CLINTON ASSOCIATES, Plaintiff vs. TOWN OF CLINTON, et al., Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION HUNTERDON/MIDDLESEX COUNTIES (Mt. Laurel II) Docket No: L-019063-84 C I V I L A C T I O N ORDER APPROVING SETTLEMENT AND PROVIDING CONDITIONS FOR ENTRY OF JUDGMENT OF COMPLIANCE AS TO TOWN OF CLINTON

This matter having been opened to the Court by the Town of Clinton and Clinton Associates on motion for approval of settlement and entry of a judgment of compliance with respect to the Town of Clinton; and the Court having entered an Order setting a hearing date and approving the form of notice of settlement on September 12, 1985; and the required notices having been issued and the Court having held a hearing on

settlement on October 23, 1985, October 24, 1985, October 25, 1985 and October 28, 1985; and counsel for objectors Julius and Mildred Skerbisch, Benjamin Luke Serra, Esq., as well as counsel for objector Ruland, Inc., R. Dale Winget, Esq., having appeared and offered expert testimony and legal argument in opposition to the settlement; and the Court having considered the testimony, evidence and arguments of counsel, and having issued a decision from the bench on October 28, 1985,

IT IS on this 4th day of November, 1985 ORDERED that:

1. The January 22, 1985 settlement agreement between Clinton Associates and the Town of Clinton as modified by letters of September 11, 1985, October 17, 1985 and October 22, 1985 is hereby found to be, in basic concept, fair and reasonable;

2. The Town of Clinton will be issued a judgment of compliance upon agreement to comply with conditions listed in paragraphs a. and b. of this Order and adoption of ordinance amendments in accordance with paragraphs c. and d. of this Order within 30 days of entry of this Order.

   a. The Town of Clinton will complete a housing survey sufficient to identify units appropriate for rehabilitation or accessory apartment conversion within 5 months of the entry of this Order. This survey shall include the identification of specific properties appropriate for rehabilitation or

conversion, the acceptance of applications from owners of said properties, the identificaiton of work or improvements required for each identified unit and the prioritization of applications.

b. Once the housing survey is completed, monies which are received by the Housing Rehabilitation, Conversion and Assistance Fund will be dispensed in the following manner. Within forty-five (45) days of receipt of funds from any developer, the Town of Clinton shall enter into contracts for the completion of rehabilitation or conversion work. The work so authorized by contract must be completed within an additional three months of the date of the contract.

c. The ordinance amendments entitled "Amendments to Town of Clinton Land Use Ordinance" (reflecting Mt. Laurel Committee responses to Caton recommendations and concensus of October 2, 1985 meeting), in evidence as J-9 at the hearing, with the following listed revisions, shall be adopted by the Mayor and Council of the Town of Clinton after public hearing within 30 days of the entry of this Order. The ordinance shall be revised as follows prior to adoption:

(1) Townhouse units shall be listed as a permitted use in the multi-family residential development areas of the PUD and PRD zones.

(2) Sections 88-53E, 88-54E, 88-55E, 88-57E, 88-58E and 88-56F shall be revised to require the bonus fee to be paid at the time the building permit is issued for the use.

(3) Section 88-52F(2) shall be amended by the addition of the following language:

> "In the event that low and moderate income units cannot be sold or rented, as applicable, within one hundred twenty (120) days of being substantially completed and offered for sale or rent, any inclusionary developer may apply to the Affordable Housing Board for relief. Such application must provide evidence of the developer's having under-taken an affirmative marketing effort to sell or rent the units. Relief to the developer shall not include exempting the units from the low and moderate income sales prices or rent levels, nor shall relief include exempting the units from restrictions on appreciation allowable upon resale or restrictions on escalation allowable upon re-rental. The Board may allow the developer to sell or rent the subject unit(s) to a household(s) whose income exceeds that otherwise required under this paragraph; provided, however, that in no event shall a low income unit be sold or rented to a household earning in excess of 50% of the median income of the region and in no event shall a moderate income unit be sold or rented to a household earning in excess of 80% of the median income of the region."

d. The ordinance entitled "An Ordinance to Establish an Affordable Housing Board, to Establish a Housing Rehabilitation, Conversion and Assistance Fund, and to Establish the Position of Housing Officer" in evidence as J-16 shall be adopted by the Mayor and Council of the Town of Clinton after public hearing within 30 days of the entry of this Order. The

ordinance shall be revised as follows prior to adoption:

(1) Section IIIC(2)I shall be deleted;

(2) Section IVC(1)(d) shall be revised to limit the administrative use of funds to 18% of the amount collected from developers.

Stephen Skillman, J.S.C.

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WILLIAM C. GEBHARDT
1884-1929

W. READING GEBHARDT
1919-1980

December 10, 1985

Honorable Stephen Skillman
Superior Court Judge
Middlesex County Court House
New Brunswick, N.J. 08903

Re: Clinton Associates vs. Town of Clinton
Docket No. L-19063-84 P.W.

Dear Judge Skillman:

I have Mr. Caton's very comprehensive letter of December 2, 1985. In the meantime, the Town has been in the process of engaging a planning firm that will be conducting our housing survey and income determination and also will be preparing grant applications for State and Federal monies.

In the course of interviewing prospective planners, I have spoken extensively with Mr. Fred Michaeli, the President of Planners Diversified, Summit, New Jersey, who is extremely experienced in the area of housing rehabilitation through governmental funding. He also raised questions about the procedures described in our ordinance along the same lines raised in my earlier letter and in Mr. Caton's letter.

May I take the liberty of suggesting that your Honor sign the Order as is but that we continue to work on the language of the ordinance. I would like the opportunity to have whatever planner we eventually engage to do our grant applications and administer whatever government funds we obtain to carefully review our ordinance to make sure that it is consistent with experience. I would also like him to review Mr. Caton's proposed language.

On the other hand, I am very anxious to get the Order of Judgment signed and a Judgment of Compliance executed since considerable development in Town has been held up awaiting the execution of the Judgment of Compliance.

Very truly yours,

RICHARD P. CUSHING

RPC:jw
cc: Mayor & Council, Town of Clinton
Mrs. Lois Terreri, Clerk
Philip B. Caton, AICP
Ms. Elizabeth McKenzie
Guliet D. Hirsch, Esq.
Benjamin L. Serra, III, Esq.
R. Dale Winget, Esq.

CLARKE & CATON

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Urban Design
Architecture
Housing/Community
Development

342 W. State Street
Trenton, NJ 08618
Tel: 609-393-3553

319 E. Centre Avenue
Newtown, PA 18940
Tel: 215-968-6729

December 2, 1985

Honorable Stephen Skillman
Superior Court Judge
Middlesex County Court House
New Brunswick, NJ 08903

Re: Clinton Assoc. v. Town of Clinton
Docket No. L-019063-84 P.W.

Please get out this letter & return to me with final letter!

Dear Judge Skillman:

I have reviewed Mr. Cushing's letter of November 14, 1985 to your Honor regarding the Town's proposed settlement in the above-captioned matter and in particular the proposed revisions to the Rehabilitation and Conversion Program incorporated within that settlement.

Mr. Cushing did discuss this matter with me prior to asking the Court for the time extensions and he has accurately characterized certain of my observations on the Town's implementation of the rehabilitation program. I am in support of the Town's proposal to extend the two deadlines; however, these modifications alone may not be sufficient to guide the use of the developer contributions to the Town's Fund.

Mr. Cushing's letter outlines a sequential approach to the rehabilitation process which generally reflects the way such a program will likely unfold in Clinton. This letter is not intended to deal step-by-step with that process; rather, it should be sufficient to underscore certain major points which Mr. Cushing makes.

First, although it is important for the Town to proceed expeditiously to implement the rehabilitation and conversion program there are practical limits to the amount of work which it should undertake before securing funding for the program.

I believe Mr. Cushing and I share an understanding of the appropriate scope of that work; namely, to survey the Town's housing stock and occupants to identify those units which constitute Clinton's indigenous need and to conduct exterior inspections (and interior if possible) of those units. It would also be helpful for the Town to attempt to identify those landlords who would be interested in the Conversion program and who have properties appropriate for conversion.

This level of information is sufficient to serve as the basis for an application by Clinton for public funding from the State Department of Community Affairs. The Town should not, for instance, engage in lengthy sessions with lower income households at this stage to explain the contracting procedures and financial implications of the program. This level of detail is more appropriately handled after funding is in hand for the variety of reasons cited by Mr. Cushing (page 2).

Incidentally, his fourth point in this regard is particularly relevant since the DCA recently announced the program guidelines for its Neighborhood Preservation Balanced Housing Program. This program, which is funded through the Fair Housing Act, will provide financial assistance to municipalities for rehabilitation and conversion of units for lower income occupancy.

However, it appears that the restrictions on the resale of units assisted with Fair Housing Act funds will be different from those on units assisted with other DCA money available to municipalities for the same purpose and also at variance with Clinton's Affordable Housing Ordinance. Needless to say, the restrictions on resale will matter a great deal to the owners of the low and moderate income units. Consequently the Town should secure its funding prior to getting too closely involved with any potential recipient.

The division of labor does increase the pressure on the Town during the 45 day period after the receipt of funds from a private developer. I support the Town's request that this period be doubled to 90 days and note that Mr. Cushing is apparently still concerned that even this period is "very tight."

The Town should be able to relieve this tension considerably by properly organizing its bidding and contracting process to be between the home improvement contractor(s) and the lower income household rather than actually including the municipality. This is the manner in which most effective municipal rehabilitation programs are structured. It eliminates the need for the bidding and contracting to conform to the Public Contracts Law thus saving time and money.

The three month deadline for completion should be adequate for most rehabilitation work. As Mr. Cushing correctly observes, many of the contractors in home improvements are small firms. Typically they like to concentrate on one project until it is complete (or substantially complete) then move on to the next rather than trying to work on a multitude of projects simultaneously.

However, there can be a loose end which lingers after the bulk of the work is finished which, for good reason or not takes weeks to be finally completed. This is a standard phenomenon of the home improvement business and should not be a cause of concern to the court. Neither should the Town have to be exposed to a suit for non-compliance in the event such projects take longer than three months to complete.

My suggestion would be to leave the three month deadline but change the requirement from "completed" to "substantially completed." This term is often used in the construction trades as a basis for payment, issuance of Temporary Certificates of Occupancy, etc. and could be determined, if necessary, by any Construction Official or Architect. It retains what I believe to be the essence of the Court's interest in expediting the work without unduly jeopardizing the Town's position.

Upon reflecting on the mechanics of this process it appears that the language in Section IV A (2) of Clinton's ordinance may be too narrow. It requires any funds received from a private developer to be devoted to rehabilitation or conversion work within a specified period of time. It is safely assumed that any public funds awarded to Clinton for this purpose will be encumbered with regulations sufficient to thoroughly protect the public interest.

However, in terms of the compliance period it seems very possible, indeed perhaps likely that the Town will receive public funding for rehabilitation and conversion before receiving developer contributions. This observation is based on Clinton's proceeding to prepare an application for funding from the NJ DCA for submission by January 31, 1986. This date is the deadline for the initial round of municipal applications for funding under the Neighborhood Preservation Balanced Housing Program.

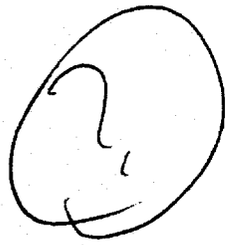
Under both this program and the Small Cities Community Development Block Grant Program (by which DCA administers federal funding to municipalities and counties) the Town may apply for up to $350,000.00 for rehabilitation and conversion assistance. If Clinton were to receive an award near this maximum amount it would be adequate to fully address the entire components of rehabilitation and conversion which are contemplated in the Town's compliance package.

Given this prospect, it is very possible that the most compelling use for the contributions from private developers will be for downpayment assistance for lower income occupants of new units in inclusionary developments. The language of this section should be expanded to permit the utilization of private contributions for either purpose.

Furthermore, if public funding addresses the local need for rehabilitation and conversion a strict time deadline for disbursement of funds for downpayment assistance would be inappropriate. After all, the timing of completion of the new lower income units will depend on the actions of private developers within the housing market. Production of these units may bear no meaningful relationship to commercial development and developer contributions to the Town's fund. Contributions may be deposited and sit for months earning interest before a new unit is completed and a lower income household applies for downpayment assistance.

Accordingly, I suggest the following language be substituted for the second and third sentence of Section IV A (2) of the Town's Affordable Housing Ordinance:

"Within ninety (90) days of the receipt of any funds from a developer, the Town of Clinton shall contractually commit the funds to rehabilitation, conversion, downpayment assistance and/or administration as those activities are defined in this Section. When more than one such activity is competing for the use of limited funds the selection(s) for funding shall be made in accordance with procedures to be adopted by the Mayor and Council after recommendation from the Affordable Housing Board. Rehabilitation and conversion work assisted through this Fund must be substantially completed within three (3) months of the date of execution of the contract for construction.



In the event that the Town has insufficient qualified applications for rehabilitation, conversion or downpayment assistance to exhaust available funds the unused contributions shall remain in the Fund, earning interest, until such time as there are qualified applications for such assistance.

If a period of six (6) months passes during which no qualified applications for assistance are received by the Town and during which funds are available in the Fund to provide such assistance, the Town shall publicly advertise the availability of such assistance and take other appropriate steps to encourage its utilization."

I hope this revised language and the accompanying explanation is helpful to the Court and to the Town. Please do not hesitate to contact me with other questions or if further elaboration is required.

Sincerely,

Philip B. Caton, AICP

cc: Richard P. Cushing, Esq.
Guliet D. Hirsch, Esq.
Elizabeth McKenzie, P.P.
Benjamin L. Serra, III, Eqs.
R. Dale Winget, Esq.

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1919-1980

ok file

RECEIVED AT CHAMBERS

November 14, 1985 NOV 18 1985

JUDGE STEPHEN SKILLMAN

Honorable Stephen Skillman
Superior Court Judge
Court House
New Brunswick, N.J. 08903

Re: Clinton Assoc. vs. Town of Clinton
Docket No. L-019063-84 P.W.

Dear Judge Skillman:

I enclose herewith a copy of the Resolution adopted on November , 1985 by the Mayor & Council indicating agreement to the terms of the proposed Order in connection with the above captioned matter. At the recommendation of our Town Planner, Elizabeth McKenzie, the Town is soliciting a planning firm which specializes in obtaining grants which will conduct the survey of dilapidated housing and prepare a description of the renovations necessary. In addition, that firm will assist the Town in preparing an application for monies under the Fair Housing Act.

The Town has also introduced on first reading the amendments to the Land Use Ordinance consistent with J-9 in evidence at trial and the Affordable Housing Ordinance consistent with J-16 at trial.

In incorporating the revisions to these ordinances suggested at trial, we made a few other language changes to try to make the two ordinances consistent and also to eliminate certain language ambiguities. I have enclosed herewith a Memorandum from Ms. McKenzie, dated November 11, 1985, describing the major changes to the 2 ordinances. In addition, all changes have been underlined to highlight them. A copy of the proposed changes were sent to both Ms. Hirsch and Mr. Caton in advance of their adoption for their review and with one small suggested change, they had no objection to the changes.

I trust that you will agree that the language changes are inconsequential. Needless to say, if you have any problems with any of

the changes, please let me know immediately so that we can deal with this.

By a separate letter, I am addressing one problem that the Mayor and Council has with respect to the time limits set forth in the Affordable Housing Ordinance for the award of contracts and the distribution of funds.

Respectfully yours,

RICHARD P. CUSHING

RPC:jw
Enclosures

cc: Mayor & Council, Town of Clinton
Mr. Philip Caton
Guliet D. Hirsch, Esq.
R. Dale Winget, Esq.
Benjamin L. Serra, III, Esq.
Mrs. Lois Terreri, Clerk
Mt. Laurel Committee (to be distributed by Lois Terreri)

P.S.:

Enclosed are copies of 85-25 (Land Use Ordinance) and 85-26 (Affordable Housing Board Ordinance).

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PE[illegible]R. GEBHARDT
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1919-1980

Letter to Carton

RECEIVED AT CHAMBERS

November 14, 1985

NOV 13 1985

JUDGE STEPHEN SKILLMAN

Honorable Stephen Skillman
Superior Court Judge
Court House
New Brunswick, N.J. 08903

Re: Clinton Associates vs. Town of Clinton
Docket No. L-019063-84 P.W.

Dear Judge Skillman:

At the hearing on the Town's proposed settlement in connection w[illegible] the above captioned matter, your Honor had suggested a requirement that any funds that are received by the Town for conversion or rehabilitation be disbursed within a set period of time. Your view was that the Town, in a survey to be conducted within five months, should identify those units suitable for rehabilitation or conversion, accept applications from interested persons and prioritize the applications.

Your Honor also suggested additional language be added to our Affordable Housing Ordinance as follows:

> "Within forty-five (45) days of the receipt of any funds from a developer, the Town of Clinton shall enter into a contract or contracts for the completion of the rehabilitation or conversion work. The work so authorized by contract must be completed within three (3) months of the date of the contract."

The Town has incorporated that language into Section IV.A(2) of its Affordable Housing Ordinance.

However, the Town is very much concerned that it will not be able to meet the 45 day and 3 month deadlines required. In connection with this, I have met with Councilman Harry Mikesell who is an experienced builder, property developer and who also served on the Hunterdon County Community Development Program which was responsible to obtain grants for

Hunterdon County for the rehabilitation of housing through the Block Grant Program.

We have sat down and gone over in detail the steps that will probably be necessary once the Town gets some funds and we would like to share this information with you and suggest that the time periods be lengthened.

As we anticipate the operation of the program during the 5 month survey period, the general work to be done in rehabilitating substandard units would be evaluated in a general fashion without elaborate cost estimates or structural reviews. Any more work at this time would probably not be feasible. First, there would be no money available for architectural renderings and estimates. Second, if considerable time expires between the initial 5 month period and the availability of the money, the conditions of the unit for code requirements may change, making any detailed estimates out dated. Third, both Mr. Caton and Mr. Mikesell have warned against creating expectations in property owners until the work is about to be done. Mr. Caton raised this problem from a fairness standpoint. He noted to me that low income people are often promised improvements by government that never materialize and he did not think this is a wise course. Also, from a more pragmatic level, Mr. Mikesell cited the fact that if people are told that there will be certain improvements in their property and there is a long period of time for them to think about it, they may think up substantial changes in the proposed work which will lead to either frustration on their behalf or redundancy in the work that has already been done. Fourth, government money may come with certain criteria attached pertaining to the mechanisms for describing the work or other requirements which may be inconsistent with any approaches taken by the Town in absence of guidelines.

Both Mr. Caton and Mr. Mikesell believe that the best approach is to prepare a general scope of the work during the 5 month period and then, once the money becomes available, to actually prepare the specific plans to do the work. It is at this step in the process that the Town questions whether 45 days will be adequate to prepare the necessary plans and bids. Mr. Mikesell has outlined the following steps that will have to be taken and some of the problems that can be anticipated.

1. For any units that require structural changes, such as to improve light or ventilation, an architect would have to be engaged to do a set of plans. In order to obtain a building permit, plans must be submitted that are signed by an architect or signed by the homeowner. It is not anticipated that the persons owning or occupying the units to be rehabilitated would be capable of drawing up plans of sufficient complexity so that they could be bid upon. Moreover, there is safety and public health factors to be taken into account which would militate against such an approach. In cases where only electrical or plumbing work

has to be done, then architectural renderings would probably be unnecessary.

2. The next step would be to actually prepare a bill of materials and a set of specifications that could be bid upon. In this regard, Mr. Mikesell has suggested the best approach is to engage a retired carpenter or builder who can view the work and come up with a specific list of materials that would be necessary and the particular specifications for the job. Since smaller contractors, with less technical qualifications, often bid on jobs of this nature, it is important to provide as much detail as possible as to the material required and the work to be done.

3. Mr. Mikesell also points out that it is often necessary to drum up contractors who are willing to do this work. This requires calls to a known list of contractors who are often available only at night. He correctly points out that the Dodge Reports, the traditional vehicle through which public construction jobs are advertised, does not report jobs under $100,000 which would mean that none of this work would be reported through that publication.

4. Once the bid specifications have been prepared and the work fully scoped out, then it will be necessary for someone on behalf of the Town to sit down with the property owner and the tenant to make sure that the proposed renovations are acceptable. It is inevitable that some additional delays will occur during this process. It would be somewhat high-handed not to solicit the input from the persons who own and/or reside in the units.

5. The bid process will also slow down the award of contracts to some degree. A minimum of 10 days notice must be given for the bids. N.J.S.A. 40A:11-22. Our local newspapers in Hunterdon County are only published on a weekly basis and there are time deadlines by which material has to get to them. In addition, the governing body, which must both authorize the advertising of the bids and their acceptance, only meets two times per month.

6. Moreover, because of the fact that we anticipate smaller contractors will be bidding on the jobs, most will not be familiar with public bidding requirements and that may create additional problems in terms of whether the standards of the Public Contracts Law are met.

With respect to the 3 month deadline within which the work must be completed, the Town can certainly put such a requirement in its

bid documents. However, it may tend to make the work more expensive because of the time pressure that it puts on contractors. There may also be problems with this deadline if structural work has to be done requiring either the ordering of special material or delays because of lack of manpower. At the present time, there is a very significant problem getting tradesmen in Hunterdon County although this may abate. Finally, if a successful bidder determines that he has underbid the job and cannot afford to complete it, the job obviously will not be done within 3 months.

However, we also recognize that the Court is extremely concerned that there be no foot dragging. While the Town really has no disincentive to have any of its substandard housing rehabilitated, particularly when the funds do not come from the taxpayers, we would like to respectfully suggest that the 45 day time period be increased to a very minimum of 90 days (which will still be, probably, very tight) and that the 3 month period be extended to a 5 month period. We would also hope that the Court would recognize that there may be unforeseen delays which, if occur, could be addressed at that time either through an application to the Court or, perhaps, some informal communications with the Master.

The Town of Clinton is anxious to fully comply with the Court's requirements and would not want any technical violation of some of these requirements to result in a suit by a builder claiming that we have not fully carried out the terms of any Judgment of Compliance and it is for these reasons that we raise these concerns.

Respectfully yours,

RICHARD P. CUSHING

RPC:jw
cc: Mayor & Council, Town of Clinton
Mr. Philip Caton
Ms. Elizabeth McKenzie
R. Dale Winget, Esq.
Benjamin Luke Serra, III, Esq.
Mrs. Lois Terreri, Clerk
Mt. Laurel Committee (to be distributed by Lois Terreri)

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
STEPHEN SKILLMAN
JUDGE

MIDDLESEX COUNTY COURT HOUSE
NEW BRUNSWICK, NEW JERSEY 08903

November 19, 1985

Mr. Philip Caton
Clarke & Caton
342 West State Street
Trenton, New Jersey 08619

Re: Clinton Associates v. Town of Clinton
Docket No. L-19063-84 P.W.

Dear Mr. Caton:

You should have a copy of Mr. Cushing's letter of November 14, 1985 regarding the provision of Clinton's Affordable Housing Ordinance dealing with the time for completion of rehabilitation or conversion work. I would appreciate your comments concerning that letter.

Very truly yours,

Stephen Skillman, J.S.C.

SS:fs
cc: Guliet D. Hirsch, Esq.
R. Dale Winget, Esq.
Benjamin L. Serra, III, Esq.
Richard P. Cushing, Esq.

RESOLUTION

WHEREAS, a hearing was held on the proposed settlement between Clinton Associates and the Town of Clinton in the matter of Clinton Associates v. Town of Clinton, et al., Superior Court of New Jersey, Law Division, Hunterdon/Middlesex Counties, Docket No. L-019063-84, before the Honorable Stephen Skillman, J.S.C. ("Court"); and

WHEREAS, the Court issued an oral opinion approving the settlement; and

WHEREAS, the Court set certain conditions that must be complied with by the Town of Clinton before the Court would enter a Judgment of Compliance on behalf of the Town; and

WHEREAS, those conditions have been set forth in a form of Order, copy of which is attached hereto as Exhibit A; and

WHEREAS, the Town agrees to comply with the conditions imposed by the Court and wishes to signify that agreement to those terms and conditions by this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Clinton that the Town of Clinton hereby agrees to comply with all of the terms and conditions set forth in the form of Order attached hereto as Exhibit A and they hereby direct the Municipal Attorney to forward a copy of this Resolution with Exhibit A attached to the Honorable Stephen Skillman to signify that the Town of Clinton agrees to the conditions set forth in said proposed form of Order and will comply therewith.

I, Lois D. Terreri, Clerk of the Town of Clinton hereby certify the foregoing to be a true and exact copy of a Resolution adopted by the Mayor and Council at a regular public meeting on November 12, 1985.

Lois D. Terreri

Lois D. Terreri, Clerk

EXHIBIT A

BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
(609) 924-0808
Attorneys for Plaintiff

CLINTON ASSOCIATES, Plaintiff vs. TOWN OF CLINTON, et al., Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION HUNTERDON/MIDDLESEX COUNTIES (Mt. Laurel II) Docket No: L-019063-84 C I V I L A C T I O N ORDER APPROVING SETTLEMENT AND PROVIDING CONDITIONS FOR ENTRY OF JUDGMENT OF COMPLIANCE AS TO TOWN OF CLINTON

This matter having been opened to the Court by the Town of Clinton and Clinton Associates on motion for approval of settlement and entry of a judgment of compliance with respect to the Town of Clinton; and the Court having entered an Order setting a hearing date and approving the form of notice of settlement on September 12, 1985; and the required notices having been issued and the Court having held a hearing on

settlement on October 23, 1985, October 24, 1985, October 25, 1985 and October 28, 1985; and counsel for objectors Julius and Mildred Skerbisch, Benjamin Luke Serra, Esq., as well as counsel for objector Ruland, Inc., R. Dale Winget, Esq., having appeared and offered expert testimony and legal argument in opposition to the settlement; and the Court having considered the testimony, evidence and arguments of counsel, and having issued a decision from the bench on October 28, 1985,

IT IS on this day of , 1985 ORDERED that:

1. The January 22, 1985 settlement agreement between Clinton Associates and the Town of Clinton as modified by letters of September 11, 1985, October 17, 1985 and October 22, 1985 is hereby found to be, in basic concept, fair and reasonable;

2. The Town of Clinton will be issued a judgment of compliance upon agreement to comply with conditions listed in paragraphs a. and b. of this Order and adoption of ordinance amendments in accordance with paragraphs c. and d. of this Order within 30 days of entry of this Order.

   a. The Town of Clinton will complete a housing survey sufficient to identify units appropriate for rehabilitation or accessory apartment conversion within 5 months of the entry of this Order. This survey shall include the identification of specific properties appropriate for rehabilitation or

conversion, the acceptance of applications from owners of said properties, the identificaiton of work or improvements required for each identified unit and the prioritization of applications.

b. Once the housing survey is completed, monies which are received by the Housing Rehabilitation, Conversion and Assistance Fund will be dispensed in the following manner. Within forty-five (45) days of receipt of funds from any developer, the Town of Clinton shall enter into contracts for the completion of rehabilitation or conversion work. The work so authorized by contract must be completed within an additional three months of the date of the contract.

c. The ordinance amendments entitled "Amendments to Town of Clinton Land Use Ordinance" (reflecting Mt. Laurel Committee responses to Caton recommendations and concensus of October 2, 1985 meeting), in evidence as J-9 at the hearing, with the following listed revisions, shall be adopted by the Mayor and Council of the Town of Clinton after public hearing within 30 days of the entry of this Order. The ordinance shall be revised as follows prior to adoption:

(1) Townhouse units shall be listed as a permitted use in the multi-family residential development areas of the PUD and PRD zones.

(2) Sections 88-53E, 88-54E, 88-55E, 88-57E, 88-58E and 88-56F shall be revised to require the bonus fee to be paid at the time the building permit is issued for the use.

(3) Section 88-52F(2) shall be amended by the addition of the following language:

"In the event that low and moderate income units cannot be sold or rented, as applicable, within one hundred twenty (120) days of being substantially completed and offered for sale or rent, any inclusionary developer may apply to the Affordable Housing Board for relief. Such application must provide evidence of the developer's having under-taken an affirmative marketing effort to sell or rent the units. Relief to the developer shall not include exempting the units from the low and moderate income sales prices or rent levels, nor shall relief include exempting the units from restrictions on appreciation allowable upon resale or restrictions on escalation allowable upon re-rental. The Board may allow the developer to sell or rent the subject unit(s) to a household(s) whose income exceeds that otherwise required under this paragraph; provided, however, that in no event shall a low income unit be sold or rented to a household earning in excess of 50% of the median income of the region and in no event shall a moderate income unit be sold or rented to a household earning in excess of 80% of the median income of the region."

d. The ordinance entitled "An Ordinance to Establish an Affordable Housing Board, to Establish a Housing Rehabilitation, Conversion and Assistance Fund, and to Establish the Position of Housing Officer" in evidence as J-16 shall be adopted by the Mayor and Council of the Town of Clinton after public hearing within 30 days of the entry of this Order. The

ordinance shall be revised as follows prior to adoption:

(1) Section IIIC(2)I shall be deleted;

(2) Section IVC(1)(d) shall be revised to limit the administrative use of funds to 18% of the amount collected from developers.

Stephen Skillman, J.S.C.

MEMORANDUM

TO: Mayor and Council of the Town of Clinton

FROM: Elizabeth C. McKenzie, P.P.

DATE: November 11, 1985

SUBJECT: Changes to Ordinance 84-17 and the Administrative Ordinance (85-__)

The purpose of this memorandum is to identify some changes made to both the Administrative Ordinance (85-__) and Ordinance 84-17 to comply with Judge Skillman's recent Order conditionally approving the settlement with Clinton Associates. Additionally, the memorandum identifies and explains several further changes made to both ordinances to make the two internally consistent and to correct minor deficiencies. These changes will require the approval of Phil Caton, Guliet Hirsch and, of course, the Court.

In the Administrative Ordinance, the changes required by Judge Skillman's Order include:

1.) The addition of the requirement that funds be expended from the Housing Rehabilitation, Conversion and Assistance fund within 45 days of their receipt from a developer, which modifies Section IV A.(2) on page 4.

2.) Section IV C.(1)(d) is modified to add the stipulation that no more than eighteen (18) percent of the funds collected from developers may be used to reimburse the Town for administrative costs.

Other changes made to Ordinance 85-__ to clean up some ambiguities and to make it conform to Ordinance 84-17 are:

1.) The addition to III A. of the requirement that members (of the Affordable Housing Board) shall serve without compensation.

2.) The addition to III B. of the requirement that the appointment of the member of the Board of Assistance (to the Affordable Housing Board) shall be for three (3) years, or the duration of the term on the Board of Assistance, whichever terminates first.

3.) The addition to IV C.(1)(a)(i) of the requirement that the recipient of funds for rehabilitation may be <u>either</u> a low or moderate income household <u>or</u> a homeowner willing to restrict the rental or sale of the dwelling unit only to a qualified low or moderate income household.

The other changes to 85-__ are minor, and not at all substantive. Nevertheless, they are underlined so that all parties and Judge Skillman have the opportunity to confirm this.

In Ordinance 84-17, it was necessary to add the requirement that the developer's fee be paid at the time of the issuance of a building permit rather than a Certificate of Occupancy (to be consistent with the Administrative Ordinance). This change was made in three places (pages 27 and 29).

Additionally, a relief provision was added in the event that a developer cannot sell or rent a low or moderate income unit to a qualified household at the proper income level. This language was agreed upon by Mr. Cushing, Ms. Hirsch and Mr. Caton. It is

included as a new item 4. on page 10 (instead of being added to item 2. on page 9 as originally proposed).

A number of responsibilities originally assigned to the Housing Officer in 84-17 had to be reassigned to the Affordable Housing Board to maintain consistency with the Administrative Ordinance. This affects items (b), (c), (d) and (f) on page 11 and item (g) on page 12 and also affects the language on pages 27 and 29 pertaining to the administration of the Fund.

On page 9, the reference to "moderate" income in item (c) has been changed to "low as opposed to very low" to be consistent with the language used everywhere else in the Ordinance.

Finally, it was agreed before Judge Skillman that the list of uses permitted in the PUD and PRD would specifically include "town-uses". I took the liberty of clarifying the areas (multi-family versus single-family) where each of the various dwelling unit types would be permitted.

TOWN OF CLINTON

85-26

AN ORDINANCE TO ESTABLISH AN AFFORDABLE HOUSING BOARD, TO ESTABLISH A HOUSING REHABILITATION, CONVERSION AND ASSISTANCE FUND AND TO ESTABLISH THE POSITION OF HOUSING OFFICER

SECTION I. An Ordinance to Amend Chapter 88, Land Use, of the Code of the Town of Clinton by adding the following:

I. PURPOSE. The purpose of this Ordinance is to create the administrative mechanisms needed for the execution of the Town's responsibility to assist in the provision of affordable housing pursuant to Ordinance 84-17.

II. DEFINITIONS. For the purposes of this Ordinance, the terms used are as defined in Ordinance 84-17. In addition, the following definitions shall apply:

Housing Officer: The employee, consultant, authority or government or other agency charged with the responsibility of administering the affordable housing program of the Town.

Ordinance 84-17: An ordinance and any amendments or supplements thereto passed by the Town of Clinton as part of the settlement of the matter of Clinton Associates vs. Town of Clinton, Docket No. L-019063-84 P.W. and incorporated into the Judgment of Compliance issued in that case.

III. AFFORDABLE HOUSING BOARD.

A. Establishment of Affordable Housing Board. There is hereby established in the Town of Clinton an Affordable Housing Board which shall consist of five members appointed by the Mayor, with the advice and consent of the Council. The members shall serve without compensation.

B. Membership of Board and Terms of Office. The Board shall be composed of one member of the governing body, whose appointment shall be for one year, a member of the Board of Assistance, whose appointment shall be for three years or the duration of the term on the Board of Assistance, whichever terminates first, and three additional residents of the Town, whose terms shall be for three years each, except that when the Board is initially appointed, one resident member shall be appointed for one year, one member for two years and the third member for three years. Appointments to fill vacancies resulting from resignations or removal from office shall be for the departing member's unexpired term.

C. Powers of Affordable Housing Board. The powers of the Affordable Housing Board shall be as follows:

(1) To recommend to the Mayor and Council the person or organization to be appointed the Housing Officer for the Town of Clinton, and the amount of compensation to be paid to that person or organization.

(2) To recommend to the Mayor and Council the adoption of rules and regulations:

A. To govern the sale or rental of affordable housing units to lower income persons pursuant to Ordinance 84-17 and the laws of the State of New Jersey.

B. To assure that the housing units built, renovated or converted for lower income housing pursuant to Ordinance 84-17 will remain available to lower income persons for the appropriate period of time as required in this Ordinance and Ordinance 84-17.

C. To establish eligibility criteria for persons wishing to purchase or rent lower income housing in the Town in accordance with Ordinance 84-17 and the laws of New Jersey provided that no eligibility priorities shall be established other than those specifically set forth in Ordinance 84-17.

D. To establish screening mechanisms to ensure that all lower income housing units are occupied only by lower income households.

E. To administer all funds made available to the Town for lower income housing from developer contributions or from public sources pursuant to Section IV of this Ordinance.

F. To regulate the resale of lower income units so as to allow lower income households to recoup the value of any improvements to the units while providing for the recapture by the Town of any windfall profits from the resale of the units, consistent with Ordinance 84-17.

G. To regulate the calculation of rents and other charges for lower income rental units for the purposes of ensuring that lower income rental units are rented only to and remain occupied only by lower income households.

H. To provide for a fair and equitable disbursal of funds from the Housing Rehabilitation, Conversion and Assistance Fund, to the extent such funds are available, to be used for downpayment assistance

for the purchase of lower income units, for conversions of accessory apartment units for rental to lower income households, for rehabilitation of substandard housing occupied by lower income households, and for such other projects or assistance consistent with the provision of affordable housing in the Town of Clinton and as are authorized by law.

I. To carry out such additional responsibilities as may be necessary to fulfill the Town's affordable housing program in accordance with Ordinance 84-17 and the laws of New Jersey.

(3) To recommend to the Mayor and Council the methods to be used for housing surveys conducted to ascertain the extent and location of substandard housing in the Town and, upon authorization by the Mayor and Council, to conduct such surveys or to arrange to have such surveys conducted.

(4) To seek out sources of government funding that will assist the Town in meeting its goals of supplying affordable housing as set forth in Ordinance 84-17 and, upon authorization by the Mayor and Council, to prepare and submit applications to secure such funding.

(5) To prepare an annual budget for the Affordable Housing Board including salaries and expenditures incurred in administering Ordinance 84-17, exclusive of expenditures for rehabilitation, conversion or downpayment assistance. The budget shall be prepared in accordance with proper municipal accounting procedures and submitted to the Mayor and Council for approval as part of the municipal budget.

(6) To recommend to the Mayor and Council the disbursement of funds from the Housing Rehabilitation, Conversion and Assistance Fund, if such funds are available, for rehabilitation and conversion of housing and for downpayment assistance in accordance with Section IV herein.

(7) To recommend to the Mayor and Council reasonable fees to be charged to developers of lower income housing units to offset the costs to the Town related to the inspection and monitoring of sales and rentals of lower income housing units, but not related to any salaries or expenditures for such items as housing surveys or preparation of grant applications.

(8) To undertake such other activities as may be authorized by law to carry out the obligations of the Town to assist in providing affordable housing in accordance with Ordinance 84-17.

(9) In the absence of the appointment of an Affordable Housing Board, the Mayor and Council shall act in its stead.

IV. HOUSING REHABILITATION, CONVERSION AND ASSISTANCE FUND.

A. Creation of Housing Rehabilitation, Conversion and Assistance Fund.

(1) There is hereby created a Housing Rehabilitation, Conversion and Assistance Fund of the Town of Clinton.

(2) Funds collected from non-residential developers in return for their exercise of the density bonus provisions of Ordinance 84-17, as well as funds collected from Clinton Associates (or its successors) shall be paid to and deposited by the Town Treasurer in an interest bearing account designated as the "Housing Rehabilitation, Conversion and Assistance Fund of the Town of Clinton". Within forty-five (45) days of the receipt of any funds from a developer, the Town of Clinton shall enter into a contract or contracts for the completion of the rehabilitation or conversion work. The work so authorized by contract must be completed within three months of the date of the contract.

(3) Funds which may be received from government sources shall be paid to and deposited by the Town Treasurer in the Housing Rehabilitation, Conversion and Assistance Fund, except that where required by the funding source, such funds shall be held in a separate account and administered as required by the funding source.

B. Collection of Fees for Housing Rehabilitation, Conversion and Assistance Fund.

(1) Prior to the granting of final approval to any applicant seeking a density bonus pursuant to Ordinance 84-17, the Planning or Zoning Board, as the case may be, shall determine the amount of the fees payable by the applicant in accordance with Ordinance 84-17.

(2) The resolution adopted by the Board shall condition its final approval on payment of the required fee at the time a building permit is issued for the approved use. A copy of the resolution of final approval shall be supplied to both the Construction Official and the Housing Officer.

C. Disbursements from the Housing Rehabilitation, Conversion and Assistance Fund.

(1) The Affordable Housing Board, subject to approval by the Mayor and Council, shall authorize disbursements from the Housing Rehabilitation, Conversion and Assistance Fund in accordance with the following procedures:

(a) Rehabilitation: In the case of funds sought for rehabilitation purposes, the Housing Officer certifies that:

(i) He has examined the application and determined that the intended recipient either is a qualified low or moderate income household according to income limits established by the Affordable Housing Board for the year or is a non-occupant owner willing to rent or sell the unit only to a qualified low or moderate income household for the requisite 10 year time period following the receipt of funds.

(ii) The housing unit has been inspected and the existence of the health and safety code violations which the applicant seeks to remedy through the use of proceeds from the Fund has been verified;

(iii) The rehabilitation activity will result in the dwelling unit being free of code violations; and

(iv) The applicant has executed an agreement: a.) to use the funds only for the approved purposes; b.) to rent or sell the unit only to a qualified low or moderate income household; c.) upon receipt of the funds, to record a deed covenanting the unit for a period of ten (10) years to limit occupancy only to a low or moderate income household pursuant to a properly issued Certificate of Occupancy; and d.) to otherwise comply with the rules and regulations of the Affordable Housing Board.

(b) Conversion: In the case of funds sought for accessory apartment conversion purposes, the Housing Officer certifies that:

(i) He has examined the application and determined that it complies with Ordinance 84-17 and the rules and regulations of the Affordable Housing Board; and

(ii) The applicant has executed an agreement: a.) to use the funds only for the approved purposes; b.) to rent the unit only to a qualified low or moderate income household; c.) upon receipt of the funds, to record a deed covenanting the unit for a period of ten (10) years to limit occupancy only to a low or moderate income household

pursuant to a properly issued Certificate of Occupancy; and d.) to otherwise comply with the rules and regulations of the Affordable Housing Board.

(c) Downpayment Assistance: In the case of funds sought for downpayment assistance, the Housing Officer certifies that: He has examined the application and determined that the applicant is a qualified recipient consistent with the rules and regulations of the Affordable Housing Board and Ordinance 84-17.

(d) Administration: Funds may be used to reimburse the Town for salaries and other expenditures connected with the execution of the Town's responsibilities to assist in providing affordable housing in accordance with this Ordinance and Ordinance 84-17, provided, however, that no more than eighteen (18) percent of the funds collected shall be used for such purposes.

V. HOUSING OFFICER.

A. Establishment of position of Housing Officer. There is hereby established the position of Housing Officer for the Town of Clinton. The Housing Officer shall be appointed by the Mayor and Council and may be a full or part-time municipal employee, a consultant, an authority, or a government or other agency contracted by the Town to perform the duties and functions of the Housing Officer.

B. Compensation. Compensation shall be fixed by the Mayor and Council at the time of the appointment of the Housing Officer, upon recommendation of the Affordable Housing Board.

C. Powers and Duties. It shall be the responsibility of the Housing Officer:

(1) To administer the affordable housing program of the Town of Clinton in accordance with Ordinance 84-17 and the rules and regulations of the Affordable Housing Board.

(2) To maintain waiting lists of households which may be eligible to rent or purchase lower income dwelling units or to obtain funding from the Housing Rehabilitation, Conversion and Assistance Fund of the Town or from such other government funded programs as may be available to qualified applicants in the Town.

(3) To advertise the initial availability of lower income housing units, when they become available, which advertising shall be in addition to any advertising done by a developer.

(4) To advertise the availability of funds for housing rehabilitation, conversion of accessory apartments, and downpayment assistance, if and when such funds are available.

(5) To maintain an up-to-date record of all deed restricted lower income housing units in the Town.

(6) To monitor all transfers of ownership and changes of occupancy of all deed restricted lower income housing units, to oversee the placement of qualified households in lower income housing units, and to enforce the provisions of Ordinance 84-17, performing all of the administrative duties and functions outlined therein.

(7) To advise the Planning Board and Zoning Board with respect to their approvals of lower income housing units and as to required developer contributions to the Housing Rehabilitation, Conversion and Assistance Fund.

(8) To maintain detailed records of income to and expenditures from the Housing Rehabilitation, Conversion and Assistance Fund of the Town of Clinton and accounts for any government grant monies received.

(9) To perform the administrative functions associated with any government funded housing rehabilitation or downpayment assistance program, once such program has been funded.

(10) To arrange for inspections of lower income housing units as necessary to carry out the requirements of this Ordinance, Ordinance 84-17, and the rules and regulations promulgated by the Affordable Housing Board.

(11) To carry out such additional duties as may be required of the Housing Officer by the rules and regulations promulgated by the Affordable Housing Board.

SECTION II. These amendments shall become effective upon final passage according to law and set forth herein.

AN ORDINANCE TO AMEND THE LAND USE ORDINANCE OF THE TOWN OF CLINTON, HUNTERDON COUNTY, TO MAKE PROVISIONS FOR LOW INCOME HOUSING AND TO AMEND ORDINANCE 84-17 TO INCORPORATE NUMEROUS CHANGES TO THAT ORDINANCE RECOMMENDED BY THE HONORABLE STEPHEN SKILLMAN, J.S.C., AND THE HONORABLE PHILIP CATON, MASTER IN THE MATTER OF CLINTON ASSOCIATES V. TOWN OF CLINTON, ET AL., SUPERIOR COURT OF NEW JERSEY, HUNTERDON/ MIDDLESEX COUNTIES, DOCKET NO. L-019063-84

SECTION I. Chapter 88 of the Town of Clinton and Ordinance 84-17 are hereby amended as follows:

TOWN OF CLINTON

85-25

AN ORDINANCE TO AMEND THE LAND USE ORDINANCE OF THE TOWN OF CLINTON, HUNTERDON COUNTY, TO MAKE PROVISIONS FOR LOW INCOME HOUSING AND TO AMEND ORDINANCE 84-17 TO INCORPORATE NUMEROUS CHANGES TO THAT ORDINANCE RECOMMENDED BY THE HONORABLE STEPHEN SKILLMAN, J.S.C., AND THE HONORABLE PHILIP CATON, MASTER IN THE MATTER OF CLINTON ASSOCIATES V. TOWN OF CLINTON, ET AL., SUPERIOR COURT OF NEW JERSEY, HUNTERDON/ MIDDLESEX COUNTIES, DOCKET NO. L-019063-84

SECTION I. Chapter 88 of the Town of Clinton and Ordinance 84-17 are hereby amended as follows:

These amendments to the Town of Clinton Land Use Ordinance shall not become effective until: 1) a Judgement of Compliance is granted to the Town of Clinton in the matter of Clinton Associates v. Town of Clinton, et al., Superior Court of New Jersey, Hunterdon/Middlesex County, Docket #L-019063-84, and 2) the time for appeal thereof expires without an appeal being taken therefrom, or, if an appeal thereto is taken by any party, the Judgement of Compliance is affirmed without further appeal.

Amend Article II, Section 88-4A. by deleting the current definitions of STREET, PARKING SPACE, and FLOOR AREA and adding the following definitions in their appropriate alphabetical order:

ATTIC - That area located under the roof of a building which does not meet the Uniform Construction Code requirements for and definition of a story.

DENSITY, GROSS - The total number of dwelling units existing or permitted on a tract divided by the total area of the tract. The result is expressed as dwelling units per acre.

DENSITY, NET - The total number of dwelling units within a designated portion of a tract divided by the total land area of the designated portion of the tract, including the open space, roadways, parking areas and common facilities devoted exclusively to that portion of the tract. The result is expressed as dwelling units per acre.

FLOOR AREA, GROSS - The total floor area of a building computed by measuring the horizontal dimensions of the outside walls of all enclosed portions of the building, including halls, enclosed porches, attics, cellars, basements and garages.

FLOOR AREA, NET HABITABLE - For residential uses, the area of a building computed by measuring the horizontal dimensions of the outside walls of a dwelling unit, excluding attics, basements or carports, verandas and garages.

FLOOR AREA RATIO - The ratio between the gross floor area of all buildings on a lot and the total area of the lot.

LOW INCOME - Means less than fifty (50) percent of the median income for the region when used with and compared to the term moderate income; means fifty (50) to eighty (80) percent of the median income for the region when used with and compared to the term very low income in the document entitled Section 8 Rental Assistance Program, Income by Family Size published by the U.S. Department of Housing and Urban Development.

LOWER INCOME HOUSEHOLD - A household meeting the regional income eligibility limits for low and moderate income households or for low and very low income households in the document entitled Section 8 Rental Assistance Program, Income by Family Size published by the U.S. Department of Housing and Urban Development.

LOWER INCOME HOUSING - Dwelling units which are affordable by purchase or rent to a lower income household spending not more than twenty-eight (28) percent of the monthly family income for sale housing and thirty (30) percent of the monthly family income for rental housing.

MODERATE INCOME - Means fifty (50) to eighty (80) percent of the median income for the region. In the document entitled Section 8 Rental Assistance Program, Income by Family Size published by the U.S. Department of Housing and Urban Development, the term low income is used instead of the term moderate income to refer to the fifty (50) to eighty (80) percent of median income range.

PARKING SPACE - An accommodation for the off-street parking of a motor vehicle, which space shall have the minimum dimensions and area established at Section 88-44B. (1) (j), exclusive of access drives or aisles, with adequate provision for ingress and egress.

PLANNED RESIDENTIAL DEVELOPMENT (PRD) - A tract with a minimum contiguous acreage of twenty-five (25) acres or more to be developed as a single entity according to a plan showing both single and multi-family residential development areas, in accordance with the requirements of Article VII, Section 88-52[a].

PLANNED UNIT DEVELOPMENT (PUD) - A tract with a minimum contiguous acreage of fifteen (15) acres or more to be developed as a single entity according to a plan showing both a multi-family residential development area and office development area in accordance with the requirements of Article VII, Section 88-52[a].

REGION- When used in this Ordinance, the term region refers to the Primary Metropolitan Statistical Area (PMSA) encompassing Hunterdon County, a three-county region including Hunterdon, Somerset and Middlesex Counties.

STREET - Any street, avenue, boulevard, road, lane, parkway, viaduct, alley or other way which is an existing State, County or municipal roadway or a street or way shown upon a plat heretofore approved pursuant to law or approved by official action or a street or way on a plat duly filed and recorded in the office of the County recording officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking areas and other areas within the street lines. For the purpose of this chapter, "streets" shall be classified as follows:

(1) ARTERIAL STREETS - Streets which are used primarily for fast or heavy traffic as designated on the Circulation Plan of the Master Plan of the Town of Clinton or have an average daily traffic volume (ADT) of over 3500.

(2) COLLECTOR STREETS - Streets which carry traffic from local streets to arterial streets and have an average daily traffic volume (ADT) from 1500 to 3500 vehicles or which provide the principal access from a preexisting collector or arterial street into a new residential development containing fifty (50) or more dwelling units.

(3) LOCAL STREETS - The streets of a residential development necessary for circulation within such development, providing access to abutting properties and having an average daily traffic volume (ADT) of less than 1500.

(4) MARGINAL ACCESS STREETS - Those streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through-traffic.

(5) DEAD-END STREET OR CUL-DE-SAC - Any street or combination of streets having only one (1) outlet or connection to a street having more than one (1) outlet or means of access.

TRACT - An area of land composed of one or more contiguous lots having sufficient area to meet the requirements of this Ordinance for the use(s) permitted. For the purposes of computing area and density requirements, a tract may include a public or private street or right-of-way provided that portions of the remainder of the tract are located directly opposite each other along at least seventy-five (75) percent of the frontage of the street or right-of-way in question.

VERY LOW INCOME - Means less than fifty (50) percent of the median income for the region in the document entitled Section 8 Rental Assistance Program, Income by Family Size published by the U.S. Department of Housing and Urban Development.

Amend Article VII by creating a new Section 88-52[a], entitled PUD and PRD Planned Development Districts as follows:

S. 88-52[a]. PUD and PRD Planned Development Districts.

A. Purpose:

(1) The purpose of the PUD and PRD districts is to encourage the development of certain large vacant tracts in a manner which incorporates the best features of design and relates the type, design and layout of residential, non-residential, and recreational development to the particular site, and, at the same time, to provide the realistic opportunity for lower income housing to be constructed in accordance with the guidelines set forth in the Mount Laurel II decision. Special standards and procedures applicable to these two (2) districts only are set forth herein to expedite the production of the lower income housing.

(2) Recognizing that the provision of lower income housing requires the removal of standards which may be desirable to achieve but which may also be cost generating to a developer of lower income housing and thereby inhibit its production, the multi-family residential development areas of the PUD and PRD may be designed in accordance with the guidelines set forth at Section 88-52[a]H., which guidelines are deemed to be the minimum necessary for public health, safety and welfare. Any provision of this or any other ordinance in conflict with this Section (Section 88-52[a]), and which imposes restrictions or limitations not required for health and safety, shall be inapplicable to the PUD and PRD districts.

B. Application procedures:

(1) The applicant shall submit all plans and documents to the Planning Board for review and approval as required in Article VI. The Planning Board shall distribute the plans to those agencies required by law to review and/or approve development plans and to all other Town agencies which normally review development plans. The failure of a Town agency to submit a report to the Planning Board shall not extend the time for review and action by the Board.

(2) The technical advisors to the Board shall review the complete application for technical compliance and shall convey comments directly to the applicant's advisors in advance of the public hearing so that at the time of the public hearing the applicant will have had sufficient opportunity to resolve any technical problems associated with the submission. Daytime meetings shall be held at the request of the applicant between the Town's advisors and/or technical coordinating committee and the applicant's advisors for this purpose.

(3) The Planning Board shall hold a public hearing in accordance with N.J.S.A. 40:55D-46.1 on the application. The Planning Board shall take action on the application within sixty (60) days from the date of submission of a complete application for preliminary or for simultaneous preliminary and final approval. If a subsequent final approval is sought, action on the final plan shall be taken by the Board within thirty (30) days of the date a complete application is submitted.

(4) The applicant is encouraged to submit a concept plan for informal review by the Board pursuant to N.J.S.A. 40:55D-10.1 prior to the preparation of a preliminary development plan.

(5) The development plans submitted shall contain the information required in Section 88-41 D. and E. except that the applicant shall be exempted from any requirements of Section 88-41 D.(23).

(+)(*) C. Permitted uses:

(1) Principal uses.

(a) Single-family dwellings in the single-family residential development area of the PRD.

(b) Multi-family dwellings and townhouses in the multi-family residential development areas of the PUD and PRD.

(c) Two-family dwellings, including both side-by-side and duplex (one over another) style dwellings, in the multi-family residential development areas of the PUD and PRD.

(d) Public or private parks and playgrounds.

(e) Public or private recreation buildings and facilities.

(f) Public utilities.

(g) Office building(s), scientific or research laboratories, data processing facilities in the office development area of the PUD only.

(2) Accessory uses and structures.

(a) Garages and off-street parking facilities.

(b) Storage and maintenance buildings.

(c) Customary accessory structures approved as part of the site plan for the development, including fences, walls, lampposts, trellises and the like.

(d) Signs in accordance with Section 88-64 of this Ordinance.

D. Tract area, development areas, density and bulk requirements:

(1) Tract area.

(a) A PUD shall contain a minimum of fifteen (15) acres.

(b) A PRD shall contain a minimum of twenty-five (25) acres.

(2) Development areas.

(a) The PRD shall be divided into a single family residential development area and a multi-family residential development area. The single family residential development area shall be that area located along, and having a minimum depth of 250 feet from, any common boundary with a single family residential zone in the Town of Clinton.

(b) The PUD shall be divided into a multiple family residential development area and an office development area. The office development area shall be the entire portion of the tract located south of Village Road and north of Route 78 and shall include the right-of-way of Village Road. The multi-family residential development area shall be that portion of the tract lying north of Village Road.

(3) Density.

(a) Within the PRD, the gross density shall not exceed 7.2 dwelling units per acre. The net density shall be up to three (3) dwelling units per acre for the single family residential area and up to ten (10) dwelling units per acre for the multi-family residential area with such net densities computed as averages for the entire single family residential development area or multi-family residential development area.

(b) Within the PUD, the net density shall not exceed 7.0 dwelling units per acre for the multi-family residential development area, with such net density computed as an average for the entire multi-family residential development area.

(4) Bulk requirements, multi-family residential development areas.

(a) There shall be the following minimum distances between buildings in the multi-family residential development areas of a PUD or PRD:

Windowless wall to windowless wall	20 feet
Window wall to windowless wall	20 feet
Window wall to window wall	
Front to front	
Building height of up to 30 feet	50 feet
Building height of 30 feet or more	75 feet
Rear to rear	50 feet
End to end	30 feet
Any building face to local street curbface or edge of pavement	30 feet
Any building face to collector street curbface or edge of pavement	40 feet
Any building face to arterial street curbface or edge of pavement	50 feet
Any building face except garage face to common parking area	12 feet
Garage face to common parking area	5 feet

The Planning Board shall reduce the above distances by not more than one-third if there is an angle of twenty (20) degrees or more between buildings and if extensive landscaping or buffers are placed between buildings.

(b) Coverage: The maximum coverage by buildings in the multi-family residential development areas shall not exceed thirty (30) percent. The maximum coverage by all impervious surfaces, including buildings, shall not exceed sixty (60) percent.

(c) Buffer areas: No building, driveway or parking area shall be located within thirty (30) feet of any tract boundary line.

(d) Building height: No building shall exceed three (3) stories in height, nor shall any building exceed forty (40) feet in height.

(e) Minimum floor area for individual multi-family units:

1 bedroom:	550 square feet
2 bedroom:	660 square feet
3 bedroom:	850 square feet

(5) Bulk requirements, office development area.

The office development area in a PUD shall be developed in accordance with the standards for the OB-2 district.

(6) Bulk requirements, single family residential development area.

(a) Lot area: No individual lot shall contain less than 7500 square feet nor have a lot width of less than 75 feet.

(b) Building setbacks:

Front yard:	30 feet
Rear yard:	40 feet
Side yards	10 feet minimum on one side 25 feet combined

Where individual lots are not being subdivided, yards shall be created for each building such that a subdivision could occur and all lots and buildings would conform to the area and setback requirements set forth herein.

E. Parking requirements:

(1) Residential uses.

(a) Parking shall be provided for all residential uses as follows:

Dwelling units with one (1) bedroom or fewer:	1.5 spaces
All other dwelling units:	2.0 spaces

(b) Parking spaces in common parking areas in the multi-family residential development area shall be located within 300 feet of the dwelling unit served.

(c) All required parking for multi-family dwelling units shall be provided off-street, except that nothing herein shall be construed to prohibit required parking spaces from being placed perpendicular to a one or two-way local street or at an angle on a one-way local street, provided that both the pavement width of the street and the length of each parking space meet the requirements set forth in this Ordinance.

(d) No arterial or collector street shall provide direct access to an individual required parking space.

(2) Nonresidential uses. Parking in the office development area shall conform with the applicable requirements of Section 88-62 of this Ordinance.

F. Lower income housing requirements:

(1) Lower income dwelling units required to be constructed.

(a) Number: All developments in the PUD and PRD zones shall be required to provide housing affordable to lower income households at the rate of twenty (20) percent of the number of dwelling units constructed in the PRD and twenty-one (21) percent of the number of dwelling units constructed in the PUD. If the required percentage of lower income housing units required to be constructed in a PUD or PRD yields a fraction of 0.5 or more, the number shall be rounded up to the next whole number; if the required percentage yields a fraction of less than 0.5, the number may be rounded down to the next whole number.

(b) Type and location: All lower income units may be multi-family units and may be located in the multi-family residential development area.

(+) (c) Size: A minimum of fifteen (15) percent of the lower income units shall be three-bedroom units and a minimum of thirty-five (35) percent of the lower income units shall be two-bedroom units; at least one-half of all two-bedroom and one-half of all three-bedroom lower income units shall be for very low income as opposed to low income occupancy, as defined in this Ordinance. If a required percentage yields a fraction of 0.5 or more, the number shall be rounded up to the next whole number; if a required percentage yields a fraction of less than 0.5, the number may be rounded down to the next whole number. Odd units may be considered low as opposed to very low income units.

(2) Eligibility standards for housing units. One-half of all lower income units shall be priced so as to be eligible for rent or purchase by very low income households earning between a floor of forty (40 percent and a ceiling of fifty (50) percent of the median household income for the region and one-half of all lower income units shall be priced so as to be eligible for rent or purchase by low income households earning between a floor of fifty (50) percent and a ceiling of eighty (80) percent of the median household income for the region. Such housing units shall be priced to be affordable to households representing a reasonable cross-section of households within the above stated income ranges.

(3) Definition of housing costs. Lower income housing costs shall not exceed twenty-eight (28) percent of the monthly family income for sale housing and not more than thirty (30) percent of the monthly family income for rental housing, considering the following.

Rental units:	Gross Rent, including utilities or a utilities allowance
Sale units:	Principal and Interest Insurance Taxes Condominium or homeowners association fees

(*) (4) Relief. In the event that a lower income unit cannot be sold or rented, as applicable, within one hundred twenty (120) days of being substantially completed and offered for sale or rent, the inclusionary developer may apply to the Affordable Housing Board appointed by the Mayor and Council for relief. Such application must provide evidence of the developer's having undertaken an affirmative marketing effort to sell or rent the unit. Relief to the developer shall not include exempting the unit from the required low or very low income sales price or rent level, nor shall relief include exempting the unit from restrictions on appreciation allowable upon resale or restrictions on escalation allowable upon rerental. The Board may allow the developer to sell or rent the subject unit to a household whose income exceeds that otherwise required, provided, however, that in no event shall a very low income unit be sold or rented to a household earning in excess of fifty (50) percent of the median income for the region and in no event shall a low income unit be sold or rented to a household earning in excess of eighty (80) percent of the median income for the region.

(5) Downpayment assistance. At least twenty-five (25) percent of all lower income housing units shall be made available for sale under a program of downpayment assistance administered by the Town in accordance with applicable regulations, provided that such a program is funded by the State of New Jersey or, alternatively, that there are sufficient funds available in a Housing Rehabilitation Conversion and Assistance Fund established by the Town to cover the costs of such a program.

(6) Subsidies. Government subsidies may be used at the discretion of the applicant and are encouraged. The Town of Clinton shall cooperate in obtaining such subsidies by making application for assistance either in concert with, or on behalf of, a private developer, if requested to do so, and by providing a Resolution of Need and authorization of tax abatement, where required, to facilitate obtaining such subsidies. Additionally, the Town of Clinton shall make application for available State funding to establish a downpayment assistance program and to assist in funding a program of housing rehabilitation and conversion. The lack of said subsidies shall in no way alter or diminish the lower income housing requirements of this Ordinance.

(7) Covenants and controls on sales and rentals.

(a) All lower income dwelling units shall be covered by covenant, with the Town of Clinton as a party beneficiary, to ensure that in all initial sales and rentals, and in all subsequent resales and rerentals, the units will continue to remain available and affordable to the lower income households for which they were intended. All such covenants shall be approved by the Town Attorney.

(+) (b) The application for the issuance of a Certificate of Occupancy for any new designated lower income housing unit shall include certification by the Housing Officer to the Affordable Housing Board documenting the eligibility of the unit and the qualification of the new purchasor and/or occupant as a lower income household.

(+) (c) Prior to any resale or transfer of ownership or change of occupancy of a designated lower income housing unit, application shall be made for a new Certificate of Occupancy. The application for a Certificate of Occupancy shall include certification by the Housing Officer to the Affordable Housing Board documenting the continued eligibility of the unit and the qualification of the new purchasor and/or occupant as a lower income household.

(+) (d) Lower income rental units may be leased for periods of up to, but not exceeding, one year. At least sixty (60) days prior to the expiration of each lease which is subject to renewal, the owner of any lower income rental unit shall provide documentation to the Housing Officer that the rental unit continues to be occupied by and remains affordable to a lower income household. At such time as an owner of a rental unit is informed by the Affordable Housing Board or by the Housing Officer at the direction of the Affordable Housing Board that the occupying household no longer qualifies as lower income, the rental unit shall, within ninety (90) days, be made available for occupancy by a qualified household.

(e) All requests for certification shall be made by the seller or owner in writing, and the Housing Officer shall grant or deny such certification within thirty (30) days of the receipt of the request.

(+) (f) The Town shall develop reasonable administrative procedures for qualifying the occupants of lower income housing. Procedures shall be directed and administered by an Affordable Housing Board, appointed by the Mayor with the advice and consent of Council, and a Housing Officer, appointed by the Mayor and Council,

The Housing Officer may be a full or part-time municipal employee or consultant, an outside agency or a housing authority. Lower income employees of the Town of Clinton, and lower income residents of the Town of Clinton living in substandard or overcrowded housing shall have first priority over all lower income housing for a period not to exceed fifteen (15) business days from the time such units are listed for sale or resale or made available for rent.

(+) (g) At the time a Certificate of Occupancy is reissued, sales prices and rents may be increased over the original levels permissible by the Affordable Housing Board in accordance with the annual Metropolitan New York Regional Consumer Price Index for Housing of the Department of Labor, including, in the case of sales units, the addition of reimbursements for documented monetary outlays for reasonable improvements, similarly increased over the original costs in accordance with the CPI as above provided, plus reimbursements for reasonable costs incurred in selling the unit, less withholdings for the current costs of essential maintenance not undertaken by the previous owner. After 30 years from the date of its initial occupancy, a lower income housing unit may be sold or rented without restrictions.

(h) Rental units may be converted for sale as condominium or fee simple units but any sale of converted units shall continue to be restricted as to purchase price and occupancy to persons meeting the income eligibility standards as set for the particular unit until the thirty (30) year restriction period has passed.

(i) Phasing of construction of lower income housing. Lower income housing shall be phased in accordance with the following schedule:

Maximum Percentage of Total Market Dwelling Units	Minimum Percentage of Lower Income Dwelling Units
25	0
50	35
75	75
100	100

The developer may construct the first 25 percent of the market units without constructing any lower income housing units. No Certificates of Occupancy shall be issued for any of the next 25 percent of the

market units until 35 percent of the lower income units (of which half must be very low income) shall have been issued Certificates of Occupancy. No Certificates of Occupancy shall be issued for any of the next 25 percent of the market units until at least 75 percent of the lower income units (of which half must be very low income) have been issued Certificates of Occupancy. The remaining required lower income housing units shall be completed and Certificates of Occupancy issued before Certificates of Occupancy shall be issued for any of the remaining market units.

(j) Placement. The lower income dwelling units shall be designated on the preliminary site plan, shall have compatible exteriors to the market units, and shall be located so that they have comparable access to that of the market units to all common elements within the development.

(k) Waiver of fees for lower income housing units. Notwithstanding any other requirement of the Town of Clinton, the following fees shall be waived for every unit designated as lower income housing and only for those units designated as lower income housing:

Subdivision and site plan application fees applicable to lower income housing units.

Building permit fees, except State and third party fees, applicable to lower income housing units.

Sewer connection fees applicable to lower income housing units.

Certificate of Occupancy fees applicable to lower income housing units.

The Town will not oppose an application to the Board of Public Utilities Commissioners for waiver of water connection fees.

G. Common open space and common elements:

(1) A minimum of twenty (20) percent of the land in the multi-family residential area in a PRD or PUD shall be designated as conservation area, open space, recreation and/or other common open space. Up to twenty-five (25) percent of the designated common open space may consist of natural or man-made water bodies. The common open space area shall exclude private patios and any area located between a building and street or common parking area.

(2) All property owners and tenants in the development shall have the right to use the common open space and any recreational facilities located on the site.

(3) Common open space may be deeded to the Town, if accepted by the Mayor and Council.

(4) All common open space not accepted by the Town and all common elements in the development shall be deeded to an open space organization established to own and maintain the common elements as provided in N.J.S.A. 40:55D-43. The open space organization documents shall be submitted to the Town Attorney for review and approval.

H. Engineering and construction design standards, single and multi-family residential development areas only:

(1) Drainage.

(a) The drainage system shall be a combination of structural and non-structural measures of controlling surface runoff. Structural measures (pipes, inlets, headwalls, etc.) shall be used in the following locations:

At all low points in roadways and driveways

At all intersections

At all locations where vehicular or pedestrian paths cross drainageways

At all locations where water may be trapped by snow or freezing conditions and create danger for pedestrians or vehicles

At all locations where water will be conducted within 15 feet of a building

All other areas may be drained through the use of structural or non-structural measures, as appropriate.

(b) The system shall be adequate to carry off the storm water and natural drainage water which originates not only within the lot or tract boundaries but also that which originates beyond the lot or tract boundaries in the current state of development. No storm water runoff or natural drainage water shall be so diverted as to overload existing drainage systems or create flooding or the need for additional drainage structures on other private properties or public lands without proper and approved provisions being made for taking care of these conditions.

(c) The following standards shall be used in computing the volume of runoff:

Collection Systems: Rational Method or an alternative method approved by the Town Engineer. The following shall be used for the various parameters of the Rational Formula (Q=ACI):

Q is the quantity of water in cubic feet per second (cfs) - to be used for design

A is the drainage area in acres

C is the runoff coefficient which shall be as contained in ACE Manual #37, latest edition

I is the intensity of the storm which shall be determined from the graph entitled "Rainfall Intensity Duration for Essex and Union Counties". The time of concentration (t) shall be determined by overland flow methods or gutter flow methods contained in ACE Manual #37, latest edition, as appropriate, but need not be less than fifteen (15) minutes.

Detention Systems: All detention systems shall be designed in accordance with the requirements of N.J.A.C. 7:8-3.4.

(d) All storm drainage facilities shall be designed in accordance with the following:

Storm Frequency:

Type of Facility	Frequency of Storm
Collection Systems	15 yrs.
Culverts	25 yrs.
Detention Systems	
Flood & Erosion Control	2,10, & 100 yrs.
Water Quality	1 yr. or 1.25" of rain in 2 hours
Emergency Spillway	100 yrs.

Velocity of Storm: Velocity shall be determined by the Manning Equation with "n" as set forth in ACE Manual #37, latest edition. The velocity shall be restricted to the following maximums or minimums:

Type of Facility	Velocity
Pipes and culverts	Minimum velocity of 3 fps when flowing 1/4 full
Open Channels and Swales	Maximum velocity as set forth in ACE Manual #37, latest edition

Structural Considerations:

Pipes and Culverts. All pipes and culverts beneath pavements or walkways shall be of reinforced concrete. At all other locations, other pipe materials may be used provided such materials can be deomonstrated to be structurally adequate by the methods set forth in ACE Manual #37, latest edition.

Swales and Channels. All swales and channels shall have adequate lining to prevent erosion and shall be of parabolic or trapezoidal section. Trapezoidal sections shall be such that the side slopes shall be no steeper than three (3) horizontal to one (1) vertical and shall have a flat bottom a minimum of two (2) feet wide.

(e) All materials used in the construction of storm sewers, bridges, open channels and swales and other drainage structures shall be in accordance with the specifications set forth in the New Jersey Department of Transporation's "Standard Specifications for Road and Bridge Construction, 1983" as amended, supplemented or revised.

(f) Lots and buildings shall be graded to secure proper drainage away from buildings. Additionally, drainage shall be provided in a manner which will prevent the collection of storm water in pools or other unauthorized concentrations of flow.

(g) Approval of drainage structures shall be obtained from the appropriate Town, County, State and Federal agencies and offices.

(h) Where required by the Town, and as indicated on an approved development plan, a drainage right-of-way easement shall be provided to the Town where a tract or lot is traversed by a system, channel or stream. The drainage right-of-way easement shall conform substantially with the lines of such watercourse and, in any event, shall meet any minimum widths and locations as shown on the Official Map and/or Master Plan.

(i) All references herein to ACE Manual #37, latest edition, shall mean American Society of Civil Engineers Manual on Engineering Practice No. 37 entitled "Design and Construction of Sanitary and Storm Sewers", latest edition.

(j) All developments shall further comply with the Flood Plain Ordinance of the Town of Clinton, as amended and supplemented, and all applicable State and Federal regulations.

(2) Lighting.

(a) Street lighting shall be provided at all street intersections and along all collector and local streets, parking areas and anywhere else deemed necessary for safety reasons.

(b) Any outdoor lighting such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs, and ornamental

lighting, shall be shown on the lighting plan in sufficient detail to allow a determination of the effects upon adjacent properties, roads, and traffic safety from glare, reflection and overhead sky glow in order to recommend steps needed to minimize these impacts.

(c) The average intensity of lighting permitted on roadways shall be as follows: 0.2 footcandles along local streets, 2.0 footcandles at local street intersections, 0.4 footcandles along collector streets and 3.0 footcandles at any intersection involving a collector street.

(3) Sanitary Sewers. The developer shall design and construct sewage collection facilities in accordance with applicable requirements and in such a manner as to make adequate sewage treatment available to each lot and building within the development from said treatment and collection system. The developer shall provide the Planning Board with a copy of the agreement with the sewer department.

(4) Streets.

(a) All developments shall be served by paved streets in accordance with the approved subdivision and/or site plan, and all such streets shall have adequate drainage.

(b) Local streets shall be planned so as to discourage through traffic.

(c) All streets within the development shall be designed in accordance with New Jersey Department of Transportation's "Standard Specifications for Road and Bridge Construction, 1983", as amended, together with the construction standards of the Town of Clinton, on file with the Town Engineer and Town Public Works Administrator, and the Schedule of Street Design.

(d) Intersections shall be designed in accordance with the following criteria:

Approach speed	25 MPH
Clear sight distance (length along centerline of each approach leg)	90 feet
Vertical alignment within 50 feet of intersecting curbline or pavement edge	3.0% (max.) & 0.5% (min.)
Minimum angle of intersection	75°; 90° preferred

Minimum curb radius (feet)	
local - local	25
local - collector	25
collector - arterial	30
Minimum centerline offset of adjacent intersection (feet)	
local - local	125
local - collector	150
collector - collector	200
Minimum tangent length approaching intersection (feet)	50

All intersections shall be curbed. If the street is not curbed (local street), then curbing within the intersection shall be offset one foot outside the edge of pavement of the approaches, and curbing shall extend 10 feet beyond the point of curvature of the curb return. The pavement width at the intersection shall be a minimum of 28 feet between curbs or the width of the street, if greater; where an approaching street has a pavement width narrower than 28 feet, a pavement transition of 25 feet in length shall be provided from the wider pavement at the intersection to the narrower pavement beyond the end of the curb.

(e) Pavement specifications shall be as follows:

Class of Street	Surface Course	Base Course	Subbase
Local	2" bituminous concrete surface course, Mix I-5	4" bituminous stabilized base course, Mix I-2	Type 5, Class A soil aggregate, if and where required
Collector	2" bituminous concrete surface course, Mix I-5	5" bituminous stabilized base course, Mix I-2	Type 5, Class A soil aggregate, if and where required

(5) Sight Triangles: Sight triangle easements shall be dedicated to the Town. No grading, planting, or structure shall be erected or maintained more than 24 inches or less than 120 inches above the centerline grade of the interesecting street so that an unobstructed view of the street is maintained. Traffic control devices and other manmade or natural objects may remain within the sight triangle if it can be demonstrated that they do not obstruct the view of oncoming traffic.

(6) Sidewalks: Sidewalks shall be installed in locations determined by the Board to be in the interest of public safety and proper pedestrian circulation.

Schedule of Street Design Standards

	Local Street Single Family Development Area	Local Street Multi-Family Development Area	Collector Street
Right-of-way width (feet)	50	n/a	60
Minimum pavement width (feet) (1)	28	22	28
Curbing (2) V = vertical face R = roll-type	R/V	R	V
Width of sidewalks & bicycle paths where provided (feet)	4	4	4
Min. distance sidewalk (where provided) from curbface (feet)	5	5	10
Min. sight distance (feet)	200	200	250
Maximum grade	10%	10%	4%
Minimum grade	1%	1%	1%
Maximum cul-de-sac length (feet) (4)	1000	1000	n/a
Min. cul-de-sac radius at right-of-way (at pavement)	55 (45)	(45)	n/a
Design speed (MPH)	25	25	30
Minimum centerline radius of curves (feet)	200	200	500
Min. centerline offsets of intersecting streets (street jogs)	125	125	150
Minimum tangent between reverse curves (feet)	50	50	100

Notes: (1) Minimum pavement widths presume that off-street parking has been provided as required. If the street is to be used for required parking, a condition which is specifically discouraged in the multi-family residential development areas, then pavement widths shall be increased by 6 feet for each side of the street on which parking is to be permitted.

(2) Curbing shall be provided in all cases where the street grade exceeds 5% or the velocity of stormwater in the shoulder or swale exceeds 3.0 to 4.5 feet per second, depending on soil conditions, based upon a 25-year design storm.

(3) See intersection design criteria.

(4) Culs-de-sac shall provide access to no more than 85 dwelling units.

Sidewalks need not follow all streets and in some instances may better follow open space corridors. The determination of whether sidewalks are needed and where they are best located shall be based on public safety considering the intensity of development, the probable volume of pedestrian traffic, the adjoining street classification (where sidewalks parallel streets), access to school bus stops, recreation areas, and the general type of improvement intended.

(7) Water supply:

(a) Water mains shall be constructed in such a manner as to make adequate water service available to each lot and building within the development. The system shall be designed and constructed in accordance with applicable requirements. Prior to the grant of the preliminary approval, the applicant shall provide the Board with a copy of a letter from the water company indicating that the project will be serviced with public water.

(b) Fire hydrants of a type and number and in locations approved by the Public Works Administrator with the advice of the chief of the Clinton Fire Company, shall be installed by the developer.

I. Multi-family residential development area requirements.

(1) No building or group of attached buildings shall contain more than twenty-four (24) dwelling units.;

(2) No building shall exceed a length of two hundred (200) feet.

(3) Each dwelling unit shall have at least two (2) exterior exposures with at least one (1) window in each exposure; alternatively, each dwelling unit shall be designed in conformance with the Uniform Construction Code such that either eight (8) percent of the floor area of all habitable rooms shall be in windows or the maximum depth of the unit shall not exceed twenty-two (22) feet.

(4) No room within a dwelling unit intended for human habitation shall be located in a cellar, basement or attic except that a cellar or basement may contain a family room or recreation room.

(5) Accessory buildings shall meet the property line setbacks of the principal buildings.

(6) The maximum height of an accessory building shall be sixteen (16) feet. Recreational buildings and facilities shall be governed by the height limitations for principal buildings.

(7) Garages may be built into the principal structure or separately constructed as hereinafter provided. Each garage space shall be at least ten (10) feet in width and twenty (20) feet in depth. Each group of attached garages shall have a joint capacity of not more than twelve (12) automobiles arranged in a row, and there shall be a minimum distance of ten (10) feet between structures.

(8) Exterior television antennae shall be limited to one (1) master antenna per building.

(9) Laundry facilities may be provided in each building. Outside clothes drying is prohibited.

(10) One or more completely enclosed but unroofed structures for the collection and storage of solid waste shall be provided. The system of collecting and storing solid waste shall be approved by the Board of Health. No garbage or other refuse shall be stored or collected except in such approved structures.

(11) In addition to any storage area contained within the dwelling unit, a minimum of one hundred fifty (150) cubic feet of storage space shall be provided for each dwelling unit, which storage area shall be convenient to and accessible from the outside of the building for purposes of storing bicycles, perambulators and similar outside equipment.

(12) Screening and fencing shall be provided as needed to shield parking areas and other common facilities from the view of adjoining properties and streets.

(13) Provisions shall be made for the preservation of existing trees and natural features to the extent possible. All disturbed areas shall be landscaped. Landscaping shall be provided as follows:

(a) Shade trees shall be planted along all streets and in common parking areas. Such trees shall be 1½ to 2 inches in caliper at time of planting and shall be planted a minimum of fifty (50) feet on center along both sides of all streets

and common parking areas. The Planning Board shall approve the choice of plantings and, in so doing, may rely upon the recommendations of the Shade Tree Commission.

(b) Common areas and yards shall be planted with: one (1) conifer, six (6) to eight (8) feet high at time of planting, for each dwelling unit; one (1) deciduous tree, 1½ to 2 inches in caliper, for each two dwelling units; and ten (10) shrubs, fifteen (15) to eighteen (18) inches high at time of planting, for each dwelling unit.

(c) Buffer areas shall be left in a natural state wherever they are outside the limits of disturbance; otherwise, buffer areas shall be planted with conifers, six (6) to eight (8) feet high at time of planting, eight (8) feet on center.

(d) All disturbed areas shall be planted in grass or ground cover.

(e) All plantings shall be of nursery stock, balled and burlapped, and shall be healthy and free of disease.

Article VII, Section 88-52 is amended to add new Sections F. and G.

F. Cluster development:

(1) Residential cluster development shall be permitted on any tract located in an R-1 or R-2 district if the tract contains five (5) or more acres.

(2) Such cluster development shall permit a reduction in minimum lot area of up to two-thirds that required in Schedule I.

(3) Minimum lot dimensions in a cluster development shall be as follows:

	R-1	R-2
Lot Width (street line)	75	60
Lot Width (building line)	100	90
Lot Depth	175	100

(4) Minimum yards in a cluster development shall be as follows:

	R-1	R-2
Front	40	30
Rear	40	30
Side		
(minimum on one side)	15(*)	12
(combined)	35	30

(*) Where a side yard is provided. The developer may elect to undertake a zero lot line development where each dwelling unit is constructed along one side lot line. In such cases, the single side yard provided shall be equivalent to the requirement for both sides, and no dwelling unit in the development shall be closer to any other dwelling unit, either within the developemnt or on an adjoining property, than the side yard (both) requirement set forth above.

(5) Common open space may be deeded to the Town, if accepted by the Mayor and Council.

All common open space not accepted by the Town and all common elements in the development shall be deeded to an open space organization established to own and maintain the common elements as provided in N.J.S.A. 40:55D-43. The open space organization documents shall be submitted to the Town Attorney for review and approval.

G. Requirements for R-1-A district. On tracts of land designated on the Zoning Map as R-1-A, the gross density of residential development permitted shall not exceed 2.6 dwelling units per acre provided that all development shall take place on lands elevated above the 100 year flood plain, and the net density of development on lands outside of the flood plain shall not exceed four (4) dwelling units per acre. Development may be in the form of single family detached dwellings, patio homes, zero lot line homes and side-by-side two-family structures.

(1) All dwelling units shall have a compatible architectural theme with variations in design to provide attractiveness to the development, and which shall include consideration of landscaping techniques; building orientation to the site, to other structures and to maximize solar gain; topography, natural features and individual dwelling unit design such as varying unit width, staggering unit setbacks, providing different exterior materials, changing roof lines and roof designs, altering building heights and changing types of windows, shutters, doors, porches, colors and vertical or horizontal orientation of the facades, singularly or in combination for each dwelling unit. Any overall structure of attached units shall provide that no more than two (2) adjacent dwelling units shall have the same setback.

(2) All parking facilities shall be located within one hundred fifty (150) feet of the nearest entrance of the building they are intended to serve. Parking spaces shall be provided in areas designed specifically for parking, and there shall be no parking along interior streets. At least one (1) parking space per dwelling unit shall be within a garage.

(3) No dwelling unit shall be less than twenty-four (24) feet wide.

(4) No outside area or equipment shall be provided for the hanging of laundry or the outside airing of laundry in any manner. Sufficient area and equipment shall be made available within each dwelling unit for the laundering and artificial drying of laundry of occupants of each dwelling unit.

(5) Each building shall contain a single master T.V. antenna system which shall serve all dwelling units within the building, and there shall be no additional T.V. or radio equipment permitted.

(6) No building shall be closer to a tract boundary than fifty (50) feet, unless said tract boundary is also within an R-1-A zone, in which case the setback from the tract boundary may be reduced to thirty (30) feet.

(7) There shall be the following minimum distances between buildings in the R-1-A zone:

Windowless wall to windowless wall	30 feet
Window wall to windowless wall	35 feet
Window wall to window wall	
Front to Front	75 feet
Rear to rear	60 feet
End to end	40 feet
Any building face to local street curb in the case of a private street or right-of-way	30 feet
Any building face to collector street curb in the case of a private street or right-of-way	50 feet
Any building face except garage face to common parking area	20 feet
Garage face to common parking area	5 feet

The Planning Board may reduce the above distances by not more than one-third if there is an angle of twenty (20) degrees or more between buildings and if extensive landscaping or buffers are placed between buildings.

Amend Section 88-52A. to add a new item (8):

(8) Accessory apartments, in the R-3 and C-1 districts and designated portions of the R-2 district.

Add new Section 88-52I.

I. Requirements for accessory apartments. In the R-3 and C-1 districts and on lots fronting on Leigh Street in the R-2 district, accessory apartments may be created provided the following conditions are met:

(1) The lot shall contain an existing single family dwelling, having a minimum floor area of 1600 square feet, or contain an existing commercial building having more than one story.

(2) The property owner undertaking the creation of the accessory apartment may obtain funding or financing to create the accessory apartment through the program established by the Town for the subsidization of same.

(3) The resulting unit shall meet all applicable building code requirements.

(4) The resulting unit shall be affordable to and shall be occupied by a household qualified as a low or moderate income household and shall be regulated as such in accordance with the requirements set forth at Section 88-52^{a}F., except that the unit may be sold or rented without restrictions after only ten (10) years from the date of initial occupancy.

(5) Except in the C-1 district, a minimum of three parking spaces shall be provided on any lot containing an accessory apartment and the parking space reserved for the accessory apartment shall be accessible directly, and not located in front of or behind another space.

(6) At the request of the applicant, the Planning Board may exempt the parking area from any of the requirements for site plan approval provided that the applicant submits, as part of the request for exemption, a drawing indicating any proposed changes to the exterior of the premises. The Board shall take action on the request for exemption within thirty (30) days of the submission of the request.

(7) Notwithstanding any other requirement of the Town of Clinton, the following fees shall be waived for every accessory apartment unit created pursuant to this Section:

Site plan application fee.

Building permit, except State and third party fees, applicable to the accessory apartment unit only.

Sewer connection fee applicable to the accessory apartment unit only.

Certificate of Occupancy fee applicable to the accessory apartment unit only.

The Town will not oppose an application to the Board of Public Utilities Commissioners for a waiver of the water connection fee for the accessory apartment unit only.

Amend Article VII, Sections 88-53, 88-54, 88-55, 88-57 and 88-58 to add to them a new item E.

E. Participation in the provision of lower income housing. The developer of any land in the district may participate in the provision of lower income housing. The developer shall be entitled to a density bonus equivalent to fifteen (15) percent of the floor area to which he is otherwise entitled under Schedule I, provided that all parking requirements can be met on the site and the Board approves any variances from setback and buffer requirements needed to accommodate the density bonus, in return for which the developer shall, no later than the time of issuance of a building permit, convey to the Town an amount equal to $3.75 per square foot of gross floor area for all bonus construction. The funds paid to the Town shall be placed into a Housing Rehabilitation, Conversion and Assistance fund to be administered by the Housing Officer and Affordable Housing Board appointed by the Mayor and Council following administrative guidelines established by Ordinance.

(*) Amend Article VII, Section 88-56 to add a new item F.

F. Participation in the provision of lower income housing. The developer of any land in the district may participate in the provision of lower income housing. The developer shall be entitled to a density bonus equivalent to fifteen (15) percent of the floor area to which he is otherwise entitled under Schedule I, provided that all parking requirements can be met on the site and the Board approves any variances from setback and buffer requirements needed to accommodate the density bonus, in return for which the developer shall, no later than the time of issuance of a building permit, convey to the Town an amount equal to $3.75 per square foot of gross floor area for all bonus construction. The funds paid to the Town shall be placed into a Housing Rehabilitation, Conversion and Assistance fund to be administered by the Housing Officer and Affordable Housing Board appointed by the Mayor and Council following administrative guidelines established by ordinance.

Article VII is amended to add new Section 88-58[a], OB-3 Office Building Districts.

Section 88-58[a], OB-3 OFFICE BUILDING DISTRICTS

A. Permitted principal uses:

(1) Office buildings for business, professional, executive and administrative purposes.

(2) Scientific or research laboratories devoted to research, testing, design and/or experimentation and processing and fabricating incidental thereto.

(3) Data processing facilities.

B. Permitted accessory uses:

(1) Off-street parking areas in accordance with S. 88-62.

(2) Signs in accordance with S. 88-64.

(3) Other accessory uses customarily incident to the uses listed in Subsection A.

C. Conditional uses. The following conditional uses, as regulated in S. 88-55, are permitted:

(1) Churches and similar places of worship of recognized religious groups, which may include attendant parish houses, convents and religious education buildings.

(2) Public and private schools teaching academic subjects.

D. Required conditions. Except as otherwise provided in this Article, the requirements and limitations contained in the Schedule of Requirements referred to in S. 88-51C shall be complied with. In addition, the performance standards contained in S. 88-56E shall be complied with.

(*) E. Participation in the provision of lower income housing. The developer of any land in the district may participate in the provision of lower income housing. The developer shall be entitled to a density bonus equivalent to fifteen (15) percent of the floor area to which he is otherwise entitled under Schedule I, provided that all parking requirements can be met on the site and the Board approves any variances from setback and buffer requirements needed to accommodate the density bonus, in return for which the developer shall, no later than the time of issuance of a building permit, convey to the Town an amount equal to $3.75 per square foot of gross floor area for all bonus construction. The funds paid to the Town shall be placed into a Housing Rehabilitation, Conversion and Assistance fund to be administered by the Housing Officer and Affordable Housing Board appointed by the Mayor and Council following administrative guidelines established by ordinance.

F. Buffering. A buffer shall be provided along any common property line with a residential use. Said buffer shall be a minimum of seventy-five (75) feet in width and shall be suitably landscaped to provide complete year-round screening of parking areas and service areas and entrances.

Amend Section 88-44B (1) (j) to add a new item [3] as follows:

[3] Parking spaces in the PUD or PRD zones, or parking spaces for office, industrial or institutional uses, or wherever it can be demonstrated by the applicant that parking facilities will be used for long periods of time, shall have a minimum area of 162 square feet and minimum dimensions of nine (9) feet in width by eighteen (18) feet in length, measured perpendicular to each other. All other parking spaces shall have minimum dimensions of nine and one-half (9.5) feet in width by twenty (20) feet in length, measured perpendicular to each other, and a minimum area of 190 square feet. Wherever the parking space measures less than twenty (20) feet in length, the aisle width for 90° angle parking shall be twenty-five (25) feet instead of twenty-four (24) feet.

Amend Article VII, Section 88-60 O. to read as follows:

O. Height exceptions. The height provisions of this Article shall not apply to the erection of farm silos, church spires, belfries, towers designed exclusively for ornamental purposes, chimneys, flues or similar appurtenances. The height provisions of this Article shall, moreover, not apply to bulkheads, elevator enclosures, water tanks or similar accessory structures occupying an aggregate of twenty (20%) percent or less of the area of the roof on which they are located and further provided that such structures do not exceed the height limit by more than ten (10) feet and are fully screened. Nothing in this Article shall prevent the erection above the height limitation of a parapet wall or cornice extending above such height limit not more than three (3) feet.

Amend Section 88-56 E.8. to add a new item (k):

(k) Any other provision of this Ordinance notwithstanding, no individual use in the Industrial zone shall generate a demand for sewage treatment greater than 1200 gallons per day per acre. The 1200 gallons per day per acre shall be construed as a maximum for each use and the land committed to that use and not for the zone as a whole.

Amend Schedule of Zoning Requirements, Town of Clinton, New Jersey, as follows:

Part I

Zone	OB-3
Primary Principal Use	Office, research
Minimum Area (square feet)	130,680
Maximum Depth of Measurement (feet)	200
Minimum Width (feet)	
Street	350
Building Line	350
Minimum Yards (feet)	
Front	100(1)
Rear	100(2)
Side	
(minimum on one side)	50
(combined)	100

Add note at bottom of Part I referenced to the front yard requirements for the I, OB-1, OB-2 and OB-3 zones, as follows:

(1) The minimum required front yard may be reduced by twenty (20) percent if no parking is provided between the building and the street line.

Add note at bottom of Part I referenced to the rear yard requirement for the OB-3 zone, as follows:

(2) Except where the lot abuts public open space, in which case the minimum rear yard may be reduced to ten (10) feet.

Part II

Maximum Height	
Stories	--
Feet	40
Maximum Floor Area Ratio	.15

Amend Schedule of Zoning Requirements, Part II, to change the heading over columns 6 through 8 to read:

MINIMUM NET HABITABLE
FLOOR AREA PER
DWELLING UNIT
(square feet)

Amend Schedule of Zoning Requirements, Part II, to add, under column 9, MAXIMUM FLOOR AREA RATIO, a floor area ratio for the I zone of .26, for the C-2 and C-3 zones of .30, for the C-1 zone of .87, and for the OB-1 and OB-2 zones of .20.

Amend Schedule of Zoning Requirements, Part II, column 5, MAXIMUM BUILDING COVERAGE (percent), to delete the maximum building coverage requirements for all non-residential zones.

Amend Table of Contents and Section 88-51 of Article VII to cover the inclusion of the PUD, PRD, R-1-A, and OB-3 districts.

Amend Schedule by referencing the PUD and PRD districts back to Section 88-52[a] and the R-1-A district back to Section 88-52G.

Amend Zoning Map to reflect all changes.

Amend Section 88-53A(9) to read:

(a) Accessory apartments as provided in Section 88-52I, provided that no accessory apartment shall be located on the first floor.

SECTION II: These amendments shall become effective upon final passage according to law and set forth herein.

GEBHARDT & KIEFER
21 Main Street
Clinton, New Jersey 08809
(201)735-5161
Attorneys for Town of Clinton

CLINTON ASSOCIATES, Plaintiff vs. TOWN OF CLINTON, et al. Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION HUNTERDON/MIDDLESEX COUNTY (MT. LAUREL II) DOCKET NO. L-019063-84 CIVIL ACTION FINAL JUDGMENT AS TO TOWN OF CLINTON

This matter having come before this Court on the joint application of Plaintiff, Clinton Associates, and Defendant, Town of Clinton, for entry of final judgment of compliance as to the Town of Clinton based upon a settlement agreement between the parties; and

This Court having determined that the settlement agreement and ordinances proposed by the Town of Clinton are,

subject to conditions set forth in this Court's Order of November 14, 1985, fair, adequate and reasonable; and

Defendant, Town of Clinton, having agreed and undertaken to comply with the conditions set forth in the Order of November 14, 1985, namely:

1. To amend the proposed ordinance amendments in accordance with paragraph 2 (c) and (d) of the November 14, 1985 Order;
2. To conduct a housing survey in accordance with paragraph 2 (a) of the November 14, 1985 Order;
3. To dispense funds from the Housing Rehabilitation, Conversion and Assistance Fund in accordance with paragraph 2 (b) of the November 14, 1985 Order;

and

This Court having determined that entry of a final judgment of compliance is justified and within the powers of this Court;

IT IS on this day of , 1985 ORDERED and ADJUDGED that:

1. The settlement agreement annexed as Attachment A and incorporated herein by reference, as modified by this Court's Order of November 14, 1985 is fair, adequate and reasonable;

2. Defendant, Town of Clinton, has agreed and undertaken to comply with the conditions set forth in this Court's Order of November 14, 1985;

3. Defendant, Town of Clinton, by implementing the settlement agreement as modified by this Court's Order of November 14, 1985, is complying with its constitutional obligation to provide realistic opportunities for the creation of sufficient low and moderate income households to meet its indigenous need and its fair share of the present and prospective regional need and is therefore entitled to a Judgment of Compliance and all rights associated therewith in accordance with So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983);

4. Final judgment is hereby entered in favor of Defendant, Town of Clinton, as to all claims made by Plaintiff;

5. The agreement annexed as Attachment A, as modified by this Court's Order of November 14, 1985, shall, in accordance with its terms and provisions, be effective immediately upon entry and shall be implemented by the parties;

6. Costs shall not be taxed against either party;

7. It is certified pursuant to R.4:42-2, that this

judgment is a complete ajudication of all of the rights and liabilities asserted in this litigation as to the Town of Clinton, and there is no just reason for delay of entry of final judgment.

STEPHEN SKILLMAN, J.S.C.

ATTACHMENT A

THIS AGREEMENT, made this 22nd day of January , 1985 by and between

THE TOWN OF CLINTON, Hunterdon County, a Municipal Corporation of the State of New Jersey (hereinafter "TOWN"),

and

CLINTON ASSOCIATES, a New York Partnership (hereinafter "CLINTON ASSOCIATES");

WHEREAS, CLINTON ASSOCIATES on March 21, 1984 instituted a certain action in the Superior Court, Law Division, Hunterdon/Middlesex County, bearing docket Number L-019063-84 P.W., against the TOWN and other parties; and

WHEREAS, TOWN has introduced and adopted an ordinance regulating its Mt. Laurel obligation which ordinance is attached hereto as "Exhibit A" and made a part hereof; and

WHEREAS, the parties hereto are desirous of entering into an agreement of settlement to resolve their differences in the aforesaid litigation;

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions hereinafter provided, it is agreed by and between the TOWN and CLINTON ASSOCIATES as follows:

1. This agreement is reached after due deliberation by all parties;

2. On or before December 18, 1990 the TOWN shall, through its normal planning process, assess its fair share of housing needs to

determine whether an opportunity for additional low and moderate income units is necessary and, if so, create such additional opportunity.

3. In the event that any publicly subsidized housing for low and moderate income households is constructed in the TOWN on or before December 18, 1990, the TOWN shall receive credit for each unit towards satisfaction of its fair share obligation.

4. In addition to the provisions in Exhibit "A" the TOWN shall take all reasonable steps to foster development of the units affordable to low and moderate households called for by paragraph 2, including but not limited to:

a. Adoption of resolutions of need, execution of payment lieu of taxes resolutions, or public housing cooperation agreements as may be necessary to facilitate a developer in obtaining public subsidies for the construction of housing affordable to low and moderate income households;

b. Expedited dispostion of site plan applications and municipal approvals for developers in the affordable housing zones;

c. Cooperation with developers in the affordable housing zones in obtaining sewage and water connections;

d. Cooperation with the needs of developers and the requirements of State and Federal agencies concerning the administration of resale price controls.

5. In order to foster production of the units of low and moderate income households on the CLINTON ASSOCIATES property, the TOWN:

a. Shall permit the development of 84 dwelling units (of which 16 shall be lower income units) and 45,000 square feet of non-residential uses on the CLINTON ASSOCIATES site in accordance with Exhibit A;

b. Shall permit CLINTON ASSOCIATES, at CLINTON ASSOCIATES' option, to submit to the Planning Board a preliminary and/or final site plan and/or subdivision applications(s) for its property prior to entry of a Judgment of Compliance; in the event this application(s) is submitted before entry of a Judgment of Compliance, the Planning Board shall review and consider such application, conditioned upon the scheduling of a public hearing and approval within 30 days of entry of the Judgment of Compliance. Any site plan or subdivision submitted pursuant to Exhibit A will only be granted in the event a Judgment of Compliance is issued by the Court.

c. Hereby reserves 19,700 gallons per day of treatment capacity in the Town of Clinton Wastewater Treatment Plant for the Clinton Associates project.

6. This Settlement shall not be effective until entry of a Final Judgment of Compliance by the Courts pursuant to South Burlington County N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 at 291 and Exhibit A. CLINTON ASSOCIATES agrees to support any attempt by the TOWN to obtain such a Final Judgment of Compliance.

7. Upon entry of a Judgment of Compliance, the parties shall execute a Stipulation of Dismissal or the Court may enter an Order providing for dismissal of the CLINTON ASSOCIATES' Complaint with prejudice.

8. In the event that any site rezoned under this Agreement ceases to be available for development pursuant to the provisions adopted under Exhibit A to this Agreement because of development for other purposes, condemnation, state or federal prohibitions or restrictions upon development or any other reason, the TOWN upon written notice to and approval of the appropriate Mt. Laurel II Judge or his designee, shall rezone sufficient other developable land pursuant to this provision to make it realistically likely that a sufficient number of units affordable to low and moderate income households will be constructed to satisfy the TOWN's fair share as determined in the Judgment of Compliance.

9. The TOWN shall not zone, rezone, grant variances, or grant any preliminary or final site plan approval for townhouses, garden apartments or condominiums residential uses at gross densities higher than 3 units/acre unless:

a. The development is subject to a mandatory set aside for units affordable to low and moderate income households identical to that contained in Exhibit A; or

b. The municipality has met its fair share obligation as set forth in the Judgment of Compliance described in paragraph 6 hereof;

c. This paragraph shall be subject to approval by the Court.

10. CLINTON ASSOCIATES has reviewed Exhibit A and agrees that the requirements for the construction of Mt. Laurel II units contained therein are reasonable and will reasonably allow CLINTON

ASSOCIATES or its assigns to construct such housing in accordance with the terms of Exhibit A.

11. CLINTON ASSOCIATES agrees tht it is willing to assist the TOWN in fulfilling the TOWN's Mt. Laurel II obligation by construction of low and moderate income housing on its site in accordance with Exhibit A and agrees that it will develop its property in accordance with Exhibit A and will construct the Mt. Laurel II housing called for in Exhibit A in accordance with Exhibit A.

12. CLINTON ASSOCIATES agrees that if it sells or transfers the property which is the subject of this lawsuit, any purchaser or assign shall be obligated to develop said property in accordance with Exhibit A.

13. CLINTON ASSOCIATES agrees to contribute $22,500.00 to a housing rehabilitation and conversion fund established by the TOWN, which sum shall be due and payable on or before a Certificate of Occupancy is issued for the non-residential uses of Clinton Associates' property.

14. TOWN agrees that upon filing of site plan and/or subdivision applications by CLINTON ASSOCIATES, it will make its professionals available to meet with CLINTON ASSOCIATES and its professionals, including daytime meetings if necessary, so that the site plan and/or subdivision review process by the TOWN's Planning Board may be expedited. CLINTON ASSOCIATES has reviewed the TOWN's ordinance and anticipates no need for any variances for its proposed office building. In the event that in the course of the subdivision and/or site plan review process it is determined that an office building smaller than 45,000 square feet should be constructed on CLINTON ASSOCIATES'

non-residential tract, then CLINTON ASSOCIATES will receive a credit toward the contribution referred to in paragraph 13 of fifty cents (50¢) for each square foot that the office building, for which final site plan is given, is less than 45,000 square feet.

15. In the event of any breach of any provision of this Agreement, the parties may seek relief by way of any remedy provided by law.

16. The owners or assignees of the lands which are rezoned by amendment referenced in Exhibit A for Mt. Laurel II housing are also recognized as third party beneficiaries with authority to enforce the terms of this Settlement Agreement, providing they are in compliance with the terms of this Agreement.

ATTESTED BY:

Lois D. Terreri

Lois D. Terreri, Clerk

TOWN OF CLINTON

By _____

WITNESSED BY:

Helen Zirinsky

CLINTON ASSOCIATES

By _____, Partner

FILE COPY

BRENER, WALLACK & HILL

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* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
* MEMBER OF N.J. & N.Y. BAR
** MEMBER OF N.J. & GA. BAR
^ CERTIFIED CIVIL TRIAL ATTORNEY

FILE NO.

September 11, 1985

Richard P. Cushing, Esq.
Gebhardt & Kiefer
21 Main Street
P.O. Box 1
Clinton, New Jersey 08809

Re: Clinton Associates v. Town of Clinton, et al.
Docket No: L-019063-84 (Mt. Laurel II)

Dear Mr. Cushing:

Please be advised that I have carefully reviewed the August, 1985 report of Philip Caton which recommends certain changes to the Settlement Agreement between the Town of Clinton and Clinton Associates including the proposed ordinance amendments, have discussed the same with my client and am pleased to report to you that Clinton Associates is willing to accept all changes recommended by Mr. Caton. These changes include, but are not limited to, the following:

1. The provision of an additional two lower income units on the Clinton Associates tract, said units to be provided for moderate income families. Thus, a total of 18 lower income units will be provided on the Clinton Associates tract comprising a 21% set-aside. We understand that the Town will apply for available governmental assistance for the additional two units;

2. The $22,500.00 payment by Clinton Associates will be made on or before a certificate of occupancy is issued for the non-residential development on the tract, or before December 31, 1987, whichever occurs earliest;

3. Specific ordinance changes such as clearer language regarding building separation reduction, parking requirements for market units, increasing the percentage of three-bedroom units allocated to low income families to 50%, the requirement that lower income housing be provided for a range of incomes between 45% and 50% of median for low income and 65% and 80% for moderate income, etc.

Very truly yours,

Guliet D. Hirsch

GULIET D. HIRSCH

GDH/sr

cc: Larry Zirinsky
Hal Fishkin

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WILLIAM C. GEBHARDT
1884-1929

W. READING GEBHARDT
1919-1980

October 17, 1985

Guliet D. Hirsch, Esq.
BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540

Re: Clinton Associates v. Town of Clinton

Dear Ms. Hirsch:

This will confirm our understanding of the settlement in connection with the above matter that the $3.75 per square foot density bonus set forth in our Ordinance does not apply to the Clinton Associates tract, and that Clinton Associates will not attempt to expand the proposed office building development beyond the square footage size set forth in the Settlement Agreement. Notwithstanding this, Clinton Associates is still required to pay the $22,500 to the Housing Rehabilitation and Conversion Fund of the Town of Clinton in accordance with Settlement Agreement and amendments thereto suggested by Philip Caton.

The purpose of this letter is simply to confirm that the change from a mandatory density bonus to a voluntary density bonus did not grant to Clinton Associates the right to take advantage of such a bonus. Naturally, if you disagree with this, please advise me upon receipt of this letter.

Very truly yours,

RICHARD P. CUSHING

RPC:cg
cc: Mayor and Council, Town of Clinton
Mt. Laurel Committee (to be distributed by Lois Terreri)
Mrs. Lois Terreri, Clerk
Philip B. Caton, AICP

BRENER, WALLACK & HILL

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[illegible]ER
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ET D. HIRSCH

ARLES SHEAK**
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** MEMBER OF N.J. & GA. BAR
▲ CERTIFIED CIVIL TRIAL ATTORNEY

October 22, 1985

FILE NO.

Richard P. Cushing, Esq.
Gebhardt & Kiefer
21 Main Street
P.O. Box 1
Clinton, New Jersey 08809

Re: Clinton Associates v. Town of Clinton

Dear Mr. Cushing:

I have your letter of October 17, 1985. Please be advised that my client understands that the office building on his property is limited to the size set forth in the settlement agreement and that the payment of $22,500.00 by Clinton Associates will be made in accordance with that agreement.

There is another revision to our general settlement agreement which needs to be confirmed. By letter of October 18, 1985 you sent me a copy of a revised ordinance entitled "An Ordinance to Establish an Affordable Housing Board, to Establish a Housing Rehabilitation, Conversion and Assistance Fund, and to Establish the Position of Housing Officer". In Section III C (7), the Affordable Housing Board is given the right to recommend fees to be charged to lower income housing developers. As I am sure you remember, we agreed at our meeting of October 18, 1985 that Clinton Associates would not be charged any type of fee to off-set salaries and expenditures of the Affordable Housing Board, or other related expenditures. If you disagree with this, kindly advise me.

Very truly yours,

GULIET D. HIRSCH

GDH/sr
cc: Hal Fishkin

GEBHARDT & KIEFER
21 Main Street
Clinton, New Jersey 08809
(201)735-5161
Attorneys for Town of Clinton

CLINTON ASSOCIATES, Plaintiff vs. TOWN OF CLINTON, et al. Defendants	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION HUNTERDON/MIDDLESEX COUNTY (MT. LAUREL II) DOCKET NO. L-019063-84 CIVIL ACTION FINAL JUDGMENT AS TO TOWN OF CLINTON

This matter having come before this Court on the joint application of Plaintiff, Clinton Associates, and Defendant, Town of Clinton, for entry of final judgment of compliance as to the Town of Clinton based upon a settlement agreement between the parties; and

This Court having determined that the settlement agreement and ordinances proposed by the Town of Clinton are,

subject to conditions set forth in this Court's Order of November 14, 1985, fair, adequate and reasonable; and

Defendant, Town of Clinton, having agreed and undertaken to comply with the conditions set forth in the Order of November 14, 1985, namely:

1. To amend the proposed ordinance amendments in accordance with paragraph 2 (c) and (d) of the November 14, 1985 Order;
2. To conduct a housing survey in accordance with paragraph 2 (a) of the November 14, 1985 Order;
3. To dispense funds from the Housing Rehabilitation, Conversion and Assistance Fund in accordance with paragraph 2 (b) of the November 14, 1985 Order;

and

This Court having determined that entry of a final judgment of compliance is justified and within the powers of this Court;

IT IS on this day of , 1985 ORDERED and ADJUDGED that:

1. The settlement agreement annexed as Attachment A and incorporated herein by reference, as modified by this Court's Order of November 14, 1985 is fair, adequate and reasonable;

2. Defendant, Town of Clinton, has agreed and undertaken to comply with the conditions set forth in this Court's Order of November 14, 1985;

3. Defendant, Town of Clinton, by implementing the settlement agreement as modified by this Court's Order of November 14, 1985, is complying with its constitutional obligation to provide realistic opportunities for the creation of sufficient low and moderate income households to meet its indigenous need and its fair share of the present and prospective regional need and is therefore entitled to a Judgment of Compliance and all rights associated therewith in accordance with So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983);

4. Final judgment is hereby entered in favor of Defendant, Town of Clinton, as to all claims made by Plaintiff;

5. The agreement annexed as Attachment A, as modified by this Court's Order of November 14, 1985, shall, in accordance with its terms and provisions, be effective immediately upon entry and shall be implemented by the parties;

6. Costs shall not be taxed against either party;

7. It is certified pursuant to R.4:42-2, that this

judgment is a complete ajudication of all of the rights and liabilities asserted in this litigation as to the Town of Clinton, and there is no just reason for delay of entry of final judgment.

STEPHEN SKILLMAN, J.S.C.

ATTACHMENT A

THIS AGREEMENT, made this 22nd day of January , 1985 by and between

THE TOWN OF CLINTON, Hunterdon County, a Municipal Corporation of the State of New Jersey (hereinafter "TOWN"),

and

CLINTON ASSOCIATES, a New York Partnership (hereinafter "CLINTON ASSOCIATES");

WHEREAS, CLINTON ASSOCIATES on March 21, 1984 instituted a certain action in the Superior Court, Law Division, Hunterdon/Middlesex County, bearing docket Number L-019063-84 P.W., against the TOWN and other parties; and

WHEREAS, TOWN has introduced and adopted an ordinance regulating its Mt. Laurel obligation which ordinance is attached hereto as "Exhibit A" and made a part hereof; and

WHEREAS, the parties hereto are desirous of entering into an agreement of settlement to resolve their differences in the aforesaid litigation;

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions hereinafter provided, it is agreed by and between the TOWN and CLINTON ASSOCIATES as follows:

1. This agreement is reached after due deliberation by all parties;

2. On or before December 18, 1990 the TOWN shall, through its normal planning process, assess its fair share of housing needs to

determine whether an opportunity for additional low and moderate income units is necessary and, if so, create such additional opportunity.

3. In the event that any publicly subsidized housing for low and moderate income households is constructed in the TOWN on or before December 18, 1990, the TOWN shall receive credit for each unit towards satisfaction of its fair share obligation.

4. In addition to the provisions in Exhibit "A" the TOWN shall take all reasonable steps to foster development of the units affordable to low and moderate households called for by paragraph 2, including but not limited to:

a. Adoption of resolutions of need, execution of payment in lieu of taxes resolutions, or public housing cooperation agreements as may be necessary to facilitate a developer in obtaining public subsidies for the construction of housing affordable to low and moderate income households;

b. Expedited dispostion of site plan applications and municipal approvals for developers in the affordable housing zones;

c. Cooperation with developers in the affordable housing zones in obtaining sewage and water connections;

d. Cooperation with the needs of developers and the requirements of State and Federal agencies concerning the administration of resale price controls.

5. In order to foster production of the units of low and moderate income households on the CLINTON ASSOCIATES property, the TOWN:

a. Shall permit the development of 84 dwelling units (of which 16 shall be lower income units) and 45,000 square feet of non-residential uses on the CLINTON ASSOCIATES site in accordance with Exhibit A;

b. Shall permit CLINTON ASSOCIATES, at CLINTON ASSOCIATES' option, to submit to the Planning Board a preliminary and/or final site plan and/or subdivision applications(s) for its property prior to entry of a Judgment of Compliance; in the event this application(s) is submitted before entry of a Judgment of Compliance, the Planning Board shall review and consider such application, conditioned upon the scheduling of a public hearing and approval within 30 days of entry of the Judgment of Compliance. Any site plan or subdivision submitted pursuant to Exhibit A will only be granted in the event a Judgment of Compliance is issued by the Court.

c. Hereby reserves 19,700 gallons per day of treatment capacity in the Town of Clinton Wastewater Treatment Plant for the Clinton Associates project.

6. This Settlement shall not be effective until entry of a Final Judgment of Compliance by the Courts pursuant to South Burlington County N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 at 291 and Exhibit A. CLINTON ASSOCIATES agrees to support any attempt by the TOWN to obtain such a Final Judgment of Compliance.

7. Upon entry of a Judgment of Compliance, the parties shall execute a Stipulation of Dismissal or the Court may enter an Order providing for dismissal of the CLINTON ASSOCIATES' Complaint with prejudice.

8. In the event that any site rezoned under this Agreement ceases to be available for development pursuant to the provisions adopted under Exhibit A to this Agreement because of development for other purposes, condemnation, state or federal prohibitions or restrictions upon development or any other reason, the TOWN upon written notice to and approval of the appropriate Mt. Laurel II Judge or his designee, shall rezone sufficient other developable land pursuant to this provision to make it realistically likely that a sufficient number of units affordable to low and moderate income households will be constructed to satisfy the TOWN's fair share as determined in the Judgment of Compliance.

9. The TOWN shall not zone, rezone, grant variances, or grant any preliminary or final site plan approval for townhouses, garden apartments or condominiums residential uses at gross densities higher than 3 units/acre unless:

a. The development is subject to a mandatory set aside for units affordable to low and moderate income households identical to that contained in Exhibit A; or

b. The municipality has met its fair share obligation as set forth in the Judgment of Compliance described in paragraph 6 hereof;

c. This paragraph shall be subject to approval by the Court.

10. CLINTON ASSOCIATES has reviewed Exhibit A and agrees that the requirements for the construction of Mt. Laurel II units contained therein are reasonable and will reasonably allow CLINTON

ASSOCIATES or its assigns to construct such housing in accordance with the terms of Exhibit A.

11. CLINTON ASSOCIATES agrees tht it is willing to assist the TOWN in fulfilling the TOWN's Mt. Laurel II obligation by construction of low and moderate income housing on its site in accordance with Exhibit A and agrees that it will develop its property in accordance with Exhibit A and will construct the Mt. Laurel II housing called for in Exhibit A in accordance with Exhibit A.

12. CLINTON ASSOCIATES agrees that if it sells or transfers the property which is the subject of this lawsuit, any purchaser or assign shall be obligated to develop said property in accordance with Exhibit A.

13. CLINTON ASSOCIATES agrees to contribute $22,500.00 to a housing rehabilitation and conversion fund established by the TOWN, which sum shall be due and payable on or before a Certificate of Occupancy is issued for the non-residential uses of Clinton Associates' property.

14. TOWN agrees that upon filing of site plan and/or subdivision applications by CLINTON ASSOCIATES, it will make its professionals available to meet with CLINTON ASSOCIATES and its professionals, including daytime meetings if necessary, so that the site plan and/or subdivision review process by the TOWN's Planning Board may be expedited. CLINTON ASSOCIATES has reviewed the TOWN's ordinance and anticipates no need for any variances for its proposed office building. In the event that in the course of the subdivision and/or site plan review process it is determined that an office building smaller than 45,000 square feet should be constructed on CLINTON ASSOCIATES'

non-residential tract, then CLINTON ASSOCIATES will receive a credit toward the contribution referred to in paragraph 13 of fifty cents (50¢) for each square foot that the office building, for which final site plan is given, is less than 45,000 square feet.

15. In the event of any breach of any provision of this Agreement, the parties may seek relief by way of any remedy provided by law.

16. The owners or assignees of the lands which are rezoned by amendment referenced in Exhibit A for Mt. Laurel II housing are also recognized as third party beneficiaries with authority to enforce the terms of this Settlement Agreement, providing they are in compliance with the terms of this Agreement.

ATTESTED BY:

Lois D. Terreri

Lois D. Terreri, Clerk

TOWN OF CLINTON

By _____

WITNESSED BY:

Helen Zirinsky

CLINTON ASSOCIATES

By _____, Partner

FILE COPY

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▲ CERTIFIED CIVIL TRIAL ATTORNEY

FILE NO.

September 11, 1985

Richard P. Cushing, Esq.
Gebhardt & Kiefer
21 Main Street
P.O. Box 1
Clinton, New Jersey 08809

Re: Clinton Associates v. Town of Clinton, et al.
Docket No: L-019063-84 (Mt. Laurel II)

Dear Mr. Cushing:

Please be advised that I have carefully reviewed the August, 1985 report of Philip Caton which recommends certain changes to the Settlement Agreement between the Town of Clinton and Clinton Associates including the proposed ordinance amendments, have discussed the same with my client and am pleased to report to you that Clinton Associates is willing to accept all changes recommended by Mr. Caton. These changes include, but are not limited to, the following:

1. The provision of an additional two lower income units on the Clinton Associates tract, said units to be provided for moderate income families. Thus, a total of 18 lower income units will be provided on the Clinton Associates tract comprising a 21% set-aside. We understand that the Town will apply for available governmental assistance for the additional two units;

2. The $22,500.00 payment by Clinton Associates will be made on or before a certificate of occupancy is issued for the non-residential development on the tract, or before December 31, 1987, whichever occurs earliest;

3. Specific ordinance changes such as clearer language regarding building separation reduction, parking requirements for market units, increasing the percentage of three-bedroom units allocated to low income families to 50%, the requirement that lower income housing be provided for a range of incomes between 45% and 50% of median for low income and 65% and 80% for moderate income, etc.

Very truly yours,

GULIET D. HIRSCH

GDH/sr

cc: Larry Zirinsky
Hal Fishkin

GEBHARDT & KIEFER
LAW OFFICES
21 MAIN STREET
P. O. BOX 1
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(201) 735-5161

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WALTER N. WILSON
WILLIAM W. GOODWIN, JR.
SHARON HANDROCK MOORE

WILLIAM C. GEBHARDT
1884-1929

W. READING GEBHARDT
1919-1980

October 17, 1985

Guliet D. Hirsch, Esq.
BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540

Re: Clinton Associates v. Town of Clinton

Dear Ms. Hirsch:

This will confirm our understanding of the settlement in connection with the above matter that the $3.75 per square foot density bonus set forth in our Ordinance does not apply to the Clinton Associates tract, and that Clinton Associates will not attempt to expand the proposed office building development beyond the square footage size set forth in the Settlement Agreement. Notwithstanding this, Clinton Associates is still required to pay the $22,500 to the Housing Rehabilitation and Conversion Fund of the Town of Clinton in accordance with Settlement Agreement and amendments thereto suggested by Philip Caton.

The purpose of this letter is simply to confirm that the change from a mandatory density bonus to a voluntary density bonus did not grant to Clinton Associates the right to take advantage of such a bonus. Naturally, if you disagree with this, please advise me upon receipt of this letter.

Very truly yours,

RICHARD P. CUSHING

RPC:cg
cc: Mayor and Council, Town of Clinton
Mt. Laurel Committee (to be distributed by Lois Terreri)
Mrs. Lois Terreri, Clerk
Philip B. Caton, AICP

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

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* * MEMBER OF N.J. & GA. BAR
▲ CERTIFIED CIVIL TRIAL ATTORNEY

October 22, 1985

FILE NO.

Richard P. Cushing, Esq.
Gebhardt & Kiefer
21 Main Street
P.O. Box 1
Clinton, New Jersey 08809

Re: Clinton Associates v. Town of Clinton

Dear Mr. Cushing:

I have your letter of October 17, 1985. Please be advised that my client understands that the office building on his property is limited to the size set forth in the settlement agreement and that the payment of $22,500.00 by Clinton Associates will be made in accordance with that agreement.

There is another revision to our general settlement agreement which needs to be confirmed. By letter of October 18, 1985 you sent me a copy of a revised ordinance entitled "An Ordinance to Establish an Affordable Housing Board, to Establish a Housing Rehabilitation, Conversion and Assistance Fund, and to Establish the Position of Housing Officer". In Section III C (7), the Affordable Housing Board is given the right to recommend fees to be charged to lower income housing developers. As I am sure you remember, we agreed at our meeting of October 18, 1985 that Clinton Associates would not be charged any type of fee to off-set salaries and expenditures of the Affordable Housing Board, or other related expenditures. If you disagree with this, kindly advise me.

Very truly yours,

Guliet D. Hirsch

GULIET D. HIRSCH

GDH/sr
cc: Hal Fishkin

Marilyn,
I'll need
my notes on
this matter with
me when
we meet.

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1884-1929
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1919-1980

December 17, 1985

Honorable Stephen Skillman
Superior Court Judge
Middlesex County Court House
New Brunswick, N.J. 08903

Re: Clinton Associates vs. Town of Clinton
Docket No. L-19063-84 P.W.

Dear Judge Skillman:

We enclose herewith the proposed Final Judgment in connection with the above captioned matter. By a copy of this letter, I am transmitting a copy of the proposed Final Judgment to the attorneys for all parties or participants in this matter. The amendments to the Land Use Ordinance of the Town of Clinton and the Affordable Housing Board Ordinance were passed on final reading on December 10, 1985 and are being published according to law. The Town is also in the process of hiring a planner/grantsman in order to conduct the housing survey and seek grants from the State of New Jersey.

If the form of the Final Judgment meets with your Honor's approval, we would appreciate your signing and filing same. Needless to say, if you require any additional information from the Town or any party to this matter, do not hesitate to advise us.

Respectfully yours,

RICHARD P. CUSHING

RPC:jw
Enclosure
cc: Guliet D. Hirsch, Esq. (w/enc.)
Benjamin L. Serra, III, Esq. (w/enc.)
R. Dale Winget, Esq. (w/enc.)
Philip B. Caton, AICP (w/enc.)
Mayor & Council, Town of Clinton (w/enc.)
Mrs. Lois Terreri, Clerk (w/enc.)

P.S.:

In accordance with our discussions, the Town will continue to work on the language of Section IV A(2) of the Affordable Housing Board Ordinance and will, by motion, submit an amendment to that section for your consideration.

Also, please note I have taken the liberty of not attaching Exhibit A to the copy of the January 22, 1985 Settlement Agreement (attached to the Judgment as "Attachment A"). Exhibit A is the December 9, 1984 Ordinance (84-17) originally adopted by the Town and then amended as a result of suggestions from Mr. Caton and the Court's directions. Naturally, if you wish, we will forward a copy to be attached, but it seemed confusing to include it.

BRENER, WALLACK & HILL
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△ CERTIFIED CIVIL TRIAL ATTORNEY

October 3, 1985

FILE NO.

The Honorable Stephen Skillman
Judge, Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08901

Re: Clinton Associates v. Town of Clinton, et al.
Docket No: L-019063-84 (Mt. Laurel II)

Dear Judge Skillman:

Please accept the following letter-brief submitted on behalf of Clinton Associates in support of the application of the parties for approval of settlement and entry of a judgment of compliance in favor of the Town of Clinton. This letter-brief addresses the legality of the provisions of the Town of Clinton Ordinance which offer a bonus to developers in all non-residential zones in return for a contribution to the Town of Clinton Housing Rehabilitation and Conversion Fund.

STATEMENT OF FACTS

The amendments to the Town of Clinton Land Use Ordinance which were adopted by the Council after public hearing on December 18, 1984 provide for a mandatory five (5) percent density "bonus" in all non-residential zones in return for a payment of $.50 per square foot of new construction. After conferring with the Court appointed master, Philip Caton, Clinton decided to change this approach to a purely voluntary one. By resolution adopted October 2, 1985, the Mayor and Town Council have agreed to bring to public hearing and adopt the following amendment if approved by the Court:

> "Participation in the provision of lower income housing. The developer of any land in the district may participate in the provision of lower income housing. The developer shall be entitled to a density bonus equivalent to fifteen (15) percent of the floor area to which he is otherwise

entitled under Schedule I, provided that all parking requirements can be met on the site and the Board approves any variances from setback and buffer requirements needed to accommodate the density bonus, in return for which the developer shall, no later than the time of application for a Certificate of Occupancy, convey to the Town an amount equal to $3.75 per square foot of gross floor area for all bonus construction. The funds paid to the Town shall be placed into a Housing Rehabilitation, Conversion and Assistance fund to be administered by the Housing Officer appointed by the Mayor and Council following administrative guidelines established by ordinance."

The proposal of the Town of Clinton is to offer a bonus of up to 15% of additional permitted floor area in exchange for a contribution of $3.75 per square foot of "bonus" space. Builders in all non-residential zones thus may develop under the current zoning without the payment of any fee, or may exercise the option of increasing the permitted floor area up to 15% by agreeing to make the specified payment to the Housing Rehabilitation and Conversion Fund. The payment is due at the time of application for a certificate of occupancy. The following chart compares the as-of-right zoning with the "bonus" zoning on a typical five (5) acre lot and calculates the fee paid for that bonus per square foot of permitted building:

TOWN OF CLINTON

COMPARISON OF AS-OF-RIGHT ZONING WITH BONUS ZONING ON FIVE ACRE LOTS

		As-of-Right		Bonus		
Ordinance Section	Zone	As-of-Right Floor Area Ratio	As-of-Right Floor Area[1]	Bonus Floor Area Ratio	Total Floor Area on Min. Lot as per Bonus	Fee Paid For Bonus[2]
88-53	C-1	87%	189,486	100%	217,800	$0.49
88-54	C-2	30%	65,340	34.5%	75,141	$0.49
88-55	C-3	30%	65,340	34.5%	75,141	$0.49
88-56	I	26%	56,628	29.9%	65,122	$0.49
88-57	OB-1	20%	43,560	23.0%	50,094	$0.49
88-58	OB-2	20%	43,560	23.0%	50,094	$0.49
88-58	OB-3	15%	32,670	17.25%	37,570	$0.49

[1] On five acre lot (217,800 sq. ft.)

[2] Per square foot of total building

Funds collected from developers through this bonus provision would be used in conjunction with any funding that might be received from programs such as the State's Neighborhood Preservation Program Balanced Housing Program to create seven (7) new apartments as accessory conversions in existing housing and to rehabilitate thirteen (13) standard units for occupancy by lower income families.

LEGAL ARGUMENT

THE SETTLEMENT BETWEEN THE TOWN OF CLINTON AND CLINTON ASSOCIATES IS FAIR, ADEQUATE AND REASONABLE AND THE NON-RESIDENTIAL BONUS PROVISION SHOULD BE APPROVED AS A PART OF THAT SETTLEMENT

A. The Non-Residential Bonus Fee Provision May Only Be Rejected If It Is Clearly Illegal Or Unconstitutional

Settlements in representative litigation are evaluated on the basis of the law which exists at the time the settlement is presented to the trial court. Armstrong v. Milwaukee Bd. of School Directors, 616 F.2d 305, 320 (7 Cir. 1980). A settlement will only be rejected if it initiates or authorizes a clearly illegal or unconstitutional practice. Unsettled legal questions need not be decided and illegality must appear as a legal certainty on the face of the agreement before a settlement will be rejected. Armstrong at 321; Robertson v. National Basketball Ass'n, 556 F.2d 682, 686 (2d Cir. 1977); Grunin v. International House of Pancakes, 513 F.2d 114, 123-124 (8th Cir.), cert. denied, 423 U.S. 864 (1975).

The general rule of repose in Mt. Laurel cases is that a judgment of compliance is binding upon all non-parties for a period of six (6) years. Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158, 291-292 (1983) (Mt. Laurel II); Morris Cty. Fair Hous. Council v. Boonton Tp., 197 N.J. Super. 359, 363-364 (Law Div. 1984). A judgment of compliance may be entered as part of a court approved settlement after appropriate notice and hearing. Morris Cty. Fair Hous. Council v. Boonton Tp., supra. Although a hearing on a settlement proposal is not a plenary trial and approval of a settlement is not an ajudication on the merits, so long as interested parties are represented and notice is adequate, res judicata applies fully. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, aff'd. 645 F.2d 699 (9 Cir. 1978), cert. den. 454 U.S. 1126 (1982).

Thus, as long as the non-residential bonus fee is not clearly illegal, it should be approved and given full res judicata effect.

B. The Clinton Non-Residential Bonus Provisions Are Not Clearly Illegal Or Unconstitutional And Should Therefore Be Approved As Part Of The Settlement

1. Background of Incentive Zoning

As preliminary matter, it should be noted that the New Jersey Supreme Court has encouraged municipal innovation in the provision of lower income housing:

> "There are several inclusionary zoning techniques that municipalities must use if they can not otherwise assure construction of their fair share of lower income housing. Although we will discuss some of them here, we in no way intend our list to be exhaustive; municipalities and trial courts are encouraged to create other devises and methods for meeting fair share obligations." 92 N.J. at 265-66.

Among the zoning techniques discussed with approval by the Supreme Court is "incentive zoning" which involves "offering economic incentives to a developer through the relaxation of various restrictions of an ordinance (typically density limits) in exchange for the construction of certain amounts of low and moderate income units". 92 N.J. at 266. Although the Court appeared to be contemplating bonuses applicable only to residential projects, the concept of "commercial incentive zoning" was mentioned with approval at p. 15 of the trial court decision in Allan Deane Corp. v. Township of Bedminster, et al., Docket Nos: L-36896-70 and L-28061-71 P.W., approved for publication September 3, 1985. Settlements have been approved which include a mandatory non-residential fee component although the Court has noted that it was not passing on the validity of that approach (see Exhibit A, unpublished decision in Zuckerman, et al. v. Bridgewater Twp., Docket No: L- 50264-84 P.W., decided June 13, 1985).

The Clinton non-residential bonus provision is a form of incentive or bonus zoning, a commonly used land use control technique by which the builder or land owner agrees to provide certain amenities in return for permission to use his property in a manner not otherwise authorized by the zoning ordinance. The types of amenities encouraged by incentive zoning include public plazas, parks, covered pedestrian spaces, theaters, off-street parking, arcades and on-site subway access. Vol 2 Rohan, Zoning and Land Use Control, §8.01 [2] at p. 8-4. Typically, the bonus offered to the developer is in the form of increased floor area or building coverage.

The approach of offering an incentive to non-residential developers to assist in the funding or construction of lower income housing has a substantial track record in San Francisco, California. The San Francisco program which was initiated in late 1980 has assisted in the construction or rehabilitation of 2,637

housing units in various San Francisco neighborhoods (Exhibit B , Vol. 35, No. 11, Land Use Law and Zoning Digest, L. Share and S. Diamond, "SanFrancisco's Office-Housing Production Program", pp. 4-10). The concept of a mandatory or optional contribution by non-residential developers has been proposed in a number of New Jersey municipalities.

2. Legality of Incentive Zoning

Municipalities have generally broad latitude in regulating land use pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. Liberal construction of zoning provisions is required in order to effect the purposes of the Act. N.J.S.A. 40:55D-92. Land use regulation will be upheld where, (1) it furthers one or more of the purposes of the Municipal Land Use Law, (2) it bears a real and substantial relationship to the regulation of land in the municipality and (3) the means employed is permitted by the legislature. State v. C.I.B. International, 83 N.J. 262, 271-272 (1980). The Town of Clinton non-residential bonus provision clearly meets this test. The provision furthers the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-2, including the following:

> "d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the state as a whole; . . .
>
> f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies; . . .
>
> g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; . . .
>
> m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land."

The Clinton non-residential bonus provision bears a real and substantial relationship to the regulation of land use. The purpose of the fee is to amass funds for rehabilitation and conversion of existing housing for lower income families. Zoning ordinances may address not only the physical impacts of land use but also the social, demographic and economic impacts. Mt. Laurel II, 92 N.J. at 273-74; Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp., 80 N.J. 6, 34-5. Clearly the provision of lower income housing is a matter with a real and substantial connection to the

regulation of land use. Mt. Laurel II, 92, N.J. at 273-74; State v. C.I.B. International, 83 N.J. at 271-72.

Commercial, industrial and other non-residential development use up limited vacant and developable land, sewer, water and other utilities within a municipality. Non-residential development also increases the municipal obligation to provide lower income housing since that obligation is directly related to job growth. Mt. Laurel II, 92 N.J. at 256. To require reasonable contributions towards housing needs, by non-residential developers who freely decide to exercise the option to construct a larger building then permitted under as-of-right zoning, is an equitable way to assure that a developer contributes towards the ordinary impact of his project.

Finally, given the broad discretion given to municipalities to formulate land use regulations, the Clinton bonus approach should be held to be sanctioned by the Municipal Land Use Law. The authority to grant bonus' in return for lower income housing contributions is of course not directly granted since the Municipal Land Use Law does not codify the Mt. Laurel doctrine. 92 N.J. at 318-19. However, the power to zone explicitly includes the power to specify floor area ratios and other "ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air." N.J.S.A. 40:55D-65b. If a residential developer may be required to construct lower income housing in return for increased densities, a non-residential developer may be given the option to contribute to a fund dedicated to lower income housing purposes in return for a density bonus.

Where the contribution is at the developer's option, constitutional objections associated with mandatory provisions do not apply. The optional payment is not an unauthorized tax or fee since the developer need not contribute unless his economic analysis shows it is justified given the quid pro quo offered in the Ordinance. The fee thus voluntarily paid is not designed to defray the cost of general municipal services. See, Daniels v. Pt. Pleasant, 23 N.J. 357 (1957). Likewise, the regulation is not an unconstitutional taking since participation is totally voluntary and a compensating benefit of equal or greater value is offered in return for the contribution. See, Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

CONCLUSION

For the aforementioned reasons, the proposed non-residential bonus provisions of the Clinton Land Use Ordinance should be approved and a judgment of compliance issued to the Town of Clinton.

Respectfully submitted,

Guliet D. Hirsch

GDH/sr

EXHIBIT A

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI
ASSIGNMENT JUDGE

OCEAN COUNTY COURT HOUSE
C.N. 2191
TOMS RIVER, N.J. 08754

June 13, 1985

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Re: Zuckerman et al. v. Bridgewater Township

LETTER OPINION

Gentlemen:

On or about July 24, 1984 the plaintiffs in the above action filed a complaint seeking Mount Laurel relief. On September 14, 1984 the court entered a consent order which established the fair share for the community, provided for the township to adopt a Mount Laurel ordinance, appointed Dr. Harvey Moskowitz as master, confirmed a builder's remedy agreed to by the township and provided an immunity from further builder's remedy suits to the township during a 90 day period within which time Bridgewater was to adopt a compliance ordinance. Thereafter the immunity period was extended by letters dated December 6, 1984 and January 18, 1985. On or about February 13, 1985 the township submitted its compliance package to the court. On March 25,

1985, Dr. Moskowitz submitted his report. During the pendency of the proceedings, two citizens groups were permitted to intervene. The Citizens for Better Planning was granted intervention on April 15, 1985. That group challenged the overall reasonableness of the sites selected for rezoning. Prior to the commencement of the compliance hearing, the Citizens for Better Planning arrived at a settlement with the township which was embodied in an order dated May 20, 1985. On May 6, 1985, the Coalition of Concerned Citizens was granted intervention for the purpose of challenging the suitability of the plaintiffs' tract. (referred to in testimony as the Pope tract)

Trial commenced on May 20, 1985 and lasted for three days. The hearing first addressed itself to the validity of the compliance package submitted by the township and thereafter specifically to the suitability of the Pope tract. The court heard the testimony of the court appointed master, the experts presented on behalf of the township, the plaintiffs' experts and the witnesses presented on behalf of the Coalition of Concerned Citizens. All parties were represented by counsel who vigorously examined or cross-examined all witnesses. The court also actively engaged in the questioning of the witnesses, in particular, the court appointed master and the township planners.

On May 1, 1985 this court issued an opinion in the matter of The Allan-Deane Corporation v. Township of Bedminster, et al., which opinion was distributed to all of the attorneys involved in this case. That opinion thoroughly examines the issue of compliance. It is unnecessary, therefore, to repeat most of the legal conclusions which were set forth.

At pages 12 through 16 of the Bedminster opinion, the court discusses the test of compliance. The analysis involves a three-step process.

1. Verify that the ordinances are free from all excessive restrictions and exactions or other cost generating devices that are not necessary to protect health and safety.

2. Examine the sites selected or other mechanisms used by the town to achieve compliance.

3. If the sites selected or other mechanisms used by the township are realistic then the compliance package should be approved.

The Bedminster opinion also emphasizes that it is not necessary for the court to consider sites which have not been selected even if those sites may be more realistic. In evaluating the sites selected or other mechanisms used, the court is to consider such factors as site suitability, affirmative measures, alternative compliance mechanisms, project feasibility and other less tangible factors. After examining each site in light of these considerations, the court must also conduct an overall examination of the reasonableness of the package. Finally, the court must consider the issue of entitlement to a builder's remedy.

In this case the court was called upon to examine "credits" sought by the municipality for existing housing supply, for approved projects, for proposed projects and other programs which were being utilized as a method of supplying the township's fair share obligation of 1,613 units. That fair share was established by virtue of the order of May 20, 1985 which reduced the fair share from 1,656 units as contained in the September 14, 1984 order.

With regard to the credits for existing housing the court concurs in the findings made by Dr. Moskowitz. Those credits satisfy 72 units of the fair share obligation. With regard to the approved projects, the court agrees with Dr. Moskowitz that 332 units should be applied towards the fair share.

The township proposes to provide 665 lower income units through the rezoning of six sites at various densities which will be developed with multifamily units consisting of market price and lower income units. A seventh site which was contained in the compliance package and is discussed at page 11 of the Moskowitz report was removed from the compliance package by the order of May 20, 1985. The court finds that each of the six sites are realistically capable of being developed for Mount Laurel housing and capable of producing a total of 665 lower income units.

Finally, the township proposes to satisfy the balance of its fair share through what it designates as "other proposed programs". These projects include a future senior citizen housing development of 127 lower income units, the conversion of 31 existing apartments into moderate income condominiums, the rehabilitation of 126 substandard units, the creation of 120 accessory apartments, the provision of 41 lower income units as part of a rezoning and redevelopment of the Somerville Manor area and the creation of an additional 24 units by other means such as variances for multifamily development (which would include a set aside of lower income units above commercial establishments) and units occupied by security and maintenance staff in housing developments.

Of the 469 lower income units in the "other proposed programs" category, the master recommended that the future senior citizen project (127 units), the condominium conversions (31 units), the accessory apartments (120

units) and the Somerville Manor apartments (41 units), be applied in full towards the fair share obligation. The master recommended that the housing rehabilitation should be reduced to a more realistic level of 80 units and that the category of 24 miscellaneous units be eliminated. Based upon my review of the testimony, I concur in this recommendation of the master.

The following fair share total results:

Existing supply	72
Approved projects under construction or zoned	332
Proposed projects	665
Other programs	399
TOTAL	1,468

There is a 145 unit shortfall in compliance with the fair share requirement. It was the opinion of the master that the shortfall could be "almost certainly made up" (page 15 of the Moskowitz report) by a bonus provision contained in the township's proposed Mount Laurel ordinance which permits an increase of up to 10% of the dwelling units on any tract if the planning board finds that such increase is needed to achieve the goals of the township's housing plan and that the increase would not adversely impact adjacent properties or encroach on environmentally sensitive lands. The master concluded that the bonus requirement could be implemented without those negative impacts.

It should be noted that since the bonus provision is needed to meet the fair share number, the ordinance does not make any provision for overzoning. Dr. Moskowitz contended that overzoning was not justified in this case. He argued that there was a significant number of units to be built within a six year compliance period. Furthermore, the township was not

seeking any relief by way of phasing - which he could have supported. Finally, he felt certain that the sites selected and other programs adopted were so realistic that they would result in the requisite amount of housing within the time period required or, at least during that time period, all of that housing would get underway.

With regard to an examination of affirmative measures the court, on its own motion, raised several concerns relating to the proposed ordinances of the township. In particular, the court highlighted issues relating to sale and resale controls, the ratio of one, two and three bedroom units, the scheme of priorities for sale of the units, the absence of a detailed program for advertising the availability of the units and the need for more precise language concerning an adequate range of affordability. These issues will be addressed in the last portion of this letter opinion which relates to the conditions imposed upon approval of the compliance package.

The principal area of debate during the compliance hearing was the suitability of the Pope tract for Mount Laurel rezoning. In that regard the court must bear in mind that the plaintiffs are entitled to be awarded a builder's remedy if they meet the criteria established in Mount Laurel II at pages 279-80. The three prong test is that the plaintiff must prove the noncompliance of the ordinance, propose to build a substantial amount of lower income housing and it must appear that relief can be granted without a substantial negative impact on the environment or on sound land use principles. There is no argument that the plaintiffs have established the first two prongs of this test. The burden of demonstrating that a negative environmental impact will take place or that the proposed development is contrary to sound planning rests upon the party raising that issue. In this case the Coalition, not the township, asserts that defense.

The Coalition raised several environmental and planning issues. Principal among them was the assertion that the Pope tract had been envisioned for years as a recreational facility for the residents of the Finderne section of Bridgewater. In that regard it was asserted that the Finderne section is the most densely populated area of the community and that the Pope tract represented the last significant piece of recreational property. Apparently, there are presently two park areas within Finderne only one of which is sizeable. The plaintiffs sought to counter this testimony by demonstrating that there are other privately owned areas in Finderne which could be condemned by the township if it, in fact, wants to preserve additional recreational area. Furthermore, the plaintiffs attempted to establish that there is or will be within Bridgewater significant recreational areas which could be used by the residents of Finderne along with the other residents of the township. It does appear that the Pope tract was designated on the 1976 Master Plan as a suitable site for recreation. However, no formal designation was ever made pursuant to the Municipal Land Use Law which would have preserved the tract for that purpose. In fact, it is now zoned for single family housing on lots of approximately 20,000 square feet.

In addition to the Coalition's argument that the Pope tract should be preserved for park purposes, it stressed that the development of the site would create an even greater population density within that area and impact negatively upon the schools, traffic and already limited recreational facilities. The Coalition also asserted that the parcel was historic and that structures located on it were worthy of preservation. The plaintiffs countered with expert testimony seeking to demonstrate that the effect upon the schools and traffic would be negligible and, as noted, that the

recreational facilities were adequate or that other sites were available to the township. With regard to the issue of historic preservation, the plaintiffs contended first, that this concern could be addressed in site plan review and second, that Bridgewater and its environs contained many historic properties or structures.

All of us must regret the loss of a single piece of our history. However, the court is called upon in each case to strike a balance between such issues and the need for lower income housing which lies at the heart of the Supreme Court's decision in Mount Laurel II. Furthermore, the other environmental and planning concerns of the Coalition must be evaluated in terms of the test as stated above, namely whether they rise to the level of a substantial negative environmental impact or are so contrary to sound planning as to justify the denial of a builder's remedy to which the plaintiff would be otherwise entitled.

The most that can be said with respect to the issues raised by the Coalition is that they are not unlike many apprehensions related to any construction that may affect the status quo. Indeed the construction of single family units on the Pope site would cause the loss of that property for park purposes and would affect schools, traffic, recreation and historic preservation. The issue is more one of the scope of the impact as opposed to its existence. In that regard, it is clear from the evidence that the Coalition has not carried the heavy burden established by our Supreme Court in Mount Laurel II of demonstrating that the development of the Pope tract would have such a negative environmental impact or be so contrary to sound planning as to justify the denial of the builder's remedy.

It cannot be forgotten that it was the potential of the builder's remedy and the resulting suit that caused the township to become compliant.

The catalyst of compliance was the Pope tract, which became subject to a builder's remedy because the township ordinances were noncompliant when the complaint was filed. The lower income housing in Bridgewater must be located somewhere. The choice of where it will be placed is, in the first instance, a matter of home rule. The court should not interfere with reasonable decisions made by the township with respect to the location of its Mount Laurel housing as long as the selection of those sites meets the test as established in the Bedminster opinion, except to the extent that the township is obligated to rezone any site because of entitlement to a builder's remedy. The township had the option to acquire the Pope tract through condemnation or to utilize it as part of its Mount Laurel response. It chose the latter course. The court cannot interfere with that judgment once it has been determined that the Bedminster test has been met.

The court, therefore, finds that the compliance package of the Township of Bridgewater is approved but that such approval is subject to the following conditions:

1. The six sites which are proposed for market and lower income housing must be rezoned in accordance with the recommendations contained at pages 10 and 11 of the master's report.

2. The ordinances should be adjusted to assure that there is an appropriate mix of low and moderate income housing and that the distribution is as close to 50% low and 50% moderate as possible.

3. The approval of the compliance package shall not constitute a finding by this court of the validity of the housing fund created by the township to assist in the development of lower income housing. As was represented at trial, the township agrees to guarantee through its resources or other funding sources the

necessary revenue to complete the undertaking of the programs contained in its compliance package in the event that there is a finding at any time that the housing fund is not valid.

4. The proposed conversion of the condominium units as referred to on page 12 of the master's report shall take place on or before December 31, 1987. In the event that the conversion is not accomplished, the township shall lose credit for those units unless the court further extends the date. In the absence of such an extension, the township will be required to provide an alternative means of supplying the 31 units.

5. The proposed senior citizen housing project as discussed at pages 11 and 12 of the master's report shall obtain preliminary approval on or before December 31, 1987 and be completed on or before July 1, 1989. In the event that preliminary approval is not obtained within the time limit set forth herein, the township will be required to provide an alternative method of satisfying its obligation for the 127 units involved in this project.

6. The township must adopt all of the proposed ordinance amendments annexed to the compliance package with the modifications hereinafter referred to within the following time frames:

a. The modifications required by this court should be submitted to the court within 30 days of the date of this letter opinion.

b. The ordinances incorporating those modifications shall be adopted within 30 days after their approval by the court.

7. The compliance package shall be modified in the following manner:

a. The priority scheme discussed at pages 20 and 21 of the master's report should be revised to provide a greater degree of regional availability to the housing in Bridgewater. The court has already given some guidance regarding permissible limitations to residents and employees of the township.

b. The ordinances should provide specific requirements with respect to a regional outreach through advertising and other methods to make the availability of the lower income housing in Bridgewater known to prospective households and attractive to them.

c. The ordinance should be more detailed in its requirement of providing a reasonable cross-section of affordability.

d. The ordinance should be more detailed with respect to restrictions relating to sale and resale. Those provisions should be contained within the ordinance and be applicable to all sites unless there is some specific condition which would make them inapplicable to any particular site. I cannot accept the concept of establishing sale and resale restrictions on an ad hoc basis or making them subject to the discretion of any specific township agent.

e. The ordinances must be revised to provide for a minimum of 15% of three bedroom units in each project involving new construction.

Upon completion of these revisions, review by the master, approval by the court and adoption of the implementing ordinances, the township may submit a final judgment granting a six year period of repose.

I would like to acknowledge the manner in which all counsel conducted themselves and presented their case. I must also recognize the Township of Bridgewater for its voluntary and efficient compliance with the dictates of Mount Laurel II. It is also important to note that the compliance was achieved at a lower ratio of market housing to lower income units than has heretofore been presented to the court. The township planners, the township attorney, the governing body and the master should be commended for achieving that result.

In the event appellate review is sought by any party to this action, the court reserves the right to supplement this letter opinion pursuant to Rule 2:5-1(b).

Very truly yours,

Eugene D. Serpentelli,
A. J. S. C.

EDS:RDH

Commentary

San Francisco's Office-Housing Production Program

By Laurie Share and Susan Diamond*

An unrelenting office construction boom that exacerbated housing shortages two years ago prompted San Francisco to begin an experiment in the use of commercial inclusionary zoning to produce affordable housing. Since then, the Office-Housing Production Program (OHPP), known affectionately as "oops," has raised $19 million, stimulating the production of more than 2,500 condominiums, coops, apartments, houses, and residential hotels.

OHPP raises money to develop and rehabilitate housing by imposing a compensatory housing requirement on developers who build more than 50,000 square feet of offices. Office developers accomplish this by building or rehabbing the housing themselves, by financing other housing projects, or by contributing money into a special city housing fund. The city planning commission imposes the OHPP requirement on developments through its discretionary review powers; the city is now reviewing an ordinance authorizing OHPP under the police power.

Cities nationwide are carefully watching San Francisco's OHPP experiment as they, too, forge new partnerships with private enterprise in order to underwrite housing costs no longer borne by the federal government. This article examines the OHPP as a potential use of zoning for socioeconomic purposes. The program is an exercise of the police power that holds development responsible for solving the socioeconomic problems that it creates—developers' responsibilities are expanded by OHPP to include housing in addition to the other costs (such as infrastructure, parks, and schools) that developers now pay. This article also discusses OHPP as a mechanism that governments can use to balance private developers' profits with the social costs of their developments.

THE RATIONALE FOR OHPP

Underlying OHPP's success is San Francisco's attraction as both a livable city and a nest of lucrative development opportunities. As a result, San Francisco has a severe housing shortage coupled with a boom in office development.

After decades as simply a city of sweeping bay views and ethnically diverse neighborhoods dotted with mom-and-pop shops, San Francisco in the 1960s began the transformation to an international financial center of white-collar workers. Today, the pace of office development remains lively, as the city's economy remains healthy and relatively recession-proof. Commercial construction is at an all-time high.[1]

Countering this activity is the antigrowth movement, which unrelentingly pushes to curb downtown expansion. Foremost is the concern that office growth will further aggravate San Francisco's housing crisis—a problem of affordability and imbalanced supply and demand. Every year, more than 2,000 new households enter the city looking for an affordable place to live. They encounter one of the most difficult housing situations in the nation.

San Francisco's location on the tip of a peninsula makes expansion difficult, particularly when neighborhoods want, at most, only the traditional stock of single homes and very-low-density apartment buildings. Furthermore, high development costs and interest rates place the average $140,000 home out of the reach of households earning under $50,000. Thus, fewer than 1,000 new units of housing are built each year to accommodate the 2,000 households seeking them. With ownership possibilities so limited, demand for rentals is relentless; the apartment vacancy rate is below three percent and rents are the highest ever. Nor can lower-income people closed out of this housing market turn to new federally subsidized housing since the government defunded such programs.

In the city's view, OHPP promotes San Francisco's general welfare by creating affordable housing at a time when market forces would not. The city's heated development climate is characterized by high-cost commercial space, luxury housing development, and diminishing housing opportunities for low- and moderate-income households. Underlying OHPP is the policy premise that new office development exacerbates the city's critical shortage of affordable housing by attracting white-collar workers who prefer to live in San Francisco. In their search for housing, some of these workers move into the scarce and expensive new housing, but more often they compete for existing housing. This competition drives up prices and drives out prior residents unable to afford higher housing costs. The ultimate losers are lower-income households, since gentrification drives them from the city while often forcing those who remain to live in substandard and overcrowded conditions. In the city's view, this process is not only unfair to those whom it displaces, but it hurts San Francisco's historically rich mix of ethnic and socioeconomic groups. This deterioration of the city's heterogeneous socioeconomic base and loss of affordable housing was deemed detrimental enough to the city's general welfare to outweigh the benefits of new office development. In adopting OHPP, the planning commission attempted to balance growth and the general welfare by deciding that office developers must share responsibility for the socioeconomic changes now underway.[2]

*Laurie Share is employed in the public finance department of the investment banking firm of Kidder, Peabody & Co. She was formely the Director of Special Development Projects in the City of San Francisco Mayor's Office of Housing and Economic Development. Susan Diamond is associated with the Los Angeles law firm of Brobeck, Phleger & Harrison. She is responsible for the legal analysis in this article, which is based on an article she published in the *Harvard Environmental Law Review*, cited *infra* note 8.

1. Since 1980, developers annually have produced approximately 2.4 million square feet of office space in the city, more than a 50 percent increase over the 1.5 million square feet produced annually throughout the 1970s. Today, 6.3 million square feet of office space is under construction and 10 million more are in the final preconstruction phases. When built, this will draw some 40,000 new employees into San Francisco. The office vacancy rate was 1–2 percent until 1983, when the recession cooled it to 4–5 percent, a rate still far below the national average. Gross rents before 1983 averaged $25 to $35 per square foot, and today are only $3 to $5 lower.

2. The OHPP is but one component of a package of financing and zoning tools devised to promote housing production and balanced commercial expansion. For example, a new zoning plan for downtown, pending city adoption, addressed the broad and longstanding effects that office growth has on a wide array of city issues, including increased traffic congestion, air pollution, loss of magnificent city views, and the growing imbalance between white-collar and blue-collar jobs.

Commentary

HOW OHPP WORKS

The OHPP is based on a formula developed by the city planning department to calculate the housing demand generated by new office development. Several assumptions were made:

- That 40 percent of new workers will seek housing in San Francisco;
- That a typical worker occupies 250 square feet of office space; and
- That one residential unit houses 1.8 persons.[3]

Thus, the equation provides a working guideline for the development of housing to offset the effects of office development:

$$\frac{\text{Gross square feet of office space}^{4}}{\text{250 square feet per employee}} \times \frac{\text{.4 employees}}{\text{1.8 employees per residential unit}} = \text{New residential units needed to satisfy demand}$$

This projected housing demand is part of state-required environmental impact reports or other review documents prepared for every office project.

OHPP Administration

If the office project exceeds 50,000 square feet of office space, the Mayor's Office of Housing and Economic Development (MOHED) administers the housing requirement according to administrative guidelines adopted by the planning commission. When a developer proposes to satisfy a housing obligation, MOHED reviews and evaluates the proposal for compliance with the guidelines. The planning department director then considers MOHED's recommendations and approves "housing credits." These credits are applied against the total housing requirement for the office building. Of key importance to the office developers, credits are transferable between office projects and developers, should developers accrue more credits than they need to satisfy OHPP requirements.

Since the city controls occupancy permits for new office buildings, it is essential for developers to satisfy the OHPP obligation. The city issues a temporary occupancy certificate only after the developer submits a satisfactory plan for providing housing. The developer then has three years to comply with the requirements before receiving the final occupancy certificate.

Housing Credits

Developers must either provide new housing or substantially rehabilitate existing vacant housing to comply with OHPP guidelines.

New single homes, condominiums, cooperatives, or residential hotels and apartment buildings that need rehabilitation also qualify, provided they are owned and operated by a government housing agency or neighborhood-based nonprofit organization committed to the preservation of affordable housing.[5]

Developers may satisfy the requirement in three ways:

- The office developer directly constructs or restores housing;
- Under contract with a housing developer, the office developer provides financial aid to housing that could not be built without this OHPP assistance;
- The developer pays an "in-lieu" fee of $6,000 per housing unit to the city's Home Mortgage Assistance Trust Fund.[6]

Developers have opportunities to increase the number of "housing credits" for each project. To meet its goals without directly mandating exact specifications, the city provides incentives to encourage certain types of housing. Each bedroom in the dwelling unit earns a credit, to stimulate multiple-bedroom construction. Housing for moderate-income persons earns three credits while housing for low-income persons earns four credits. Developers get two credits per dwelling unit if their lower- or moderate-income projects are assisted by other government funding sources, such as Section 8 rent supplements.

Credits receive final approval—and developers receive their final certificates of occupancy—when they prove to the planning director that construction is underway, or that rehabilitation work is finished, or that its completion is guaranteed by a posting of a construction reserve. Developers making in-lieu contributions receive approval when they pay.

OHPP'S TRACK RECORD

OHPP does seem to have increased and preserved low- and moderate-income housing. Since late 1980, OHPP has assisted the construction or rehabilitation of 2,637 housing units in 36 developments in various San Francisco neighborhoods. Of these, 1,312 units have been rehabbed from substandard or uninhabitable conditions. The remainder are new units, 437 of which are under construction while 888 are in the pre-construction phase.[7]

Sixty-eight percent of all OHPP requirements have been satisfied by 19 office developers who have participated in the program to date. Five developers chose to build upper-

3. The source of these assumptions is a 1979 planning department study by Sedway Cooke entitled *Downtown San Francisco Conservation and Development Planning Program, Phase I Study.*

4. Gross square footage means the net increase of floor area on the site. If a 200,000-square-foot office building replaces a 50,000-square-foot building, the housing requirement would reflect the 150,000-square-feet net gain in office space.

5. *Affordable housing* means dwelling units occupied by low-income households (incomes under 80 percent of the median) or moderate-income households (incomes between 80 percent and 120 percent of the median). Their rents may not exceed 30 percent of their gross monthly income, or their home ownership cost may not exceed 38 percent of their gross monthly income, as adjusted for household size.

6. The trust is a pool of funds used to reduce, by up to 35 percent, the monthly mortgage payments of low- to middle-income first-time homebuyers. The pool subsidizes 10 ¾ percent, fixed-rate, 30-year mortgages provided through a 1982 $60 million city issue of tax-exempt mortgage revenue bonds. The option of paying into the trust was temporarily closed as of October 1982, when the trust accrued sufficient funds to complete the mortgage revenue bond program. Reinstatement of the "fee option" is pending implementation of another city-sponsored financing program.

7. This total excludes three projects of yet undetermined size because they are in the planning stage.

income condominiums atop their office buildings. They did so mainly to take advantage of floor area bonuses provided under a new zoning law designed to encourage new housing in the downtown business core. The other developers took advantage of the in-lieu fee or OHPP's graduated "housing credit" system to build or assist the construction of housing for low- and moderate-income households.

The Home Mortgage Assistance Trust Fund—which has received from three developers in-lieu payments totaling $4.88 million—has subsidized the mortgages of 76 low- and moderate-income families buying existing homes priced below $96,600. The balance of money in the trust will leverage the pending construction of 322 new condominiums and cooperative units priced below $114,200 and will subsidize mortgage payments for the purchasers with low-to-middle incomes.

It is also clear that OHPP has created affordable housing that would not exist without it. Under prevailing cost conditions, private developers have no economic rationale to produce low- and moderate-income housng. Even where HUD-subsidy programs still exist, their maximum benefits cover just 60–70 percent of San Francisco's per-unit development costs.

A gray area exists where office developers elect either to build their own luxury housing atop office towers or to contribute funds to another developer's luxury housing project. In the first instance, one could argue that housing is housing, and that the new luxury units serve to ameliorate market pressures simply by their existence: they increase supply. In the second instance—in which the office developer contributes to another builder's luxury project—concern arises that housing builders might simply use OHPP funds as a substitute for their own capital. Such substitution works counter to the program's goal of building housing that could not be built without OHPP, in order to produce net gains in the housing stock. In mitigating against such substitutions, MOHED often must assume the difficult role of evaluating the economic feasibility of the housing that the office developer proposes to assist.

The OHPP program has been administered with sufficient sensitivity to have avoided driving developers and tenants from the city. The program has increased the cost of office development and rent by less than 3 percent. It increases by $3 to $5 the average per-square-foot office construction costs and increases the average $35-per-square-foot office rents by less than one dollar per square foot. The program costs office developers between $2,500 and $6,000 per housing credit, depending on the program options each developer selects.

Experience with developers indicates that they consider OHPP an unpleasant but not unbearable increase in their costs of doing business in San Francisco. Although some developers blame OHPP for several recent decisions by major corporations to locate in the suburbs, key representatives of the development and business community have indicated that OHPP alone has not caused office developers or tenants to leave the city. The continuing fast pace of new office construction further substantiates that the development community remains "bullish" on San Francisco.

THE LEGAL ISSUES OF OHPP[8]

In analyzing the legality of a local land use program that forces the private sector to accept increasing responsibility for development impacts, it is first necessary to establish that some statute or state constitutional provision grants the city authority to implement the program. Moreover, the substance of the program must comply with state and federal constitutional requirements. In California, as a result of Proposition 13, it is also important to determine whether the program constitutes a special tax that must be approved by two-thirds of the electorate.

Sources of Authority

The initial impetus for OHPP arose from a seemingly natural extension of the rationale of the California Environmental Quality Act (CEQA). This state statute allows a city to require mitigation of a project's significant environmental effects. Private projects subject to local discretionary approval, such as downtown office buildings, must meet the CEQA requirements. The city reasoned that new office buildings attract new worker-residents to San Francisco, thereby exacerbating its existing housing shortage. Consequently, the city argued, new office buildings have an impact on the social environment that office developers must mitigate by contributing to the production of housing. The city thus instituted OHPP in 1980, relying on CEQA as its sole source of authority.

The California State Legislature amended CEQA in 1981, however, to limit the scope of mitigatable impacts to those affecting the *physical* environment. An additional amendment in 1982 implied that CEQA alone could not authorize the mitigation of project effects on the environment.

Seeking other means to implement OHPP, San Francisco turned to the discretionary review power of the city planning commission. This local power is derived from a municipal code section that gives the planning commission discretion to grant or deny permits. While this power serves as a convenient device for retaining flexibility, it is not clear that it was intended to serve such a powerful function.

San Francisco could also use the local police power granted to it by a state constitutional provision that allows the city to pass local police, sanitary, and other ordinances that do not conflict with state law. While this complex subject deserves more detailed analysis, OHPP appears to implement rather than conflict with state law. Under 1980 amendments to the state's housing statutes, each locality must take all necessary steps to meet its share of the regional housing need. More specifically, the localities must cooperate with the private sector in providing housing for all income groups, such as assisting in the production of low- and moderate-income housing. Since OHPP is consistent with this state requirement, an OHPP ordinance apparently would not exceed the scope of this local police power.

Constitutional Issues

Land use programs such as OHPP are generally subject to scrutiny under several provisions of the state and federal constitutions: the due process, just compensation and equal protection clauses. While the focus of each of these doctrines

8. The legal analysis section of this article is an abstract of the same subject discussed in detail in Diamond, *The San Francisco Office/Housing Program: Social Policy Underwritten By Private Enterprise*, 7 HARV. ENVIRONMENTAL L. REV. 449, 462–480 (1983). Explanatory citations of the legal propositions cited in this article can be found there.

varies,[9] the essential question pertinent to OHPP is whether the program is rationally related to a legitimate state interest. Thus, OHPP is valid if the program is designed to accomplish objectives that are legitimate and it is at least fairly debatable that the program will achieve those objectives.

Legitimate Objectives. The basic goal of OHPP is to solve San Francisco's current housing shortage, which has been exacerbated by cutbacks in federal housing grants and by increased local commercial activity. San Francisco's ultimate objective, therefore, is to improve local housing opportunities, particularly for families of low and moderate income.

Since *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the courts have reasoned that a land use restriction promotes a legitimate state interest if it furthers the public health, safety, morals, or general welfare. Cases indicate the broad scope of these applications of the police power to the field of housing. For example, the courts have found that the public welfare includes the elimination of substandard housing conditions, the construction of low- and moderate-income housing and, in a few instances where the market fails to provide sufficient units, the production of middle-income housing. Without doubt, OHPP serves a legitimate state interest if it improves housing opportunities for low-, moderate-, and perhaps, middle-income families.

The harder question is whether this use of the police power extends to increased production of upper-income housing, such as luxury condominiums atop office buildings? The state housing laws address the housing needs of all income levels but the courts may be reluctant to expand the notion of the public welfare unless convinced that the market is not adequately supplying the desired facility.

Even if a court finds that the public welfare does not include luxury housing, it could perhaps find that such housing is a means to an end, rather than the end itself. If the filtering process is underway in San Francisco then the addition of new luxury units arguably triggers a chain of events in the housing market that eventually results in lower housing prices and higher vacancy rates for lower-income housing.[10] Production of upper-income housing would then bear a rational relationship to the improvement of housing opportunities for lower-income groups. If local studies indicate, however, that housing is filtering up rather than down the income scale, such as by the gentrification evidenced in San Francisco, the courts must find that the production of luxury housing is a legitimate state objective.

Rational Nexus. Exaction theory provides a useful analogy to assess whether OHPP rationally implements its stated objectives. An exaction is a condition that a developer must satisfy before a locality will approve the requested building permit or subdivision application.[11] For example, a subdivision developer in California typically must provide roads, sewers, parks, and schools in order to receive development permission.

These exactions are legal if there is a *rational nexus* between the service need created by the development and the exaction. In *Associated Home Builders of Greater East Bay v. City of Walnut Creek*, 484 P.2d 606 (1971), 23 ZD 220, the California Supreme Court demonstrated its willingness to allow cities to demand dedication of land or payment of "in-lieu" fees as prerequisites to development. This opinion is most notable for the broad ramifications of its rationale on innovative cost-shifting programs such as OHPP. Noting the rapid disappearance of open space, the *Associated Home Builders* court held that it was unnecessary to find that the particular subdivision created a need for additional recreational facilities but only that present and future subdivisions caused the general need for such facilities. Dictum in the opinion renders the nexus requirement even more attenuated, indicating that if the needs of the residents of the particular subdivision are met by existing facilities then the facilities financed by the exaction may be built elsewhere in the city where a greater need exists.

Applying this logic to OHPP, the nexus exists where a court finds that present and future office projects create a general demand for housing, especially during a housing shortage.[12] The implications of the *Associated Home Builders* rationale can be understood in the OHPP context by viewing the nexus concept as existing along a spectrum. The tightest nexus occurs in the "company town" scenario where the new office workers live in the OHPP housing. A more attenuated nexus exists where the type of OHPP housing produced merely reflects the income level of the office workers. In the past, office workers residing in San Francisco have been lower-income sales and clerical workers, while the wealthier professionals and managers have commuted from the suburbs. Recently the trend has reversed, as larger companies relocate data processing functions to the suburbs and upper-income workers return to the city. This new location pattern indicates that OHPP housing should be built for middle- and upper-income households. The *Associated Home Builders* dictum suggests, however, that due process can be satisfied with an even-less-substantiated nexus. If upper-income workers are displacing lower-income households in former low-income neighborhoods then the city could reasonably devote the OHPP funds to low- and moderate-income housing in order to balance population and housing availability and secure a heterogenous socioeconomic base.

While *Associated Home Builders* reinforces the power of government to require the private sector to shoulder the burden of providing some of the community infrastructure, there are limits to the use of exactions as a cost-shifting tool. In *Liberty v. California Coastal Commission*, Cal.Rptr. 247 (1980), the court held that a city could require a restaurant owner to provide parking for his customers but not

9. Equal protection analysis focuses on whether the state has treated similarly situated classes differently; takings analysis focuses on the economic impact of the regulation on the plaintiff, the necessity of the regulation to effectuate a substantial public purpose and the character of the action; due process analysis focuses on the arbitrariness or irrationality of the action. The California courts tend to use the same method of analysis in examining such claims challenged under both the state and federal constitutions. For a more detailed analysis of the separate claims, see Diamond, *supra* note 8, at 467–477.

10. *See* Ellickson, *The Irony of Inclusionary Zoning*, 54 S. CAL. L. REV. 1167, 1185 (1981).

11. *See* Jacobsen and McHenry, *Exactions on Development Permission* in WINDFALLS FOR WIPEOUTS 342 (D. Hagman and D. Misczynski, eds. 1978).

12. This proposition is supported by *Ayres v. City Council of Los Angeles*, 207 P.2d 1 (1949). In this case the court upheld exactions that were intended to benefit the public as a whole rather than only the needs of the particular development.

for adjacent beach users and patrons of other restaurants. The court stated that it would not allow a locality to use the police power to shift costs of a public benefit to a remote beneficiary. Such a regulation, according to that court, is an exercise of the eminent domain power, not the police power.

Consequently, San Francisco must be prepared to demonstrate a rational nexus between office development and housing demand. Technically, the deferential standards employed in judicial review of socioeconomic regulations mean that such regulations are presumed valid and those challenging the regulation must bear the burden of demonstrating arbitrariness. Nonetheless, in a new and untested area of the law such as mandatory cost-shifting programs, a city should be ready to substantiate its assertion of a rational nexus.

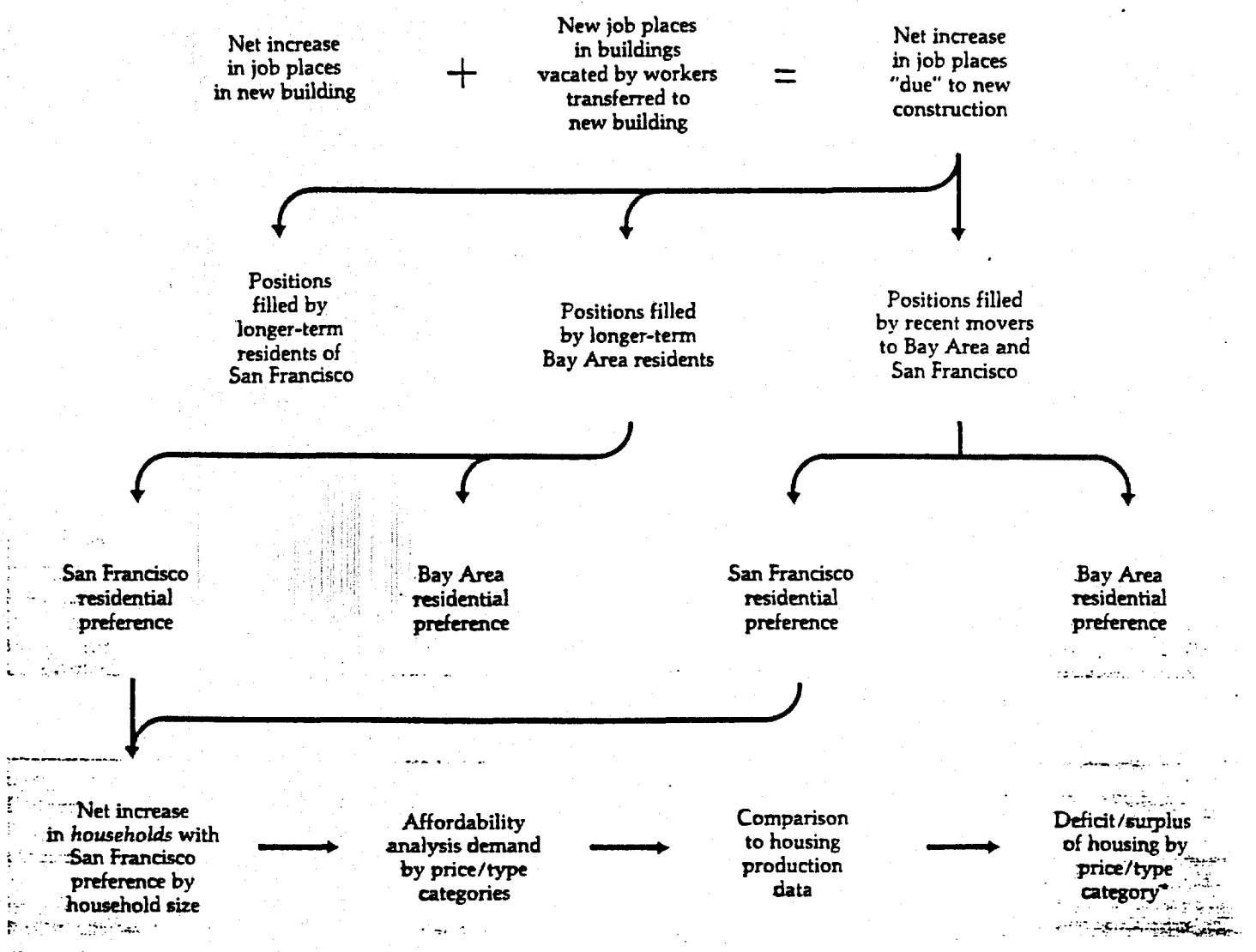
Proposition 13

In California, localities must contend with Article XIIIA of the California Constitution, popularly known as Proposition 13, when implementing programs that resemble development taxes.

Article XIIIA, Section 4 prohibits special taxes that are not approved by two-thirds of the qualified voters in the district. This limitation is relevant to OHPP if the program's in-lieu fee is legally defined as a special tax. The law in this area is still developing, as indicated by *City and County of San Francisco v. Farrell*, 648 P.2d 935 (Cal. 1982), in which the court held that the term "special tax" means different things in different contexts.

In the specific case of exactions, the California Court of Appeals in *Trent Meredith, Inc. v. City of Oxnard*, 170

FIGURE 1. HOUSING DEMAND MODEL FOR NEW HIGH-RISE OFFICE BUILDING



*Demand due to citywide employment growth need also be considered here.

Source: Questor Associates Housing Affordability Report prepared for San Francisco Department of City Planning, page 8, June 1982.

Cal.Rptr. 685 (1981), 33 ZD 106, held that an exaction for schools is not a special tax. According to the court, an exaction that is expressly limited to an amount reasonably needed for schools represents an exercise of the police power rather than the revenue-raising power. This test is similar to that set forth in Cal. Gov't Code §50067, which states that a special tax shall not include a fee which does not exceed the reasonable cost of providing the regulatory activity and which is not levied for general revenue purposes. Thus, OHPP is not subject to Section 4 so long as the cost of participation is no greater than the reasonable cost of satisfying the housing need generated by the office development and the funds are used to produce housing.

Furthermore, from a policy perspective, OHPP does not appear to fit within the scope of Section 4. According to *Amador Valley Joint Union High School District v. State Board of Equalization*, 583 P.2d 1281 (Cal. 1978), 31 ZD 1, which upheld the constitutionality of Article XIIIA, the purpose of Section 4 is to prevent a locality from imposing local taxes designed to replace funds lost by other provisions of Proposition 13, namely the limitation on the property tax rate and assessment and the restriction on state taxes. Since housing has not been funded by property tax revenues in the past, OHPP is not a method of replacing lost local funds.

Conclusion

Analysis suggests that to meet legal requirements the city must be able to reasonably demonstrate a link between an increase in office space and housing demand. The cases indicate that the city can require production of low- and moderate-income housing under OHPP, although the provision of any kind of housing would probably be acceptable as long as it is a legitimate state objective. OHPP will not be defined as a special tax if the cost of participation in OHPP is no greater than the investment needed to generate housing, and as long as the funds are devoted solely to housing purposes.

PLANNING AND HOUSING POLICY ISSUES

Ensuring the legality of an OHPP exaction therefore requires a data base that demonstrates the link between new office space and housing demand, and that the exaction is no more costly than required to address the housing market problems created by new office development.

Establishing the data base for such a link involves at least three planning tasks:

- A qualitative and quantitative description of the relationship between employment growth and housing demand and affordability.
- A forecast of future office employment growth and a forecast of future residence patterns.
- A housing market feasibility study that identifies the affordability and supply problems facing targeted households, the housing affordability gaps, and alternative methods for filling these gaps.

Evaluation of this data should shape policymakers' strategy for intervening in the housing and office markets to accomplish stated city housing goals.

The housing affordability model illustrated in Figure 1 identifies the information needed to describe the relationship between new employees and housing demand.

This model illustrates the most direct link between the new workers and housing demand. It pinpoints the specific housing needs of new workers moving into the city. A model which defines the gentrification problems created when new workers displace lower-income residents would require an additional analysis of the housing affordability gaps that face displaced households.

As the housing demand model suggests, the residential preferences of new employees is a key factor in calculating housing demand. A forecast of residential patterns predicts how many workers are likely to move into the city, given assumptions and projections about how other concerns besides employment growth will change over time. Figure 2 identifies the information included in such a forecast.

As the diagram shows, many factors other than employment affect housing choice. These other considerations must not be ignored when measuring the effects of employment growth on the housing market. Rather, data only need show that employment growth is a significant factor among all others.

ADMINISTRATIVE ISSUES

The administrative workings of an OHPP program partially determine its success. The level of city participation necessary to control program results depends largely on the housing policies adopted to achieve those results. For example, San Francisco's OHPP gives office developers the flexibility to negotiate independently with housing developers, thereby permitting them to set the price they pay to satisfy the housing requirement. This structure requires the city to play an active administrative role in controlling what housing OHPP funds. This involvement poses practical problems and limitations that diminish when the office developer's housing alternatives are non-negotiable and standardized in cost.

Two program approaches work well to diminish the need for ongoing city involvement in administration. First is the in-lieu fee approach whereby office developers pay a standardized fee into a housing trust, administered by a private entity or by a city agency in the housing finance business. Success of the in-lieu fee approach depends on whether the programs funded through the trust generate the needed housing. Cities should cautiously target funds into workable financing methods and to capable developers. This should minimize the potential legal problems should collected fees fail to produce the housing for which office developers paid.

The second approach, also tested in San Francisco, is to turn office developers into housing developers. While the interests of office developers vary from city to city, OHPP experience suggests that development of housing—particularly low- and moderate-priced housing—is not a business in which office developers will engage. OHPP administrators and office developers agree that the highly specialized job of housing production is best left to those with experience and expertise in the field.

However a city chooses to structure its OHPP, it should respond to its own government administrative peculiarities and to the particular characteristics of its lending and development community.

Commentary

LEARNING FROM SAN FRANCISCO'S PROGRAM

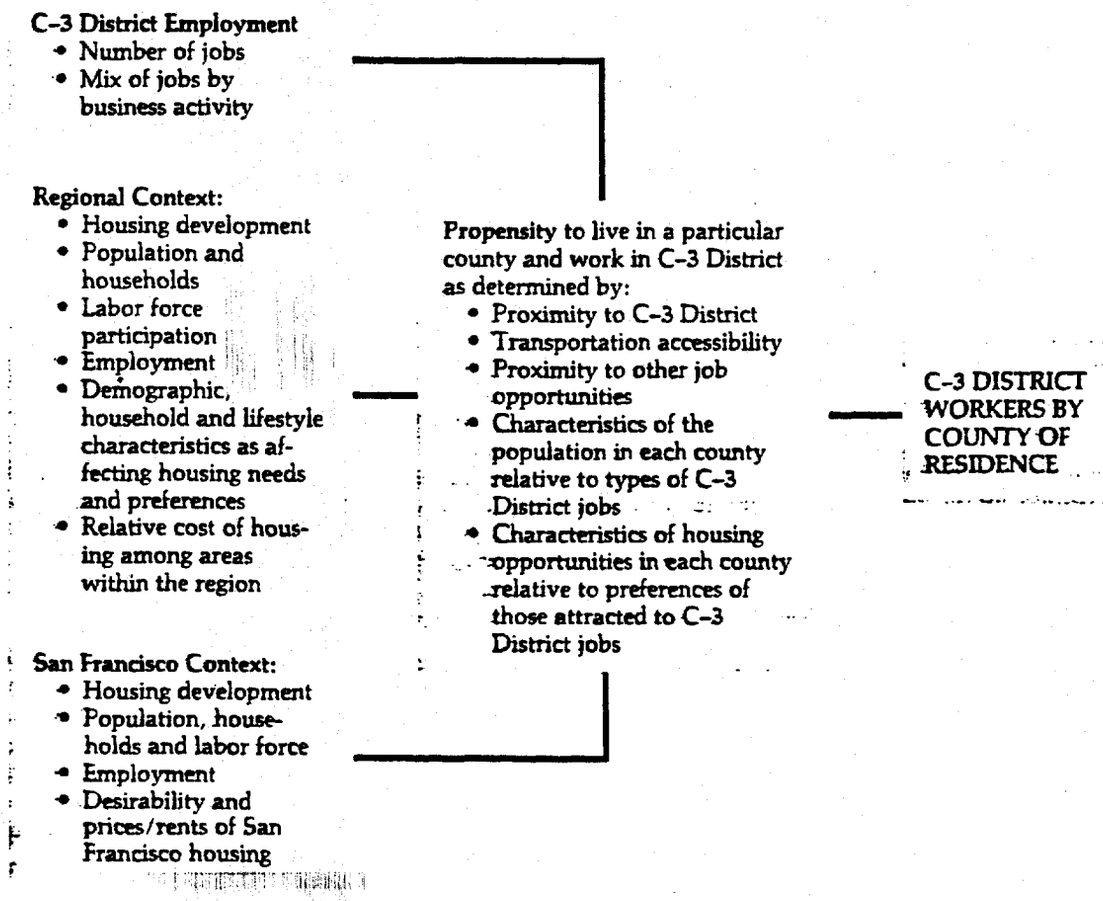
The success of an OHPP program extends beyond legal and housing solutions. Several interrelated political and economic considerations require careful consideration when government sets out to regulate the private marketplace, particularly when that marketplace already is highly regulated, complex, and dynamic.

Cities thinking about shifting the cost of housing to private enterprise with an OHPP system should consider the following points:

- Demonstrate city efforts to share responsibility for solving the housing problems. As a participant in a new public/private partnership, show how city programs and policies serve to ameliorate the problems.
- Carefully analyze housing market dynamics in order, first, to identify the factors that most affect the market's ability to supply housing in response to changing demand, and second, to identify the most appropriate vehicles for government intervention in the housing marketplace.
- Learn and address the methods and needs of the development community to ensure that developers can perform their responsibilities pragmatically and economically.
- Design the program with enough flexibility that it can adjust to changes in the market conditions of both the development industry and the housing market. Accordingly, perform regular program evaluations. Include an analysis of the results achieved and any changes in market conditions that might create an imbalance between program benefits and their cost to private enterprise. To analyze the latter, review changes in key market indicators such as housing and office vacancy rates and occupancy costs.

Achievements of these goals inevitably must involve ongoing dialogue among the government, the private sector, housing developers, economists, financial institutions and members of the legal and neighborhood communities.

FIGURE 2: DIAGRAM OF FACTORS CONSIDERED IN FORECASTING FUTURE RESIDENCE PATTERNS OF DISTRICT WORKERS



CLINTON ASSOCIATES,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	HUNTERDON/MIDDLESEX COUNTIES
	:	(MT. LAUREL II)
vs.	:	
	:	DOCKET NO. L-019063-84 P.W.
TOWN OF CLINTON, et al.,	:	
	:	CIVIL ACTION
Defendants,	:	

BRIEF IN SUPPORT OF THE APPLICATION OF THE PARTIES FOR APPROVAL OF SETTLEMENT AND ENTRY OF A JUDGMENT OF COMPLIANCE IN FAVOR OF THE TOWN OF CLINTON

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STATEMENT OF FACTS

The Statement of Facts presented by Plaintiff, Clinton Associates, in its letter brief clearly sets forth the factual history of this matter and Defendant, Town of Clinton, will rely thereon.

LEGAL ARGUMENT

POINT I

THE VOLUNTARY NON-RESIDENTIAL BONUS FEE PROPOSED BY THE TOWN OF CLINTON IS LEGAL AND IS CONSISTENT WITH MT. LAUREL II.[1]

It is hornbook law in New Jersey that municipal powers must receive a broad and liberal construction. Our Constitution pronounces this proposition to be a fundamental tenet of state jurisprudence. N.J. Const. 1947, Art. IV, §VII Paragraph 11. Our courts have repeatedly enforced this principle particularly with respect to the municipal regulation of real property. Thus, in Ingannamort v. Borough of Fort Lee, 62 N.J. 521 (1973), the court sustained municipal rent control notwithstanding the lack of specific statutory authorization for same. In Dome Realty v. City of Paterson, the court upheld a muncipal ordinance which required the obtaining of a certificate of occupancy each time a dwelling unit was rented. Again, the lack of specific statutory authorization was deemed to be irrelevant. And, in Summer v. Teaneck, 53 N.J. 548 (1969), the Supreme court expressly sustained the municipal right to prohibit blockbusting, the practice of inducing owners of real property to sell out by spreading rumors of racial change in the

[1] Southern Burlington County NAACP v. Mt. Laurel Twp, 92 N.J. 158 (1983), hereinafter "Mt. Laurel II."

neighborhood. Once more, no statute expressly gives this power. See also, Fred v. Borough of Old Tappan, 10 N.J. 515 (1950), sustaining an ordinance dealing with soil removal in the absence of a specific grant of statutory power.

In Summer, Dome Realty, Ingannamort and Fred, the court found the required power to act in N.J.S.A. 40:48-2. This provision reads:

> Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry in effect the powers and duties conferred and imposed by this subtitle, or by any law.

The Summer court found this enactment "to accomplish a broad grant of police power in addition, rather than merely ancilliary, to the sundry detailed authorizations for municipal action contained in our statutes." Summer, 53 N.J. at 552. Thus, N.J.S.A. 40:48-2 was held to contain a fundamental home rule grant authorizing localities to legislate in furtherance of the public welfare.

As further stated in Ingannamort:

> Home rule is basic in our government. It embodies the principle that the police power of the state may be invested in local government to enable local government to discharge its role as an arm or agency of the State and to meet other needs of the community.

62 N.J. at 548.

In fact, under N.J.S.A. 40:48-2, municipal power has been held to be encumbered by only three limitations. First, the subject matter of the regulation must not require uniform treatment. Second, the regulation under review cannot conflict with, i.e., be pre-empted by, some clearly expressed state policy. Summer v. Teaneck, 53 N.J. at 554; Dome Realty, 83 N.J. at 232. Finally, the regulation cannot be arbitrary and capricious. See N.J. Builders Assn. v. Mayor, E. Brunswick, 60 N.J. 222, 227 (1972).

The first restriction is clearly inapplicable here. Mt. Laurel compliance is not a subject like descent or distribution, in which local decisions would cause undue confusion. See Ingannamort, 62 N.J. at 528. As the Supreme Court has stated "local housing conditions present community needs that are ideally suited for local intervention." Dome Realty, 83 N.J. at 226. Mt. Laurel II obligations vary greatly from community to community. Under the Warren formula, one town's task will be limited to 150 units while another may have twenty times as much. Thus, the need to employ a particular implementation alternative to the builder's remedy "depends very much on the local scene and varies accordingly in its intensity.... There is no inevitable need for a single statewide solution...." Summer v. Teaneck, 53 N.J. at 553. Mt. Laurel II itself echoes this theme, stating, that the use of affirmative devices "will be initially up to the municipality itself," and that "municipalities and trial courts are encouraged to create... devices and methods for meeting fair share obligations." 92

N.J. at 262, 265-266. Thus, Mt. Laurel II, with its emphasis and local initiative and the encouragement of voluntary compliance, is completely inconsistent with any assertion that uniform treatment is mandatory. See 92 N.J. at 214. Therefore, as the court has declared in Allen-Deane Corp. v. Tp. of Bedminster, slip op. at 13-14 (decided May 1, 1985), the choice of particular affirmative regulatory devices, such as the developer fee, is consistent with Mt. Laurel II, remitted to local discretion. Accordingly, the proposed non-residential bonus fee is not barred by any uniformity requirement.

The second barrier, pre-emption, is only raised when the Legislature clearly demonstrates an intent to occupy a given field and otherwise exclude valid local action:

> But an intent to occupy the field must appear clearly. Kennedy v. City of Newark, 29 N.J. 178, 187 (1959). It is not enough that the Legislature has legislated upon the subject for the question is whether the Legislature intended its action to preclude the exercise of the delegated police power. Masters-Jersey, Inc. v. Mayor and General Council of Borough of Paramus, 32 N.J. 296 (1960). Hence the fact that the State has licensed a calling may not be enough to bar local licensure to protect an additional value of local concern. Belleville Chamber of Commerce v. Town of Belleville, 51 N.J. 153, 157 (1968). The ultimate question is whether, upon a survey of all the interests involved in the subject, it can be said with confidence that the Legislature intended to immobilize the municipalities from dealing with local aspects otherwise within their power to act.

Summer v. Teaneck, 53 N.J. at 554-555 (emphasis added).

In applying this test, and in determining whether pre-emption clearly exists, notwithstanding the usual inclination to favor home rule, the court should ask whether the state regulations in the same field are so pervasive as to preclude local regulation. Overlook Terrace Management Corporation v. Rent Control Board of West N.Y., 71 N.J. 451, 461-2 (1976). Further, the court must also ask "does the ordinance stand as an obstacle to the accomplishment and execution of the full purpose and objective' of the Legislature." Id. In the case of voluntary bonus fees, such as Clinton's, the answer to this question is "no."

The limitations and conditions on the zoning power do not bar adoption of such a provision to achieve Mt. Laurel II ends. Mt. Laurel II itself endorsed a number of innovative regulatory devices, in particulary the set aside, for which there is no explicit authorization in the Municipal Land Use Law (M.L.U.L.). The New Jersey Supreme Court explicitly rejected the argument that such devices went beyond the reach of the zoning power and sweepingly held that affirmative devices would be barred only if forbidden by some affirmative constitutional command:

> Looked at somewhat differently, having concluded that the constitutional obligation can sometimes be satisfied only through the use of these inclusionary devices, it would take a clear contrary constitutional provision to lead us to conclude that that which is necessary to achieve the constitutional mandate is prohibited by the same Constitution. In other words, we would find it difficult to conclude that our Constitution both requires and prohibits these measures.

92 N.J. at 273.

This language clearly supports the use of measures, like the bonus fee, which do not physically regulate land but are designed to create low and moderate income housing opportunities. The reason is that the constitutional obligation is not to provide three bedroom units, or any other physical type of construction. The obligation is, rather, to produce low income housing. Therefore:

> All of the physical uses are simply a means to this end. We see no reason why the municipality cannot exercise its zoning power to achieve that end directly rather than through a mass of detailed regulations governing the "physical use" of land, the sole purpose of which is to provide housing within the reach of lower income facilities. We know of no governmental purpose relating to zoning that is served by requiring a municipality to ingeniously design detailed land use regulations, purporting to be "directly tied to the physical use of the property," but actually aimed at accommodating lower income families, while not allowing it directly to require developers to construct lower income units.

92 N.J. at 274.

In sum, a bonus fee does not go beyond or become inconsistent with the zoning power or the police power merely because its initial impact is economic, not physical. Indeed, such a fee actually does directly what the regulation of land by a set aside ordinance can only do indirectly, that is, provide funds to subsidize production of lower income housing. It therefore constitutes, if anything, a more direct use of the zoning authority to implement Mt. Laurel II goals.

In addition, Mt. Laurel II's emphasis on creativity supports such an exercise of municipal power. Thus, the court not only endorsed two specific socio-economic zoning measures - density bonuses and mandatory set asides - it also encouraged municipalities and trial courts to create other devices and methods for meeting fair share obligations." 92 N.J. at 265-266. Clinton has responded to that invitation in adopting the non-residential bonus fees. Its response to that invitation should not be held ultra vires of the zoning and police powers as defined by Mt. Laurel II.

Third and consistent with the above, Mt. Laurel II contains in its ruling in Glenview Development Co. v. Franklin Township, an explicit assertion that the M.L.U.L. was not designed to affect a municipality's capacity to implement Mt. Laurel. It was a procedural statute which was not, according to the court, intended either to facilitate or "interfere with the satisfaction of the constitutional duty," 92 N.J. at 320. Accordingly, the M.L.U.L. leaves municipalities to regulate as they see fit in order to satisfy the constitutional mandate.

Therefore, to the extent that localities have police power to enforce the constitution, and to assist lower income persons, the M.L.U.L. does not stand in their way. See United Bldg. and Constitution Trades Council v. City of Camden, 88 N.J. 317, 329 (1982), holding that municipalities have broad implied powers to combat employment discrimination. Compare South Carolina v. Katzenbach, 383 U.S. 301, 325-326 (1966), holding that Congress, as well as the courts have broad remedial

power to redress the Constitutional prohibition against vote discrimination.

Nor are municipalities immobilized from acting by virtue of the existence of licensing statutes that empower them to charge fees to defray to the cost of administering the licensing system. The ordinance in this case is quite simply not a licensing ordinance. It deals not with the administration of an inspection system, but the development of a housing program. Its aims are thus quite different from the traditional licensing statute. For that reason, applying the standard in Summer, 53 N.J. 548, it is apparent that the Legislature's directions with respect to licensing statutes are not thwarted by this entirely different type of regulation. If, as the Supreme Court found, a municipality can control the discharge of firearms notwithstanding the existence of very similar State regulations about hunting, then certainly restrictions on licensing ordinances should not be held to immobilize municipal action with respect to a far more distinct subject, that is, the development of affirmative devices to carry out a constitutional zoning mandate. See Township of Chester v. Panicucci, 62 N.J. 94 (1973). In sum, the ordinance in quesion, not being a licensing ordinance, is not affected by the restrictions on such ordinances.

Also, voluntary bonus fees are not taxes which are pre-emped by the Legislature's statutory framework governing the assessment and collection of taxes.

First, the instant ordinance deals with innovative housing programs, not items such as school costs which have traditionally been borne by the general public. This is a key difference, since case law which discusses fees in a tax context, such as West Park Avenue v. Ocean Township, 48 N.J. 122 (1966) at 126, was concerned with the notion of requiring new homeowners to pay for services which "traditionally" had been supported by general taxation. In contrast, the services in this case have not been traditional. They are newly inspired by the constitutional requirements set forth in Mt. Laurel II. Thus, permitting some of the costs of these programs to be borne voluntarily by non-residential developers in return for increased floor area does not mark a change in past policy of the kind which concerned the Supreme Court in West Park Avenue.

Rather, in this context of innovation, the fairness issue has different dimensions. Clinton has merely sought to allow non-residential developers greater floor space in return for assistance in funding a portion - certainly not all - of the costs for housing programs which are necessitated by Mt. Laurel II.

Further, "tax philosophy" has changed drastically over the past twenty years. This judicial trend is described in a recent winning article which states that impact fees have steadily gained judicial acceptance:

> A review of recent constitutional challenges to impact and in lieu fees discloses a changing judicial attitude toward these cost-shifting devices. Despite earlier negative reaction to such payment requirements, state courts currently tend to validate them as a proper and reasonable exercise of police power.

Juergensmeyer and Blake, Impact fees: An Answer to Local Government's Capital Funding Dilemma, 14 Land Use and Environment Law Review 247, 253-254 (1983).

As these writers also point out, restrictions on local use of impact fees have become, over this period, "difficult to reconcile with the planning and funding problems proposed on local government by the constant acceleration of suburban growth," and also difficult to rationalize with the "judicial view of zoning ordinances as presumptively valid." Id. at 261. Accordingly, the courts are now more philosophically inclined to accept the need for such fees.

As a result of these changed judicial attitudes, the courts have in fact been far more willing to allow municipalities to charge specifically even for services or capital projects which were "traditionally" funded out of general revenues. Thus, for example, in City of San Diego v. Holodnak, 157 Cal. App. 3d 759, 203 Cal. Rptr. 797 (Dist. Ct. App. 1984), the California courts permitted the City of San Diego to impose impact fees to defray the costs of water lines, parks, branch libraries, fire stations and the widening of a bridge over an inter-state highway. The argument that such items had traditionally been paid for from government revenues obviously did not sway the court. The courts in Florida,

another high growth state, have reached similar conclusions. See Hollywood, Inc. v. Broward County, 431 So. 2d 606 (Fla. Dist. Ct. App.), petition for review denied, 440 So. 2d 352 (Fla. Sup. Ct. 1983), holding that a county could require a contribution to the county park system. In Hollywood, Inc., the court even went so far as to uphold an imposition to defray costs of parks located fifteen miles from the particular development in question. 431 S. 2d at 612.

These cases demonstrate that the philosophy of municipal impact fees is not static. What was considered settled twenty-five years ago is now under careful scrutiny by the courts. The scrutiny should be even more cautious here, moreover, where the services involved are not traditional ones and there is no breaking with traditional pattern for defraying their costs at the local level.

The proposed ordinance of the Town of Clinton allowing a non-residential developer to voluntarily choose increased floor space in return for contributions to a housing trust fund is legal and is consistent with the goals expressed by our Supreme Court in Mt. Laurel II.

POINT II

IN RULING ON THE PROPOSED SETTLEMENT BETWEEN THE TOWN OF CLINTON AND CLINTON ASSOCIATES, THE COURT SHOULD APPROVE THE NON-RESIDENTIAL BONUS FEE PROVISION UNLESS IT FINDS THE PROVISION TO BE CLEARLY ILLEGAL OR UNCONSTITUTIONAL.

Although Mt. Laurel litigation is not specifically made subject to the class action rules, specifically R. 4:32 which requires court approval of any compromise, Mt. Laurel cases are representative litigation and the principles and case law behind the class action rules provide guiding principles. See Tabaac v. Atlantic City, 174 N.J. Super. 519, 534 (Law Div. 1980). Tabaac was a taxpayer's suit brought by two individuals, which would, when settled, have res judicata effect for thousands of taxpayers. There the court held that the notice of compromise provision of R. 4:32 should be followed. A judgment of compliance in a Mt. Laurel case is also binding on all non-parties to the lawsuit for six years. Mt. Laurel II at 291-292. Additionally, the outcome of the litigation has important ramifications for the public as a whole.

Since there is little available case law on the judiciary's role in approving Mt. Laurel settlements, the court should be guided by the principles set forth in other types of representative litigation, particularly class actions both under our New Jersey court rules and under the similar Federal rules of civil procedure. In representative litigation, a settlement

is a bargained for exchange between the parties, and the judiciary's role should be to protect the interests of the represented class and the public. Liddell v. Bd. of Education of the City of St. Louis, 567 F. Supp. 1037 (D.C. Mo. 1983).

Before a settlement of a class action may be rejected on the grounds that the settlement either initiates or authorizes a continuation of clearly illegal conduct, any illegality or unconstitutionality must appear as legal certainty on the face of the agreement. Gautreaux v. Pierce, 690 F.2d 626 (Ct. App. Ill. 1982). See also Bennett v. Behring Corp., 737 F.2d 982 (Ct. App. Fla. 1984).

The court does not need to rule on the validity of the non-residential bonus provision in order to approve the proposed settlement. The court must only find that the illegality or unconstitutionality is not a legal certainty. The proposed bonus fee provision is not clearly illegal or unconstitutional, and as argued in Point I, supra, is very a valid exercise of municipal power, and the settlement agreement proposed by the parties is fair and reasonable. Therefore, this court should approve the bonus fee provision and settlement application of the parties.

CONCLUSION

For the foregoing reasons, the proposed non-residential bonus provisions of the Clinton Land Use Ordinance should be approved and a judgment of compliance be issued to the Town of Clinton.

Respectfully submitted,

GEBHARDT & KIEFER

By _____
RICHARD P. CUSHING

SHARON HANDROCK MOORE
On the Brief

requesting that the Court postpone its final entry of Consent Judgment to enable my client to fully prepare and document a proposal for the development of his property. It is my feeling that the flood plain problems are not insurmountable, and that the town could go a long way towards resolving any future Mt. Laurel problems by my client's development of his property.

Although my proposal and request for additional time may seem somewhat belated, the first notice that my client had of the situation was within the past month. Accordingly, it is most respectfully urged that my client be given appropriate time to submit his proposal to the Special Master and Your Honor. I await your reply.

Respectfully yours,

Benjamin Luke Serra

BLS/bca
cc: Mr. and Mrs. Julius Skerbisch
Gebhardt & Kiefer
Brener, Wallack & Hill

6 weeks

BENJAMIN LUKE SERRA

Counsellor - At - Law

(201) 526-3377

Please reply to Somerville address

15 West High Street
Somerville, New Jersey 08876

RD #3, Deerhill
Tewksbury, New Jersey 08833

October 8, 1985

The Honorable Steven Skillman
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08903

Re: Clinton Associates v. Town of Clinton, et al.

Dear Judge Skillman:

Please be advised that I represent Julius and Mildred Skerbisch, owners of affected property in the above-captioned matter. Mr. Skerbisch owns the property which lies adjacent to Route 78 and bounds the South Branch as well as the Manny Wolf property. It is my understanding that the Court proposes to increase the permissible density to somewhere between four and seven units per acre, including Mr. Skerbisch's land.

As Your Honor is aware, much of my client's property is within the flood hazard or flood plain area. My client's property is ideal for high density housing, notwithstanding the flood difficulties which may be alleviated provided the Court is willing to permit such application. Because the Skerbisch tracts borders along Route 78, and the river itself, it is ideally suited for high density development. The additional housing which has been constructed in recent years has increased the traffic flow on Leigh Street significantly. The additional housing as proposed on the Wolf tract and my client's tract shall not have any significant impact on the increased travel on Leigh Street. In short, the increased traffic volume is inevitable, and the Township could well benefit by additional high density housing.

Further, because my client has access to sewer and water lines, courtesy of Foster-Wheeler, any increased development on his property should not pose any significant difficulty in this regard. I am

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From: please call H. and find out whether Lowe received this letter + have any response to it. and when I will get any response I spoke to do Gerbisch

October 8, 1985

RECEIVED AT CHAMBERS
OCT 9 1985
JUDGE STEPHEN SKILLMAN

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Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08903

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October 8, 1985

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Middlesex County Court House
New Brunswick, New Jersey 08903

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△ CERTIFIED CIVIL TRIAL ATTORNEY

RECEIVED AT CHAMBERS
OCT 15 1985
JUDGE STEPHEN SKILLMAN

FILE NO.

October 10, 1985

RECEIVED AT JUDGES CHAMBERS
OCT 15 1985
JUDGE C. JUDSON HAMLIN

The Honorable Stephen Skillman
Judge, Superior Court of New Jersey
Middlesex County Court House
New Brunswick, New Jersey 08901

Re: Clinton Associates v. Town of Clinton
Docket No: L-019063-84 (Mt. Laurel II)

Dear Judge Skillman:

I have the October 8, 1985 letter of Benjamin L. Serra, Esq. concerning property owned by Julius and Mildred Skerbisch. On behalf of Clinton Associates, I object to Mr. Serra's request that the compliance hearing be adjourned in order to allow his client to prepare a development proposal for his property. I have three reasons for objecting:

1. This Court need not consider development plans for the Skerbisch's site in passing upon the sufficiency of the Town of Clinton Mt. Laurel compliance plan. So long as the Court finds that: 1) the proposed Clinton ordinances are free from excessive restrictions and exactions and, 2) the sites and mechanisms selected to achieve compliance will provide a realistic opportunity for the construction of lower income housing units, it does not need to look at any sites which the Town did not select and compare the relative suitability of the selected versus non-selected sites. The Allan Deane Corporation v. Township of Bedminster, Docket No: L-36896-70 P.W., approved for publication, September, 1985, pp. 12-13.

2. I understand that the Skerbischs have never offered to provide lower income housing on their property. In fact, the letter of October 8, 1985 does not clearly contain that offer either;

3. Considerable effort and expense has been incurred by my client in arranging for newspaper notices for the hearing, as well as certified letter notices to all potentially affected parties;

If Your Honor is inclined, however, to grant an adjournment of the hearing, we would request that Mr. Serra's client make a committment to file any reports or plans they may wish to submit expeditiously, and that the hearing be adjourned no longer than one month to permit this. Secondly, we would ask that the Skerbischs indicate at this time whether their challenge will involve issues other than the appropriateness of the rezoning of their land. Thirdly, we would ask that notice of the new hearing date be permitted by ordinary mail to all parties who received prior notice.

Respectfully submitted,

Guliet D. Hirsch

GDH/sr

cc: Benjamin L. Serra
Richard Cushing