

# EXHIBIT C

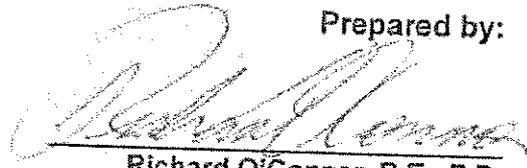
# Amended Housing Element & Fair Share Plan

Prepared for

Township of Clark  
Union County, New Jersey

Adopted \_\_\_\_\_

Prepared by:



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*The original of this document has been signed and sealed in accordance with New Jersey Law*

## Legal Notice Amendment to Housing Element/Fair Share Plan As a Result of Mediation

**NOTICE:** As a result of mediation, there will be substantial amendments to the adopted housing element and fair share plan as originally filed by (municipality), (county), and the housing element/fair share plan will be amended to include (explain the amendment in detail; for example: lot, block, site, number of additional inclusionary sites, and/or a change in inclusionary sites, a substantial increase in density or a fundamental change in approach).

The COAH Mediation Report is available for public inspection at the municipal clerk's office at (address) during regular business hours for a period of 45 days from this notice.

Objections or comments to the amendments to the mediated housing element and fair share plan must be filed with the Council on Affordable Housing (COAH), 101 South Broad Street, P.O. Box 813, Trenton, New Jersey, 08625-0813 and with (municipality) within 45 days of the date of publication of this notice.

**COUNCIL ON AFFORDABLE HOUSING (COAH)  
2004 REGIONAL INCOME LIMITS**

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8 Person	Max. Increase** Rents Sales
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$52,125	\$55,848	\$59,571	\$67,018	\$74,464	\$77,443	\$80,421	\$86,378	\$92,335	\$98,292	3.5% 5.28%
	Moderate	\$41,700	\$44,678	\$47,657	\$53,614	\$59,571	\$61,954	\$64,337	\$69,103	\$73,868	\$78,634	
	Low	\$26,062	\$27,924	\$29,786	\$33,509	\$37,232	\$38,721	\$40,211	\$43,189	\$46,168	\$49,146	
Region 2 Essex, Morris, Union and Warren	Median	\$56,210	\$60,225	\$64,240	\$72,270	\$80,300	\$83,512	\$86,724	\$93,148	\$99,572	\$105,996	3.5% 1.65%
	Moderate	\$44,968	\$48,180	\$51,392	\$57,816	\$64,240	\$66,810	\$69,379	\$74,518	\$79,658	\$84,797	
	Low	\$28,105	\$30,113	\$32,120	\$36,135	\$40,150	\$41,756	\$43,362	\$46,574	\$49,786	\$52,998	
Region 3 Hunterdon, Middlesex and Somerset	Median	\$64,400	\$69,000	\$73,600	\$82,800	\$92,000	\$95,680	\$99,360	\$106,720	\$114,080	\$121,440	3.5% 5.87%
	Moderate	\$51,520	\$55,200	\$58,880	\$66,240	\$73,600	\$76,544	\$79,488	\$85,376	\$91,264	\$97,152	
	Low	\$32,200	\$34,500	\$36,800	\$41,400	\$46,000	\$47,840	\$49,680	\$53,360	\$57,040	\$60,720	
Region 4 Mercer, Monmouth and Ocean	Median	\$55,635	\$59,609	\$63,583	\$71,531	\$79,479	\$82,658	\$85,837	\$92,196	\$98,554	\$104,912	3.5% 6.37%
	Moderate	\$44,508	\$47,687	\$50,867	\$57,225	\$63,583	\$66,127	\$68,670	\$73,757	\$78,843	\$83,930	
	Low	\$27,818	\$29,805	\$31,792	\$35,766	\$39,740	\$41,329	\$42,919	\$46,098	\$49,277	\$52,456	
Region 5 Burlington, Camden and Gloucester	Median	\$48,160	\$51,600	\$55,040	\$61,920	\$68,800	\$71,552	\$74,304	\$79,808	\$85,312	\$90,816	3.5% 0.88%
	Moderate	\$38,528	\$41,280	\$44,032	\$49,536	\$55,040	\$57,242	\$59,443	\$63,846	\$68,250	\$72,653	
	Low	\$24,080	\$25,800	\$27,520	\$30,960	\$34,400	\$35,776	\$37,152	\$39,904	\$42,656	\$45,408	
Region 6 Atlantic, Cape May, Cumberland and Salem	Median	\$42,377	\$45,404	\$48,430	\$54,484	\$60,538	\$62,960	\$65,381	\$70,224	\$75,067	\$79,910	3.5% 7.01%
	Moderate	\$33,901	\$36,323	\$38,744	\$43,587	\$48,430	\$50,368	\$52,305	\$56,179	\$60,054	\$63,928	
	Low	\$21,188	\$22,702	\$24,215	\$27,242	\$30,269	\$31,480	\$32,691	\$35,112	\$37,534	\$39,955	

\*These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:93-7.4.

\*\*These two columns are used for calculating the pricing for resale and rent increases for units as per N.J.A.C. 5:93-9.15. Affordable rents may be raised a maximum of 3.5 percent, based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI), Northeast Region, All Urban Consumers Housing. However, low income tax credit developments may increase based on the low income tax credit regulations. Allowable sales price increases vary by region and are determined by annual changes in regional incomes.

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## EXECUTIVE SUMMARY

### Introduction

Clark Township received its first-round substantive certification from the Council on Affordable Housing (COAH) on September 4, 1991. The Planning Board of Clark Township, adopted a "second round" Housing Element and Fair Share Plan on September 2, 1997 that addressed the Township's 12-year (1987-1999) cumulative obligation. The Township Council of Clark Township adopted a resolution endorsing the Housing Element and Fair Share Plan on September 10, 1997. However, the Township did not petition at that time. On August 16, 1999, the Township Council approved a resolution petitioning for substantive certification. COAH received Clark Township's Housing Element and Fair Share Plan and resolution of petition on August 23, 1999.

When Clark Township was granted its first substantive certification in September 1991, it received a vacant land adjustment from COAH due to the lack of vacant and developable land within the Township. COAH's approval of the vacant land adjustment established the Township's new construction obligation, or realistic development potential (RDP) at 23 units. Pursuant to COAH's regulations, Clark Township is able to retain its previously approved vacant land adjustment so long as it continues to implement its plan and address the Township's adjusted housing obligation number. Clark Township also has a 13-unit obligation to rehabilitate existing dwellings occupied by low and moderate-income families in the Township. Clark Township's current affordable housing obligation is 36 units, consisting of a 23-unit RDP and a 13-unit rehabilitation component.

Clark Township's proposed second-round Fair Share Plan fully addresses both its RDP of 23 units and its 13-unit rehabilitation obligation. The Township's Fair Share Plan is summarized below and described in detail in the subsequent sections of this report. The Fair Share Plan consists of the following components:

- Clark Township is eligible to receive six (6) credits for two existing group homes in the Township. Because COAH considers these group homes as rental units, the Township is eligible to receive an additional six (6) rental bonus credits, for a total of 12 units of credit from these facilities
- The township is eligible to receive a reduction of 22 units for zoning that permits affordable housing on three sites in the Township.
- Clark is also receiving 13 units of credit for dwellings in the Township that were rehabilitated by the Union County Multi-Jurisdictional Housing Program.

Combined, Clark Township is eligible to receive a total of 47 units of credits and reductions, or 11 units more than its current affordable housing obligation as established by COAH. These credits and reductions are listed in Table 5 of the Fair Share Plan.

### **February 2001 Amendment**

After review of the Township's Housing Element and Fair Plan, COAH issued a report on March 28, 2000, requesting additional information from the Township. In its report, COAH requested that the Township capture opportunities for affordable housing beyond the RDP as required pursuant to N.J.A.C. 5:93-4.1(b), provide documentation to COAH on its previously zoned sites to confirm that they still met COAH's criteria, and revise its affirmative marketing ordinance to reflect COAH's current regulations.

In response to COAH's report, the Township Planning Board adopted an amended Housing Element and Fair Share Plan on February 14, 2001 and submitted it to COAH for its review and approval. The amended Fair Share plan addressed COAH's requirement to capture opportunities for affordable housing beyond the RDP by creating an overlay zone on the former Schwarz farm site (Block 57, Lot 1). The overlay permits the site to be developed with age-restricted housing with an affordable setaside. In addition, the Township proposed a mandatory development fee ordinance designed to collect monies for affordable housing purposes as new development occurs in the Township. As noted below, the Schwarz farm overlay district is being retained in the current Fair Share Plan amendment.

The amended plan also identified three group homes in Clark that could potentially be eligible for credit towards the Township's affordable housing obligation. Each of the group homes contain three bedrooms and are owned and operated by the Arc of Union County to provide alternative living arrangements for developmentally disabled individuals.

### **December 2001 Amendment**

Upon review by Township professionals and subsequent discussions with COAH, the Township determined that two of the group homes containing a total of six bedrooms were eligible for credit towards the Township's RDP. These facilities provide the Township with six credits, plus an additional six rental bonus credits, for a total of 12 units of credit. After applying these credits, the Township's new construction obligation is reduced to 11 units. Consequently, the Township amended its fair share plan in December 2001 to take advantage of the eligible credits from these facilities.

With the application of the credits from the group homes, the Township also eliminated one of the four previously designated inclusionary sites from its Fair Share Plan. The site is commonly known as the Esposito Farm site on Madison Hill Road (Block 40, Lots 25, 25.01 and 27) in the southeastern portion of the Township, which had been identified as a priority site for open space acquisition by Union County. The Esposito Farm site has since been acquired by Union County and is currently being developed as a county park facility.

With the elimination of the Esposito site from the plan, the new construction component of the Township's Fair Share plan consists of 34 units of affordable housing, or 11 units more than its RDP of 23 units. In addition, the Township is eligible to receive 13 units of credit for rehabilitation activities in the Township. Consequently, the Township has fully addressed its current affordable housing obligation.

### **Objections and Mediation**

In accordance with COAH procedural rules, Clark published notice of its amendment on December 28, 2001, which started a 45-day period in which objections could be filed to the Township's proposed plan. During the 45-day objector period, COAH received two objections, one from William Caruso and the other from Audrey Palmatier, both residents of Clark Township.

COAH also received a letter from Mr. Carl S. Bisgaier, Esq., dated January 14, 2003, approximately one-year after the 45-day objector period ended, seeking objector status for Sterling Acquisition Group, LLC (Sterling), a contract purchaser of the Schwarz farm site. COAH permitted Sterling to participate in mediation in accordance with N.J.A.C. 5:92-7.2(e), which permits the "owners of record" of sites that have been designated for low and moderate income housing in a municipality's housing element and fair share plan to participate in mediation. Mediation began on April 21, 2003 and concluded on August 31, 2003.

COAH staff issued a mediation report on May 25, 2004, which stated that mediation concluded with no outstanding objections and no material contested issues of fact. No mediated agreement was agreed to between Clark Township and Sterling. The Township will keep the Schwarz farm site in the fair share plan and retain the senior housing overlay as proposed in the Township's previously amended fair share plan.

Clark Township reached agreement with Caruso and Palmatier and signed a mediation agreement with the objectors on April 19, 2004. Pursuant to the agreement, the Township has agreed to rezone a 10.7-acre tract of land, identified as Block 58, Lot 4, on the municipal tax map, located on Terminal Road for an "Age-Restricted Affordable Housing Overlay District." The district will permit a maximum of 300 age-restricted residential units on the site, of which twenty percent must be set aside for low and moderate income households.

### **June 2004 Amendment**

This amendment supplants Clark Township's previously amended Fair Share Plan and implements the provisions of the mediation agreement between the Township and the objectors to Clark's previously adopted Housing Element and Fair Share Plan. The Township's Housing Element, which was previously adopted and reviewed by COAH, including the analysis of housing stock, demographic characteristics, and employment characteristics of the Township remain unchanged.

## DETERMINATION OF CLARK TOWNSHIP'S LOW AND MODERATE INCOME HOUSING NEED

### **Precredited Need**

Pursuant to the Fair Housing Act, COAH is responsible for defining housing regions in New Jersey and developing criteria for establishing each municipality's share of the regional affordable housing need. Clark Township is located within Housing Region No. 2, the Northwest region. This region consists of Warren, Morris, Essex and Union counties.

COAH has established Clark Township's precredited need as 105 units, consisting of a new construction component of 92 units and a rehabilitation component of 13 units. The Township's precredited need is Clark's affordable housing obligation prior to the application of any adjustments, credits and reductions that the Township is eligible to receive pursuant to COAH's regulations. The following sections describe each of the components that contribute to that need, including both the Township's new construction and rehabilitation components.

### **Indigenous Need**

Indigenous need is the total number of existing deficient housing units occupied by low and moderate-income households within a community. The indigenous need is determined by the presence of a number of statistical surrogates.

The surrogates used by the Council on Affordable Housing in its methodology are:

1. The year the structure is built. Units built before 1940 are considered "old housing", and are subject to greater deterioration than newer homes;
2. Persons per room. 1.01 or more persons per room is an index of overcrowding;
3. Plumbing facilities. Lack of the exclusive use of complete plumbing facilities is considered as an inadequate facility.
4. Kitchen facilities. Adequate kitchen facilities include exclusive use of a sink with piped water, a stove and a refrigerator.
5. Heating facilities. Inadequate heating is the use of coal, coke, wood or no fuel for heating.
6. Sewer. Inadequate sewer services are lack of public sewer, septic tank or cesspool.
7. Water. Inadequate water supply is lack of either city water, drilled well or dug well.

A unit with at least two of the above characteristics and occupied by a low or moderate-income family is a deficient unit.

Because Census data are only available by sub-region, it is necessary to "step down" the sub-regional indigenous need to the municipal level. Six indices of deficiency are available at both the municipal and sub-regional levels. These indices are used to distribute the sub-regional indigenous need among the sub-region's municipalities. The indices of deficiency are (1) water or sewer deficiency, whichever is greater; (2) non-standard heating facilities or no fuel; (3) overcrowding, i.e. 1.01 or more persons per room; (4) inadequate plumbing facilities; (5) housing built before 1940; (6) absence of telephone in unit.

Using COAH's methodology, Clark has an indigenous need of 19 units. It should be noted that the determination of indigenous need, based on the surrogates, used 1990 census data. Some of the "substandard" housing units may have been rehabilitated since then. COAH's formula calculates that six (6) units were anticipated to be "spontaneously" rehabilitated by private initiatives, resulting in a rehabilitation component of 13 units for the Township.

#### ***Reallocated Present Need***

Reallocated present need is a share of the excess deteriorated units in a region transferred to all communities which are within the growth area except selected urban aid cities. Excess deficient units are allocated and redistributed to all of the other municipalities within a growth area in the region.

Low-and moderate-income housing is distributed to each community using both economic and land use factors. The factors were selected as measures of both municipal responsibility and capacity. The factors used in apportioning reallocated present need include:

1. Equalized nonresidential valuation (commercial and industrial).
2. Undeveloped land.
3. Aggregate income difference.

Using the allocation formula, the Township of Clark has a reallocated present need of 52 units.

#### ***Prospective Need***

According to COAH, prospective need is a projection of low-and moderate-income housing needs based on development and growth that is reasonably likely to occur in a region or municipality. Prospective low-and moderate-income housing need is derived by projecting the population by age cohort from 1993 to 1999 and converting this to households.

The following factors are used to distribute regional prospective need to each municipality:

1. Change in equalized nonresidential valuation from 1980 to 1990.
2. Undeveloped land.
3. Aggregate income difference.

Clark's 1993-1999 prospective need is 10 units.

#### ***Prior Cycle Prospective Need (1987 - 1993)***

Prior cycle prospective need is an allocation of unmet need from the previous, or first-round, cycle (1987 - 1993). The formula recalculates the prior cycle prospective need to reflect the best estimate of the growth in low and moderate-income households that actually occurred in the period.

The Township of Clark has a prior cycle prospective need of 51 units.

#### ***Modifications and Adjustments***

1. Demolitions. The fair share formula identifies demolition as a factor that eliminates housing opportunities for low and moderate-income households. Therefore, the number of demolitions is added to the total need number.

The number of municipal demolitions that occurred during 1988, 1989 and 1990 are averaged and multiplied by six to obtain the projected 1993 to 1999 demolition estimate. Total demolitions are tallied by municipality and the share affecting low and moderate-income housing is estimated by a multiple of the sub-regional low-and moderate-income housing deficiency percentage.

In Clark, estimated demolitions account for one (1) additional unit.

2. Filtering. Filtering is a factor that reduces total need number, based upon the recognition that housing needs of low and moderate income households are partially met by sound housing units formerly occupied by higher income sectors of the housing market. That is, as higher income households vacate certain units, they become available to households of lower income. Filtering is strongly correlated with the presence of multi-family housing units. Filtering is measured by using the American Housing survey over the 4-year period 1985 - 1989.

In Clark, filtering reduces the total housing obligation by 18 units.

3. Residential Conversions. Residential conversion is the creation of dwelling units from already existing residential structures. Residential conversion causes a reduction in total municipal need because it provides housing for low-and moderate-income households. Residential conversion is positively correlated with the presence of two-to four-family housing units.

Converted units are measured using the 1980 and 1990 Housing Census. Conversions are calculated as the difference between the increase in total housing units and the housing units constructed less the demolitions over the period.

In Clark residential conversions reduces the Township's housing obligation by four (4) units.

4. Spontaneous Rehabilitations. Spontaneous rehabilitation measures the private market's ability to rehabilitate deficient low and moderate-income units to code standard. It causes a reduction to the indigenous municipal need. Spontaneous rehabilitation is positively correlated with income.

In Clark, spontaneous rehabilitation is calculated to cause a net reduction of six (6) units.

The components of Clark Township's precredited affordable housing need are summarized in the following table

**Table 1  
Affordable Housing Need Calculation  
Clark Township, NJ**

Indigenous Need	+19
Reallocated Present Need	+52
Prospective Need	+10
<b>Total Need 1993-1999</b>	<b>81</b>
Prior Cycle Prospective Need (1987-1993)	+51
<b>12-Year Cumulative 1987-1999 Need</b>	<b>132</b>
Adjustments	
Demolitions	+1
Filtering	-18
Conversions	-4
Spontaneous Rehabilitation	-6
<b>Precredited Need</b>	<b>105</b>
New Construction Component	92
Rehabilitation Component	13

### Vacant Land Adjustment

Clark has been identified as a "VL" (Vacant Land Adjustment Community) in COAH's 1987-1999 municipal affordable housing allocations. The VL designation is given to municipalities that received a vacant land adjustment in the first affordable housing cycle (1987 to 1993) from COAH.

When Clark Township received its first substantive certification on September 4, 1991, it received a vacant land adjustment from COAH due to the lack of sufficient vacant and developable land within the Township. COAH's approval of the vacant land adjustment established the Township's new construction obligation, or realistic development potential (RDP) at 23 units. Pursuant to N.J.A.C. 5:93-4.2(f), a municipality that received an adjustment due to lack of vacant land in addressing its first-round (1987-1993) obligation is entitled to retain its vacant land adjustment as part of its second-round plan and is presumed to have addressed its RDP, provided the municipality continues to implement the terms of its previous substantive certification and addresses its adjusted affordable housing obligation.

A municipality's rehabilitation component cannot be reduced through a vacant land adjustment. Consequently, the Township's rehabilitation component remains at 13 units and is addressed through eligible credits for rehabilitation work performed by the Union County Multi-Jurisdictional Housing Program.

**Table 2**  
**Adjusted Affordable Housing Need**  
**Clark Township, NJ**

New Construction Component	+92
Rehabilitation Component	+13
<b>Precredited Need</b>	<b>105</b>
Prior-Cycle Credits (units created prior to 12/96)*	-3
Vacant Land Adjustment	-66
<b>Adjusted Affordable Housing Need</b>	<b>36</b>
Realistic Development Potential (RDP)	23
Rehabilitation Component	13

\*Group home located 279 Oak Ridge Road (See page 10.)

Clark Township proposes to continue to implement the terms of its original certification by obtaining credit for two existing group homes with rental bonus credits and retaining inclusionary zoning on three of four of its previously zoned inclusionary sites. Together, the two group homes, rental bonus credits and zoning will provide the Township with a total of 34 units of credits and reductions, or 11 units more than its 23-unit RDP. These components of the Township's Fair Share Plan are described in the following section.

## **FAIR SHARE PLAN**

Based on the previously discussed credits and adjustments, the Township's current affordable housing obligation is 36 units, including a 13-unit rehabilitation obligation and a 23-unit RDP. The Township addresses this obligation in the following manner:

### **Rehabilitation**

The Union County Multi-Jurisdictional Housing Program has rehabilitated 13 units in Clark Township since April 1, 1990. Clark Township has submitted documentation to COAH to support the granting of credits for these units and COAH staff has determined that they meet COAH's criteria as indicated in its March 28, 2000 report. Clark Township proposes a continuation of the current rehabilitation program under the auspices of the Union County Multi-Jurisdictional Housing Program, which is administered by Planners Diversified, a private firm retained by Union County to administer its program.

### **New Construction**

The Township addresses its new construction obligation, or RDP, through a combination of group homes and retention of inclusionary zoning on three of its four previously certified sites.

### **Group Homes**

Alternative living arrangements may be used to address a municipal housing obligation. Alternative living arrangements are defined as structures in which residents live in distinct bedrooms but share kitchen and plumbing facilities and common areas. Alternative living arrangements include transitional facilities for the homeless, State-licensed boarding homes, residential healthcare facilities, group homes for the developmentally disabled and other congregate living arrangements. For each of these facilities, the unit of credit is the bedroom.

There are three group homes for the developmentally disabled in Clark Township that qualify as alternative living arrangements as per COAH guidelines. Each of the three facilities contains three bedrooms. The three facilities are all owned and operated by The ARC of Union County, a not for profit organization funded by State grants and charitable donations. Two are located on Oak Ridge Road and one is located on Union County Parkway.

All three of the facilities are operated under contract with the New Jersey Division of Developmental Disabilities in the Department of Human Services. The two facilities on Oak Ridge Road were purchased with capital funding from the DDD. The facility on Union County Parkway was donated to The Arc of Union County and renovated using DDD capital funding. The capital grants have a term of twenty years

and are renewable at the end of the initial term which COAH's requirements for affordability controls. Crediting forms and a letter from DDD confirming the status of the facilities is included in Appendix A.

Two of the group homes are eligible for credit toward the Township's RDP for a total of six (6) credits. In addition, the Township can receive an additional six (6) rental bonus credits, for a total of 12 units of credit. The two group homes and eligible credits are summarized in the following table:

**Table 3  
Group Home Facilities  
Clark Township**

Facility Location	Type of Facility	Operator	No. of Bedrooms	Date Opened	Eligible Credits	Rental Bonus Credits	Total Credits
93 Union County Parkway	Group Home for the Developmentally Disabled	Arc of Union County	3	1995	3	3	6
507 Oak Ridge Road	Group Home for the Developmentally Disabled	Arc of Union County	3	November 2001	3	3	6
<b>Totals</b>			<b>6</b>		<b>6</b>	<b>6</b>	<b>12</b>

The third group home located at 279 Oak Ridge Road was opened in July 1986 and is considered by COAH to be a "prior-cycle" credit that can be applied against the Township's precredited need prior to the application of the vacant land adjustment.

### **Zoning**

The Township of Clark proposes to retain inclusionary zoning on three of the four parcels zoned for inclusionary development in its 1991 Housing Element and Fair Share Plan. Each of these parcels are zoned R-B, Multiple Family Residential. Permitted uses in the R-B Zone include townhouses and garden apartments at a density of 8 dwelling units per acre and a 20 percent affordable housing set aside. The potential number of low/moderate income units to be generated by these three parcels is 22 units. A summary of the units to be generated by the inclusionary zoning on the three sites is as follows:

**Table 4  
Sites Zoned for Inclusionary Development  
Clark Township, NJ**

Site Name	Block	Lot	Acres	Density (D.U./Acre)	Total Units	Low and Moderate Income Units
Schieferstein Farm	36	13	3.25	8.0	26	5
Miele Nursery	28.01	13 & 14	5.00	8.0	40	8
Raritan Road & Charlotte Drive	28	8 & 9	5.43	8.0	43	9
<b>Totals</b>			<b>13.68</b>		<b>109</b>	<b>22</b>

In approving the Township's first-round plan in 1991, COAH found that each of these sites met COAH's criteria for suitable, approvable, available, and developable sites. Each of the three sites is located in Planning Area 1 (PA-1) of the State Development and Redevelopment Plan. Each site has access to sewer and water and is surrounded by compatible land uses. The Township has entered into an appropriate dialogue with the property owners of the sites as required by COAH and none of the property owners have approached the Township for rezoning of their sites. It is the understanding of the Township that the current zoning is appropriate given current market conditions.

The Township's previously certified plan contained a fourth site that had been zoned for inclusionary zoning. Commonly known as the Esposito Farms site (Block 40, Lots 25, 25.01 and 27), the property is located on Madison Hill Road in the southeastern portion of Clark Township and contained one of the last working farms in Clark Township and Union County. The site contains approximately 12.8 acres and was to have provided 20 units of affordable housing pursuant to the requirements of the R-B zoning on the tract.

With the two group homes, rental bonus credits, and zoning on the remaining three sites, the Township's plan provides for a total of 34 affordable units towards its new construction obligation, or 11 units more than its current RDP. Consequently, the Esposito Farms site is not needed to satisfy the Township's obligation and the Township has eliminated the site from its plan.

The removal of the Esposito Farms site was predicated on the fact that the site was identified as a priority site for open space acquisition by Union County. The Esposito Farms site has been acquired by the County and is currently under development as a county park facility. The Township has amended its Master Plan to identify this site for open space and recreation purposes in the Open Space Element of its Master Plan consistent with Union County's Master Plan.

Pursuant to N.J.A.C. 5:93-5.13(b), a municipality petitioning for substantive certification of a plan that addresses its 12-year cumulative obligation, must retain inclusionary zoning on a site included in its first-round plan if: (1) the site was subject to an agreement pursuant to COAH's mediation process or part of negotiated settlement in court; or (2) a development application for the site was filed prior to the expiration of the first-round plan. None of these conditions are applicable to the Esposito site. In accordance with COAH requirements, the Township provided the property owner of the Esposito Farms site with a notice of the intent of the Township to rezone the site and remove it from the Township's affordable housing plan. (See Appendix B.)

A listing of the eligible credits and reductions and a summary of Clark Township's amended Fair Share Plan are summarized in the following table:

**Table 5  
Amended Fair Share Plan  
Clark Township, NJ**

Realistic Development Potential	23
Rehabilitation Component	13
<b>Total Affordable Housing Obligation</b>	<b>36</b>
Credits (Group Homes)	-6
Rental Bonus Credits	-6
Reductions (R-B Zones)	-22
Units Rehabilitated After 4/1/90	-13
<b>Total Credits and Reductions</b>	<b>-47</b>
Remaining Fair Share Obligation	0
<b>Surplus Units</b>	<b>11</b>

#### **Capturing Opportunities for Affordable Housing Beyond the RDP**

A municipality receiving a vacant land adjustment is expected to capture opportunities for affordable housing beyond its calculated RDP. COAH calls this difference between the RDP and new construction component of the precredited need, a municipality's "unmet need." In its March 28, 2000 report, COAH requested that Clark Township consider overlay zoning, an accessory apartment program or a development fee ordinance to address its obligation beyond the RDP. Clark Township has chosen to respond to COAH's requirement by creating two overlay zones for age-restricted housing with an affordable housing setaside and by instituting a development fee.

### ***Overlay Zoning***

Clark Township proposes two overlay zones to capture opportunities for affordable housing beyond the RDP.

#### ***Schwarz Farm Site***

The Township will rezone the former Schwarz farm site (Block 57, Lot 1) to an Age-Restricted Affordable Housing Overlay (AHO) District. The property is located on Old Raritan Road and is shown on the maps included in Appendix C.

The overlay zone will allow the site to be developed with an age-restricted multi-family residential development containing a twenty (20) percent setback for low and moderate-income households. The age restricted multi-family development is an option available to the developer or property owner in addition to the uses permitted pursuant to the requirements of the underlying IL, Limited Industrial District.

The development may be constructed as multi-family dwellings, multiple group dwellings, or garden apartments, townhouses, or townhouse/flat combinations. The AHO would permit either age-restricted townhouses at a density of 15 units per acre or senior housing at 30 units per acre. Both options require a mandatory setback of twenty percent (20%) of the units for low and moderate-income housing. A copy of the AHO District ordinance is provided in Appendix D.

#### ***Clark Developers Site***

As a result of mediation, the Township also will rezone a 10.7-acre tract of land located on west side of Terminal Road (Block 58, Lot 4) to an Age-Restricted Affordable Housing Overlay District. A map of the site is included in Appendix E. The site is owned by Clark Developers, LLC, which is a party to the mediation agreement between the Township and Caruso and Palmatier. (See Appendix F.)

The overlay option will permit a maximum of 300 age-restricted residential units on the site, of which twenty percent must be set aside for low and moderate income households. The age restricted multi-family development is an option available to the developer or property owner in addition to the uses permitted pursuant to the requirements of the underlying IL, Limited Industrial District.

Sixty percent (60%) of the total units approved are to be age-restricted to occupants 55 years and older and forty percent (40%) of the total units are to be senior units restricted to occupants 62 years and older. The senior units will be located in one building with an additional 5,000 square feet dedicated to recreation/common space. All the affordable units in the project will be senior units (62 years or older). The AHO ordinance for the Clark Developers site and a concept plan is attached to the mediation agreement is provided in Appendix F.

### ***Development Fee Ordinance***

Clark Township has adopted a development fee ordinance that is designed in accordance with COAH's model. The ordinance applies to all non-residential improvements and to new residential construction. Additions and improvements to existing dwellings will be exempt from paying a fee. The development fee for non-residential activities is one (1%) percent of equalized assessed value. The development fee for eligible residential activities is one-half of one (0.5%) percent of equalized assessed value. Where there is a zoning change or use variance that permits increased residential development, the Township will impose a development fee of six (6%) percent of the equalized assessed value for each additional unit that may be realized as a result of the rezoning or use variance.

The proceeds from the development fee ordinance will be deposited in a housing trust fund and will be used for COAH approved activities to address the Township's low and moderate income housing obligation. The Township has adopted a spending plan that has been designed in accordance with COAH's model spending plan.

### **Rental Obligation**

Pursuant to N.J.A.C. 5:93-5.15(a), every municipality addressing its 1987-1999 affordable housing need has an obligation to create a realistic opportunity to construct rental units as part of its plan. For municipalities receiving a vacant land adjustment, the rental obligation is 25 percent of the RDP. Consequently, Clark Township's rental obligation is six (6) units, or 25 percent of the Township's RDP of 23 units. The Township is satisfying its rental obligation with the two group homes described above.

### **Affirmative Marketing**

The Township has revised its affirmative marketing ordinance in accordance with COAH's request. The ordinance has been prepared in accordance with N.J.A.C. 5:93-11, to insure that as sales/re-sales and rents/re-rentals occur, the units will be marketed to the COAH housing region consisting of Essex, Morris, Union and Warren Counties.

### **Administrative Entity**

In accordance with N.J.A.C. 5:93-9.1(a), Clark Township will utilize the Housing Affordability Service (HAS), formerly known as the Affordable Housing Management Service (AHMS), as the affordable housing administrator for new construction. In the event that housing units are created in Clark Township during the six-year period of substantive certification, the township will contract with HAS to ensure the affordability of the units during the period of affordability controls.

**Controls on Affordability**

In accordance with N.J.A.C. 5:93-9, the Township has adopted an administrative plan that outlines the methods of qualifying applicants, establishing waiting lists and procedures to match applicants to units.

**Fair Share Ordinance**

Clark Township also will adopt revised fair share ordinance that regulates the development of inclusionary development in accordance with applicable COAH regulations.

**Appendix A**  
**Group Home Crediting Documentation**



DONALD T. DIFRANCESCO  
ACTING GOVERNOR

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES  
PO BOX 726  
TRENTON, NJ 08625-0726

JAMES W. SMITH, JR.  
ACTING COMMISSIONER  
DEBORAH TRUB WEHRLEN  
DIRECTOR  
TEL. (609)292-3742

November 13, 2001

Mr. Stanley Slachetka  
Heyer Gruel & Associates  
63 Church St.-2<sup>nd</sup> Floor  
New Brunswick, NJ 08901

Dear Mr. Slachetka:

This letter is in response to your inquiry regarding three properties in Clark Township, Union County:

93 Union County Parkway

279 Oakridge Road

507 Oakridge Road

All three of these homes are Community Residences for the Developmentally Disabled that are operated under contract with the State Division of Developmental Disabilities. In addition, the two homes on Oakridge Road were purchased with Capital Funding from the Department of Human Services, Division of Developmental Disabilities. Although the home on Union County Parkway was donated to the Arc of Union County, the money to renovate the home was also provided with Capital Funding from the Division. The contracts providing the capital grant have a term of twenty years and are renewable at the end of the initial term.

I hope this information is helpful. Should you need additional information you may call me at 609-984-5349.

Sincerely,

A handwritten signature in cursive script that reads "Blanche Ellis".

Blanche Ellis, Director  
Community Capital Planning & Development Unit

## ALTERNATIVE LIVING ARRANGEMENTS

MUNICIPALITY: Clark Township

COUNTY: Union

A:

<u>Type of Facility</u>	<u>Address of Facility</u>	<u># Of Rooms Specifically Restricted to Low/Moderate Income Households/ Individuals</u>	<u>Construction or Rehabilitation</u>	<u>Date of Occupancy For New Construction or Final Inspection For Rehabilitation</u>
Group home for the developmentally disabled	93 Union County Parkway, Clark, NJ	Three (3) bedrooms	Donated to ARC of Union County renovated in 1995	1995

B. Briefly description of affordability control. (Kindly attach applicable legal instrument)

The ARC of Union County is a not for profit organization funded by state grants and charitable donations. The facility was renovated using capital funding from the Department of Human Services, Division of Developmentally Disabilities. The contracts providing the capital grant have a term of twenty years and are renewable at the end of the initial term.

C. Briefly describe rehabilitation work and cost per room, if applicable.

The dwelling is a cape cod home donated to the ARC of Union County in 1995 and renovated to accommodate three (3) developmentally disabled persons.

D. Affidavit that occupants meet either low or moderate income eligibility standards.

Residents receive only social security income and meet COAH eligibility standards for low-income households.

E. Verification that facility is open to the general public and is not age restricted.

The facility is open to the general public and not age-restricted.

Certified by: Deborah Pomianek  
Owner or Administrator of Facility or Developer  
Deborah Pomianek

Certified by: Deborah Pomianek  
Chief Elected Municipal Official

**ALTERNATIVE LIVING ARRANGEMENTS**

MUNICIPALITY: Clark Township

COUNTY: Union

A:

<u>Type of Facility</u>	<u>Address of Facility</u>	<u># Of Rooms Specifically Restricted to Low/Moderate Income Households/ Individuals</u>	<u>Construction or Rehabilitation</u>	<u>Date of Occupancy For New Construction or Final Inspection For Rehabilitation</u>
Group home for the developmentally disabled	279 Oak Ridge Road, Clark, NJ	Three (3) bedrooms	Purchased and renovated by the ARC of Union County	July 1986

B. Briefly description of affordability control. (Kindly attach applicable legal instrument)

The ARC of Union County is a not for profit organization funded by state grants and charitable donations. The facility was purchased and renovated using capital funding from the Department of Human Services, Division of Developmental Disabilities. The contracts providing the capital grant have a term of twenty years and are renewable at the end of the initial term.

C. Briefly describe rehabilitation work and cost per room, if applicable.

The bi-level dwelling ~~the brick, Ranch-Style~~ home was purchased and renovated by the ARC of Union County using funds from the Division of Developmental Disabilities.

D. Affidavit that occupants meet either low or moderate income eligibility standards.

Residents receive only social security income and meet COAH eligibility standards for low-income households.

E. Verification that facility is open to the general public and is not age restricted.

The facility is open to the general public and not age-restricted.

Certified by: Deborah Pomianek  
 Owner or Administrator of Facility or Developer  
 Deborah Pomianek

Certified by: [Signature] Mayor  
 Chief Elected Municipal Official

**ALTERNATIVE LIVING ARRANGEMENTS**

MUNICIPALITY: Clark Township

COUNTY: Union

A:

<u>Type of Facility</u>	<u>Address of Facility</u>	<u># Of Rooms Specifically Restricted to Low/Moderate Income Households/ Individuals</u>	<u>Construction or Rehabilitation</u>	<u>Date of Occupancy For New Construction or Final Inspection For Rehabilitation</u>
Group home for the developmentally disabled	507 Oak Ridge Road, Clark, NJ	Three (3) bedrooms	Purchased and renovated by the ARF of Union County	November 2001

B. Briefly description of affordability control. (Kindly attach applicable legal instrument)

The ARC of Union County is a not for profit organization funded by state grants and charitable donations. The facility was purchased and renovated using capital funding from the Department of Human Services, Division of Developmental Disabilities. The contracts providing the capital grant have a term of twenty years and are renewable at the end of the initial term.

C. Briefly describe rehabilitation work and cost per room, if applicable.

The brick, Ranch-Style home was purchased and renovated by the ARC of Union County using funds from the Division of Developmental Disabilities.

D. Affidavit that occupants meet either low or moderate income eligibility standards.

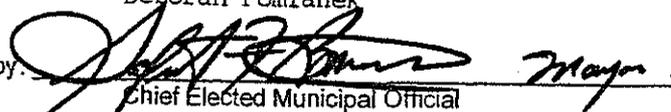
Residents receive only social security income and meet COAH eligibility standards for low-income households.

E. Verification that facility is open to the general public and is not age restricted.

The facility is open to the general public and not age-restricted.

Certified by:   
 Owner or Administrator of Facility or Developer

Deborah Pomianek

Certified by:   
 Chief Elected Municipal Official

**Appendix B**  
**Letter to Owner of Esposito Site**



SAL BONACCORSO  
MAYOR

TOWNSHIP OF

*Clark*

NEW JERSEY

430 Westfield Avenue  
Clark, New Jersey 07066-1704  
Tel.: (732) 388-3600  
Fax.: (732) 388-0256

November 29, 2001

The Estate of Mr. Peter Esposito  
659 Madison Hill Road  
Clark, New Jersey 07066

Re: Proposed Clark Township fair Share Plan Amendment  
Esposito Farm Property  
Block 40, Lots 25, 25.01 and 27

To whom it may concern:

This letter is to inform you that the Township of Clark has prepared an amended Housing Element and Fair Share Plan that addresses its cumulative 1987-1999 fair share housing obligation as established by and the New Jersey Council on Affordable Housing (COAH). The Township intends to adopt its amended plan and petition COAH for substantive certification before the end of December.

This letter is being sent to you as part of the notification requirements to owners of inclusionary sites that is required by COAH as part of the Township's substantive certification review. The Township's new plan seeks to eliminate the R-B Multiple - Family Residential District designation from your property (Block 40, Lots 25, 25.01 and 27) and rezone it to an R-150 Residential Zone designation. Clark will affirmatively address its obligation by retaining the R-B Zoning on three remaining inclusionary sites in the Township and receiving credits for two existing group homes for the developmentally disabled.

I have enclosed a copy of the Township's proposed Fair Share Plan amendment for your review. The Clark Township Planning Board will hold a public hearing on the proposed amendment to the Fair Share Plan on December 11, 2001, at 8:00 p.m. in the Clark Township Council Chambers located at 315 Westfield Avenue. The Township would appreciate it if we could have your response in writing before the date of the Planning Board hearing.

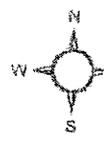
Yours truly,

Mayor Sal Bonaccorso

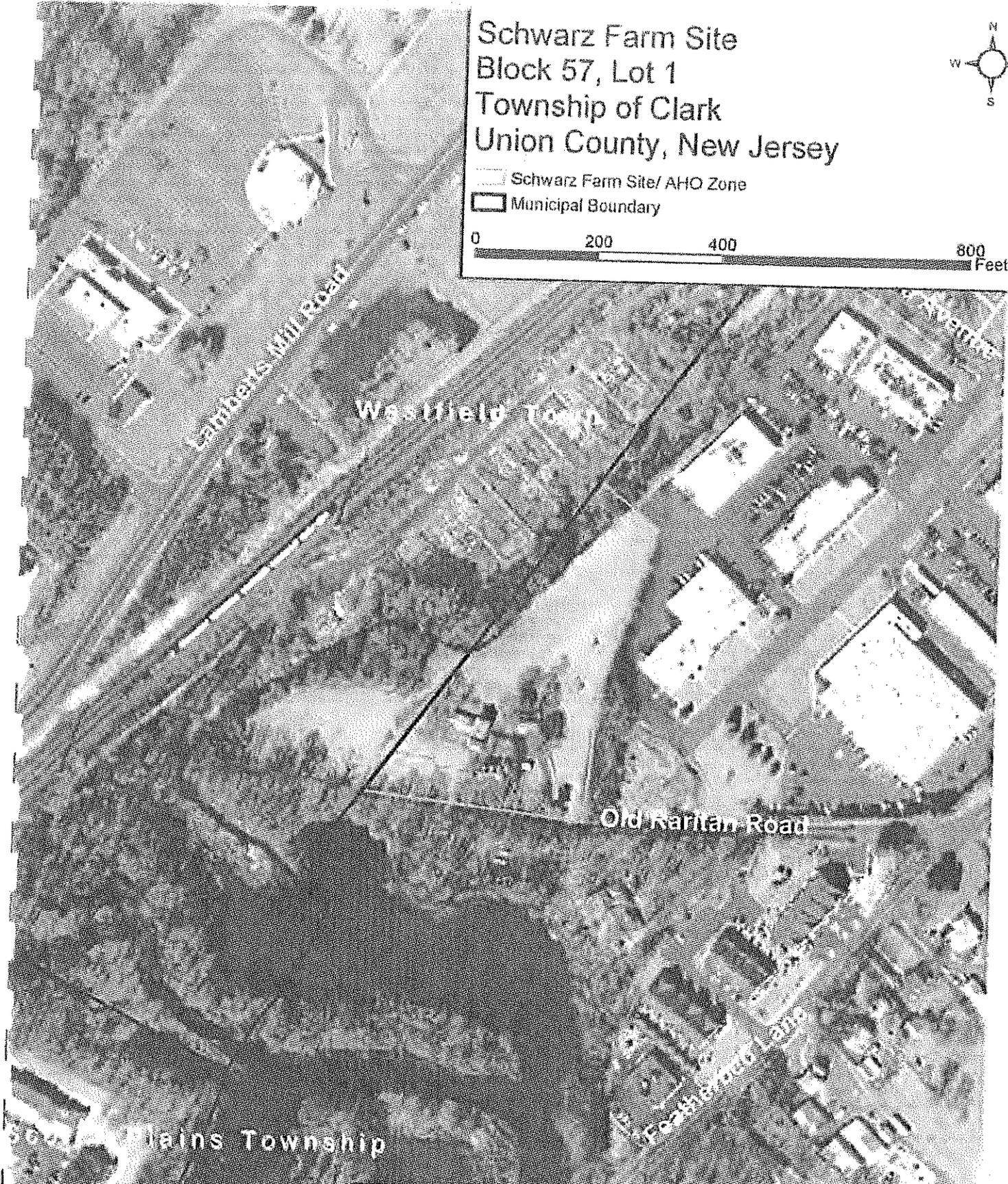
SB:ff

**Appendix C**  
**Schwarz Farm Site Map**

Schwarz Farm Site  
Block 57, Lot 1  
Township of Clark  
Union County, New Jersey



-  Schwarz Farm Site/ AHO Zone
-  Municipal Boundary



NOTE: This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not State-authorized.



**Appendix D**  
**AHO District Ordinance—Schwarz Farm**

TOWNSHIP OF CLARK  
Ordinance No. \_\_\_\_\_

AN ORDINANCE TO SUPPLEMENT CHAPTER 34 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF CLARK TO PROVIDE FOR THE ESTABLISHMENT OF AN AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF CLARK.

BE IT ORDAINED by the Governing Body of the Township of Clark that it does hereby supplement and amend Chapter 34 of the Revised General Ordinances of the Township of Clark as follows:

**Section 1**

Section 34-4 is hereby amended to include the following new definitions:

*Dwelling, age-restricted* shall mean a housing unit that is restricted to occupancy by at least one person that is at least 55 years of age or older.

*Age-restricted multi-family residential development* shall mean a residential development containing age-restricted dwellings and providing facilities and services specifically designed to meet the needs of older persons consistent with the guidelines and requirements of the United States Department of Housing and Urban Development (HUD). Affordable housing units in an age-restricted multi-family residential development shall meet all necessary standards and requirements for low and moderate income housing units in accordance the rules and regulations of the New Jersey Council on Affordable Housing (COAH).

**Section 2**

Section 34-5.1 is hereby amended to include the following new zoning district:

AHO      Age-restricted Affordable Housing Overlay

### Section 3

Section 34-5.2 is hereby amended to include the following new paragraph "f":

- f. The Zoning District Map is amended and supplemented to provide that the AHO, Age-restricted Affordable Housing Overlay District shall apply to Lot 1 in Block 57, which fronts on Old Raritan Road in the Township of Clark. Lot 1 in Block 57 shall also retain its underlying IL, Limited Industrial District zoning designation.

### Section 4

Chapter 34 of the Revised General Ordinances of the Township of Clark is hereby amended to include the following new Section 34-15:

#### **34-15. AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT WITH LOW AND MODERATE INCOME HOUSING SETASIDES.**

##### **34-15.1 Purpose of District**

The purpose of the Age-Restricted Affordable Housing Overlay District is to permit the construction of an age-restricted multi-family residential development, with a twenty (20) percent affordable housing setaside in accordance with the Township's adopted Housing Element and Fair Share plan, the requirements of the New Jersey Council on Affordable Housing (COAH) and the terms and conditions of the Township's substantive certification. The development of the age restricted multi-family development shall be an option available to the developer or property owner in addition to that permitted pursuant to the requirements of the underlying zoning district.

##### **34-15.2 Permitted Uses**

Age-restricted multi-family residential development containing a twenty (20) percent setaside for low and moderate income households. The development may be constructed as multi-family dwellings, multiple group dwellings, or garden apartments, townhouses, or townhouse/flat combinations.

**34-15.3 Development Standards**

- (a) Minimum Tract Area. 1.9 acres.
- (b) Minimum Frontage. A minimum of 250 feet on a paved public street.
- (c) Density. The maximum density shall be thirty (30) units per acre for multi-family dwellings, multiple group dwellings, or garden apartments, and fifteen (15) units per acre of gross site area for townhouses and townhouse/apartment flat combinations.
- (d) Low and Moderate Income Housing Requirements. A minimum of twenty percent of the age-restricted dwelling units shall be affordable to low and moderate income households in accordance with the standards and requirements specified in Section 34-14.4.
- (e) Building Height. Maximum building height shall be two and one-half stories and thirty-five feet for townhouse developments, three and one-half stories and forty-five feet for townhouse/apartment flats combinations and all other permitted forms of residential development.
- (f) Setbacks. The following setback standards shall apply:
  - Front Yard: 50 feet or the height of the principal building, whichever is greater
  - Side Yard: 25 feet
  - Rear Yard: 50 feet
- (h) Lot Coverage. Not more than 25 percent of the lot or parcel area shall be covered by buildings and accessory structures.
- (i) Total Lot Coverage. Not more than 65 percent of the lot or parcel area shall be covered by a combination of buildings, accessory structures, parking areas, driveways, and other impervious surfaces.

- (j) Minimum Open Space. Not less than 35 percent of the parcel area shall be open space as defined in section 34-4.
- (k) Parking. Off-street parking shall be provided in accordance with the Residential Site Improvement Standards. No off-street parking shall be located less than twenty (20) feet from the front property line and fifteen (15) feet from side and rear property lines. With the exception of garages in townhouse and townhouse flat developments, no parking shall be located under a building.
- (l) Landscaped areas, buffer areas, and recreation facilities. All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped, and shall be arranged such that appropriate active and passive recreation opportunities will be provided on-site for the residents of the development (e.g. walking paths, benches, gazebos, or ponds or water features). A suitable landscaped buffer strip of at least ten (10) feet in width shall be provided to the side and rear property boundaries to form a visual screen.
- (m) Parking Lot Setback and Landscaping. Parking areas shall be attractively landscaped in accordance with the following standards:
  - (1) Parking lots shall be setback a minimum of fifteen (15) feet from the right-of-way of a public street. The setback area shall be landscaped with shade trees and shrubs adaptable to the location and able to provide low level screening of the view of the parking lot. At least one shade tree for each forty (40) feet of frontage shall be provided.
  - (2) In addition to landscaping required along public streets, the interior of the parking lot shall be landscaped with at least one (1) tree for every twenty (20) parking spaces which shall be planted in suitably prepared and protected landscaped islands.

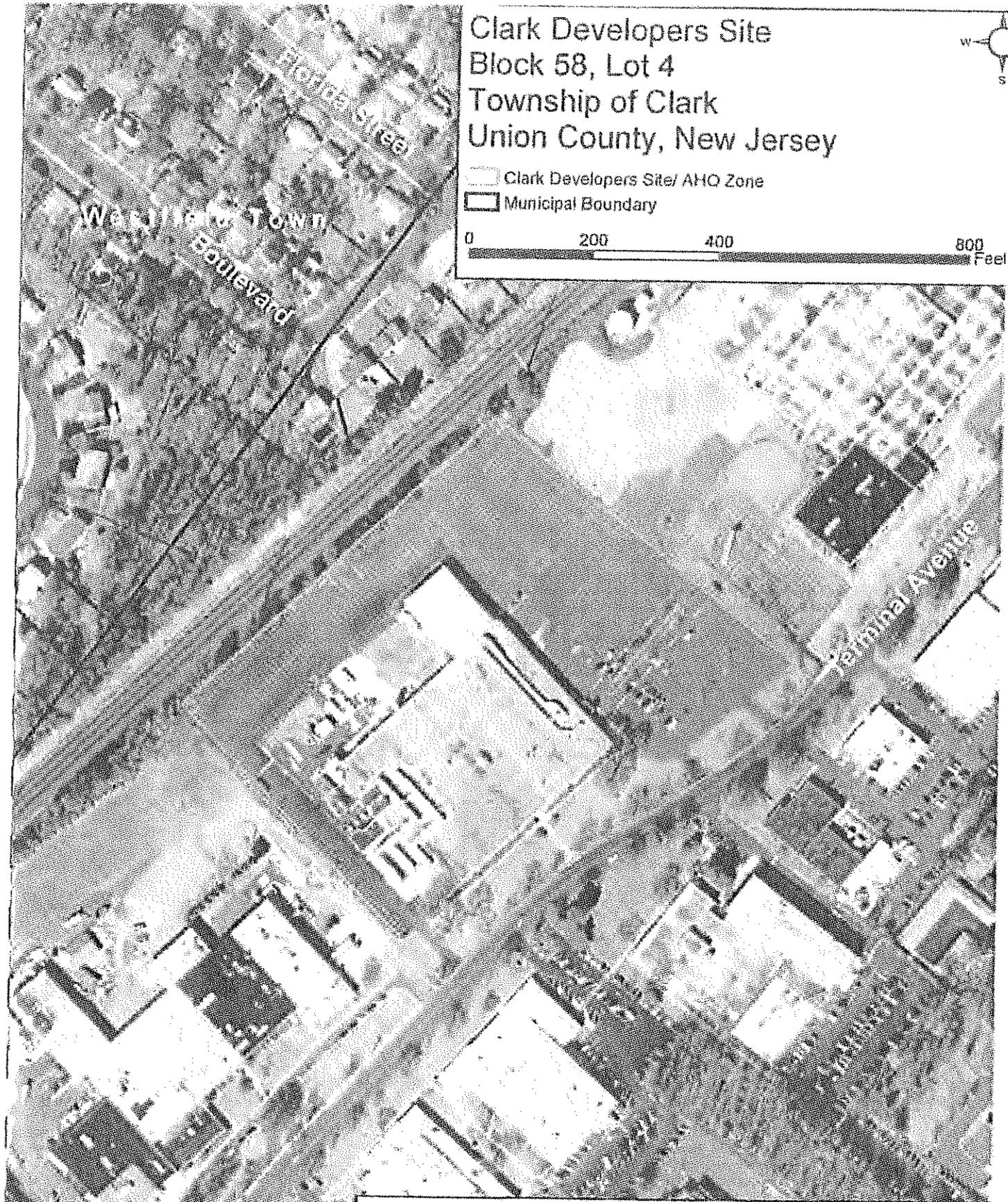
- (n) Townhouse and Townhouse/Apartment Combination Building Spacing. The minimum spacing between buildings shall be fifty (50) feet between front and back and twenty-five (25) feet end to end. The minimum setbacks from driveways and parking areas shall be twenty (20) feet from building fronts, twenty-five feet from building rears, and twenty (20) feet on building ends.

**Appendix E**  
**Clark Developers Site**

Clark Developers Site  
Block 58, Lot 4  
Township of Clark  
Union County, New Jersey



- Clark Developers Site/ AHO Zone
- Municipal Boundary



NOTE: This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been verified by NJDEP and is not State-authorized.



**Appendix F**  
**Mediation Agreement**

**COAH MEDIATION AGREEMENT**  
*Township of Clark, Union County*

This COAH Mediation Agreement (this "**Agreement**") is entered into this \_\_\_\_\_ day of April, 2004 by and among WILLIAM CARUSO, having an address of 7 School Street, Clark, New Jersey 07066 ("**Caruso**"), AUDREY F.S. PALMATIER having an address of 503 Goodman's Crossing, Clark, New Jersey 07066 ("**Palmatier**") CLARK DEVELOPERS, L.L.C., a New Jersey limited liability company, having an address c/o Garden Homes, Inc., 820 Morris Turnpike, Short Hills, New Jersey 07078 ("**Clark Developers**" or "**Developers**"), the TOWNSHIP OF CLARK, County of Union, State of New Jersey, a municipal corporation of the State of New Jersey, with a business address located at Clark Municipal Building, 430 Westfield Avenue, Clark, New Jersey 07066 (the "**Township**"), and the PLANNING BOARD OF THE TOWNSHIP, with a business address located at Clark Municipal Building, 430 Westfield Avenue, Clark, New Jersey 07066 (the "**Planning Board**" or "**Board**"). The Developer, Caruso, the Township and the Board are sometimes hereinafter individually referred to as "**Party**" and collectively as the "**Parties**".

**WITNESSETH:**

**WHEREAS**, Southern Burlington County N.A.A.C.P. v. Mount Laurel Township, 92 N.J. 158 (1983) (hereinafter "**MOUNT LAUREL II**"), The Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and other applicable law require TOWNSHIP OF CLARK (hereinafter "**CLARK**" or "**TOWNSHIP**") as well as most other New Jersey municipalities to create a realistic opportunity for the provision of affordable housing; and

**WHEREAS**, the Township received substantive certification from COAH for its Housing Element and Fair Share Plan, which addressed the Township's first-round affordable housing obligation; and

**WHEREAS**, the Township has sought substantive certification of its amended Housing Element and Fair Share Plan (the "**Compliance Plan**") from COAH to satisfy the Township's second-round affordable housing obligation; and

**WHEREAS**, CLARK seeks to satisfy its affordable housing obligation through a variety of compliance mechanisms including rezoning of certain lands to allow a realistic opportunity for the construction of affordable housing; and

**WHEREAS**, the Township has a realistic development potential (RDP) determined by COAH to be 23 units; and

**WHEREAS**, the Township is required by COAH to capture opportunities for the creation of affordable housing beyond its RDP; and

**WHEREAS**, Clark Developers is the owner of that certain 10.67 acre tract of land located in the Township, with frontage on Terminal Road and more particularly described as Block 58, Lot 4 on the Tax Map of the Township (the "**Clark Developers Property**"); and

**WHEREAS**, Caruso and Palmatier have objected to the Township's petition for substantive certification of its Compliance Plan and is a party to the COAH Mediation; and

**WHEREAS**, Clark Developers desires to develop and is committed to developing the Clark Developers Property with an age-restricted multi-family development with 60% of the total units for at least one person 55 years of age or older and 40% of the total units for 62 years of age or older. The development will include a 20% total set-aside for low and moderate-income households ages 62 years and older (the "**Clark Developers Development**"); and

**WHEREAS**, the Clark Developers Development shall assist the Township in capturing opportunities for affordable housing beyond the Township's RDP as required by COAH; and

**WHEREAS**, COAH rules and regulations permit the township to address this requirement through an overlay zoning option on the Clark Developer's Property and the provision of affordable age-restricted housing as proposed by Clark Developers; and

**WHEREAS**, the Parties have reached an amicable settlement and desire and intend to memorialize same by the execution of this Agreement,

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, TERMS AND CONDITIONS SET FORTH HEREIN, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:**

1. **PURPOSE:** This Agreement is reached after due deliberation by the Parties and upon the considered judgment of the Parties that it is in their best interest and in the best interest of the public good and welfare to settle the COAH Mediation pursuant to the terms and conditions contained herein and in so doing advance the purposes and objectives of *Mt. Laurel II* compliance in a manner consistent with sound land use planning principles. This Agreement also satisfies and removes the objections of Caruso and Palmatier to the Township's petition for substantive certification of its compliance plan.

2. **COAH APPROVAL:** The obligations of the Parties under this Agreement are premised upon COAH approval of this Agreement and COAH's grant of substantive certification of the Township's Housing Element and Fair Share Plan, which includes this site. The implementation of this Agreement, the voting on the adoption of amendments to the Township Zoning Ordinance consistent with the provisions set forth in **Exhibit A**, attached hereto and made a part hereof (the "**Zoning Amendment**"), and the Board's consideration, review and voting on any and all related applications of the Developer for development approvals (the "**Development Applications**") shall occur consistent with the terms hereof, the terms and conditions of COAH's approvals, and COAH's regulations.

3. **REPRESENTATIONS OF THE PARTIES REGARDING THE COMPLIANCE PLAN, MASTER PLAN AND ZONING AMENDMENTS:**

3.1. The Developer, Caruso and Palmatier agree to withdraw their existing objections to the Compliance Plan and agree not to challenge any provision of the Compliance Plan.

3.2. The Board and the Township agree that the Clark Developers Property can be developed pursuant to the terms of the Zoning Amendment in a manner generally consistent with the schematic plans for the development of the property depicted in **Exhibit B**, attached hereto and made a part hereof (the "**Concept Plan**").

3.3. The Planning Board agrees that, at its next regularly scheduled meeting before which proper notice may be provided, to move the adoption of any required Master Plan amendments to conform the Master Plan to support the Zoning Amendments and, at such meeting to pursue completion of its review, the necessary public hearing and a vote on adoption.

3.4. The Township agrees that, at its next regularly scheduled meeting before which proper notice may be provided, to move first reading on the adoption of the Zoning Amendments and, thereafter immediately to refer the proposed amendments to the Planning Board for its review, to pursue completion of its review, the necessary public hearing and a vote on final adoption. The vote on final adoption shall occur at the next regularly scheduled meeting after the earlier of: (i) the receipt of the Planning Board's recommendation on the Zoning Amendments; or (ii) thirty-five (35) days after the date of Referral to the Planning Board.

3.5. The adoption of any such required Master Plan amendments by the Board and the Zoning Amendments by the Township cannot be mandated herein, cannot be the subject of the remedy of specific performance and must and shall be subject to the

relevant statutory procedures with regard thereto; however, such adoptions are material conditions of this Agreement and the failure to effect such adoptions shall be a material breach of this Agreement and, if so breached, the Developer, Caruso, and Palmatier in their sole, absolute and unfettered discretion may terminate this Agreement and, upon such termination, this Agreement shall be null and void as to their respective properties, and the Parties shall have no further obligations or liabilities hereunder.

**4. PROCEDURE FOR REZONING OF THE PROPERTY:** Pursuant to and conditioned upon compliance with the Constitution and laws of the State of New Jersey; including, without limitation, Municipal Land Use Law, *N.J.S.A. 40:55D-1, et seq.* (the "MLUL"), and consistent with and subject to all of the procedures set forth therein, the Township and the Board agree to move to vote on the rezoning of the Developer's Property consistent with the Zoning Amendments. The Township and the Board shall move expeditiously to vote on the rezoning and to undertake the statutory prerequisite procedures to adopt the Zoning Amendments and to vote thereon and any relevant Master Plan amendments immediately upon the execution of this Agreement.

**5. BOARD REVIEW:** The development of the Developer's Property shall be subject to preliminary and final subdivision and/or site plan approval proceedings governed by the MLUL and shall be fast-tracked consistent with the procedures and policies set forth herein and in COAH regulations. The Board agrees that the Development Applications shall be reviewed consistent with the terms of this Agreement and shall be otherwise consistent with the standards applicable to review of inclusionary developers as set forth in COAH regulations and judicial precedent for a *Mount Laurel* development and generally consistent with the Concept Plans.

**5.1. Approval Process - Fast-tracking:** Consistent with *Mount Laurel II*, the Act and COAH regulations, the Board shall expedite any application filed by the Developers for Board approval. The Board agrees to fast track the Development Applications by taking the following actions:

- (a) To have the Development Application reviewed for completeness within ten (10) days from the receipt thereof;
- (b) One (1) special meeting per month at the Developer's request and at the Developer's expense;
- (c) To expedite the approval process consistent with the spirit and intent of this Agreement.
- (d) All filings of the Developer's shall be not only with the Board, but also directly with the Board's Planner and Engineer and any other relevant

Board consultant or professional. The Board shall submit all professional reports within twenty (20) days from the date the application is deemed complete.

- (e) The right to be placed on the agenda at the next public action meeting after they so request, provided that the request is filed a minimum of ten (10) days before a scheduled public meeting.

5.2. The approval of the Development Application by the Board cannot be mandated herein, cannot be the subject of the remedy of specific performance and must and shall be subject to the relevant statutory procedures with regard thereto; however, such approvals are material conditions of this Agreement and the failure to effect such adoptions shall be a material breach of this Agreement and, if so breached, the Developer and Caruso, in their sole, absolute and unfettered discretion may terminate this Agreement and upon such termination, this Agreement shall be null and void as to their respective properties, and the Parties shall have no further obligations or liabilities hereunder.

6. **VESTING:** The Zoning Amendments shall remain in effect for a term which shall be no less than: (i) six (6) years from the effective date of the Zoning Amendments, no appeal having been taken or, if an appeal has been taken, upon the issuance of a final, unappealable or unappealed decision in support of the adoption of the Zoning Amendments (the "**Effective Date of the Zoning Amendments**"); or (ii) such later date consistent with COAH regulations and, in any event, shall not be amended or rescinded without the consent of the Developers and approval of COAH. Upon approval of the Development Applications pursuant to the Zoning Amendments, the Zoning Amendments thereafter shall not be amended or rescinded so as to create any non-conformity. Any subdivision and/or site plan approval for the development of the Property shall be given extended initial vesting by the Board for a period of six (6) years.

7. **APPLICATION OF OTHER ORDINANCES - VARIANCES AND WAIVERS:** The Parties acknowledge that, consistent with COAH regulations and policies and *Mount Laurel* precedent, no land use amendment, other than based on health and safety, will apply to the Developer's Property absent their consent and/or the approval of COAH or the courts. Further, variances and waivers in order to minimize costs and to eliminate undue cost-generative requirements and provisions may be required. Developer's agreement to the terms and conditions hereof shall not be deemed to embody their agreement not to seek such variances and/or waivers if appropriate for purposes of developing the Developer's Property. The Board acknowledges its obligation to grant variances and/or waivers in accordance with *N.J.A.C. 5:93-10.1(b)*.

**8. UTILITY SERVICE AND SEWAGE TREATMENT CAPACITY AND SITE ACCESS - EASEMENTS:** The Township and the Board agree to take all action which is necessary and appropriate and consistent with their obligations under *Mount Laurel II*, the Act and COAH regulations to assist in obtaining adequate utility services, potable water and sewage treatment and conveyancing capacity for the developments to be constructed on the Developer's Property and shall cooperate with Developer in its efforts with regard thereto. The Developer shall be solely responsible for all costs and fees necessary and required to be paid in connection with its obtaining the utilities previously referenced in this paragraph, and the Township of Clark shall bear no obligation to contribute to the same in any respect. If easements are necessary or appropriate for the purpose of providing for such infrastructure and site access in an economical manner consistent with *Mount Laurel II*, the Act and COAH regulations, and if the Developer is unable after diligent efforts to obtain such easements, the Township agrees to undertake the acquisition of such easements at the sole cost and expense of the Developer.

**9. MORATORIUM:** The Township agrees that, in the event that any State or Federal legislation permitting the imposition of moratoriums is adopted, the Township shall not impose a moratorium of any kind on the Clark Developers Development absent a health or safety emergency.

**10. OTHER AGENCY APPROVALS:** The Township and the Board shall cooperate with Developer to obtain all necessary approvals and permits from all relevant public entities and utilities; such as, by way of example only, the County of Union, the Union County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Soil Conservation District and the like. Notwithstanding the foregoing, the Township and the Board shall not be obligated to expend any funds to obtain or assist in obtaining such approvals or permits.

**11. GOVERNING PROVISIONS:**

**11.1. Parties Bound/Assignment:** The terms and conditions set forth in this Agreement shall bind and inure to the benefit of and/or be the responsibility of any successor- in-interest of any of the Parties to this Agreement and may be enforced by any of the Parties or any such successor-in-interest.

**11.2. Entire Agreement:** This Agreement and the prefatory statement, recitals and the Exhibits attached hereto, which hereby are incorporated herein and made a part hereof, contain the entire agreement between the Parties. No representative, agent or employee of any of the Parties has been authorized to make any representations or promises with reference to this Agreement or to vary, alter or modify the terms hereof except as stated herein. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the Parties hereto.

**11.3. Effect of Counterparts:** This Agreement may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original.

**11.4. Preparation:** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

**11.5. Waiver:** Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these provisions.

**11.6. Captions:** Captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

**11.7. Validity:** In the event any one or more of the material provisions of this Agreement shall be held to be invalid, void or unenforceable, the Parties shall, within thirty (30) days of such determination, attempt, in good faith, to restructure this Agreement consistent with its intent. If the Parties fail to resolve such a restructuring, any of the Parties may seek Court review and a ruling to restructure this Agreement in a legally acceptable manner while reflecting the underlying intent of the Parties as expressed herein. No such holding that this Agreement is invalid, void or unenforceable shall otherwise effect the obligations of the Parties hereunder unless so material that this Agreement is rendered ineffective in the context of the intent of the Parties as expressed herein.

**11.8. Default:** In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of such a default, the Part (y)(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available.

**11.9. Cooperation and Professional Fees:** The Parties agree to fully cooperate with each other in order to carry out the provisions of this Agreement. In addition, in the event of any challenge to this Agreement by a third party, Clark Developers shall reimburse the Township for its professional fees and costs related to defense of such an action in an amount not to exceed Twenty Thousand and 00/100 (\$20,000.00) Dollars.

**11.10. Notice of Actions:** The Parties and their respective counsel agree to immediately provide each other with notice of any lawsuits, action or governmental declaration threatened or pending by third-parties of which they are actually aware which may affect the provisions of this Agreement.

**11.11. Construction, Resolution of Disputes:** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflict of laws. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Union County. Service of any complaint may be affected consistent with the terms hereof for the delivery of "Notices", hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

**11.12. Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

## **12. EFFECTIVE DATE:**

This agreement shall take effect upon approval of the agreement by COAH and COAH's grant of substantive certification of the Township's Housing Element and Fair Share Plan.

**TO CARUSO:** At the address set forth above  
Telecopier No.: (732) 382-5553

**TO PALMATIER:** At the address set forth above  
Telecopier No.: ( )

**WITH A COPY TO:** Ronald L. Shimanowitz, Esq.  
Hutt & Shimanowitz  
PO Box 648  
459 Amboy Avenue  
Woodbridge, New Jersey 07095  
Telecopier No.: (732) 634-0718

**CLARK DEVELOPERS:** At the address set forth above  
Telecopier No.: (973) 467-3480

**WITH A COPY TO:** Ronald L. Shimanowitz, Esq.  
Hutt & Shimanowitz  
PO Box 648  
459 Amboy Avenue  
Woodbridge, New Jersey 07095  
Telecopier No.: (732) 634-0718

**TO THE TOWNSHIP:** To the Municipal Clerk at the address set forth above  
Telecopier No: (732) 388-1241

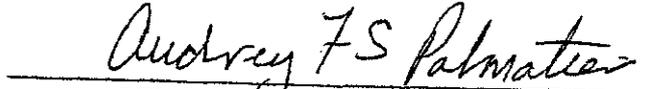
**WITH A COPY TO:**  
Telecopier No: ( )

**TO PLANNING BOARD:** Board Clerk at the address set forth above  
Telecopier No: ( )

**WITH A COPY TO:** Robert J. Mega, Esq.  
Kochanski & Mega, PC  
2353 St Georges Avenue  
Rahway, New Jersey 07065  
Telecopier No: (732) 382-5914

IN WITNESS WHEREOF, the Parties and/or their authorized representatives have signed this Agreement.

  
WILLIAM CARUSO

  
AUDREY F.S. PALMATIER

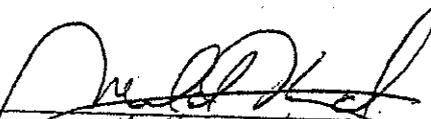
CLARK DEVELOPERS, L.L.C.,  
A New Jersey limited Liability Company

By:   
Name: Zigmunt Wilf  
Title: Managing Member

TOWNSHIP OF CLARK

By:   
Name: Salvatore F. Bonaccorso  
Title: Mayor

PLANNING BOARD OF THE TOWNSHIP OF CLARK

By:   
Name: Richard Kurziwsky  
Title: Attorney

**Township of Clark**  
**Ordinance No. \_\_\_\_\_**

**AN ORDINANCE TO SUPPLEMENT CHAPTER 34 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF CLARK TO PROVIDE FOR THE ESTABLISHMENT OF AN AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF CLARK.**

**BE IT ORDAINED** by the Governing Body of the Township of Clark that it does hereby supplement and amend Chapter 34 of the Revised General Ordinances of the Township of Clark as follows:

**Section 1**

Section 34-4 is hereby amended to include the following new definitions:

*Dwelling, age-restricted* shall mean a housing unit that is restricted to occupancy by at least one person that is at least 55 years of age or older.

*Senior age-restricted* shall mean a housing unit that is restricted to occupancy by Persons that are at least 62 years of age or older.

*Age-restricted multi-family* residential development shall mean a residential development containing age-restricted and senior age-restricted dwellings and providing facilities and services specifically designed to meet the needs of older persons consistent with the guidelines and requirements of the United States Department of Housing and Urban Development (HUD). Affordable housing units in age-restricted multi-family residential development meet all necessary standards and requirements for low and moderate income housing units in accordance the rules and regulations of the New Jersey Council on Affordable Housing (COAH).

**Section 2**

Section 34-5.1 is hereby amended to include the following new zoning district

*AHO Age-restricted Affordable Housing Overlay*

### **Section 3**

Section 34-5.2 is hereby amended to include the following new paragraph "F":

f. The Zoning District Map is amended and supplemented to provide that the AHO, Age Restricted d Affordable Housing Overlay District shall apply to Lot 4 in Block 58, which fronts on Terminal Avenue in the Township of Clark, Lot 4 in Block 58 shall also retain its underlying IL, Limited Industrial District zoning designation.

### **Section 4**

Chapter 34 of the Revised General Ordinances of the Township of Clark is hereby amended to include the following new Section 34-15:

**34-15. Age-Restricted Affordable Housing Overlay District With Low and Moderate Income Housing Setasides**

**34-15.1 Purposes District.**

The purpose of the Age-Restricted Affordable Housing Overlay District is to permit construction of an age-restricted multi-family residential development, with a twenty (20) percent affordable housing set aside in accordance with the Township's adopted Housing Element and Fair Share plan, the requirements of the New Jersey Council on Affordable Housing (COAH) and the terms and conditions of the Township's substantive certification. The developer or property owner in addition to that permitted pursuant to the requirements of the underlying zoning district.

**34-15.2 Permitted Uses**

Age-restricted multi-family residential development containing a twenty (20) percent setaside for low and moderate-income households ages 62 years and older. The development may be constructed as multi-family dwellings, multiple group dwellings, or garden apartments, townhouses or townhouse/flat combination

**Township of Clark**  
**Ordinance page 3**

34-15.3 Development Standards

- a). Minimum Tract Area. 10 acres
- b). Minimum Frontage. A minimum of 250 feet on a paved public street
- c). Density. The maximum density shall be (30) thirty units per acre for multi-family dwelling, multiple group dwellings, or garden apartments, and fifteen (15) units per acre of gross site area for townhouses and townhouse/apartment flat combinations. **Notwithstanding the foregoing, the total unit count cannot exceed 300 dwellings.**

Sixty (60%) percent of the total units approved shall be restricted to occupants 55 years and older in accordance with all applicable laws and regulations.

Forty (40%) percent of the total units approved shall be restricted to occupants 62 years and older in accordance with all applicable laws and regulations. These units shall be located in one building with an additional 5000 square feet dedicated to **recreation/common** space.

- d). Low and moderate Income Housing Requirements. A minimum of twenty percent of the total age-restricted dwelling units shall be affordable to low and moderate income household (senior age-restricted) ages 62 years or older in accordance with the standards and requirements specified in Section 34-14.4. **But excluding paragraphs B 3 and B 4.**

- e). **Building Height.** Maximum building height shall be 45 feet, and 4 stories. The architectural design of the buildings must include the use of Design techniques such as hip and cable roof or mansard roof with dormers for the fourth floor to avoid the appearance of a straight block or mid-rise building.

**Township of Clark  
Ordinance page 4**

f). Setbacks. The following setback standards shall apply:

**Buildings:**

**Front Yard:** 50 feet or the height of the principal building, whichever is greater.

**Side Yard:** 100 feet

**Rear Yard:** 100 feet

**Accessory Building:**

**Front Yard:** 50 feet

**Side Yard:** 25 feet

**Rear Yard:** 25 feet

h). **Building Coverage.** Buildings and accessory structures shall cover not more than 30 percent of the lot or parcel area. **Accessory structures devoted to parking shall count towards total lot coverage.**

i). **Total Lot Coverage.** Not more than 70 percent of the lot or parcel area shall be covered by a combination of buildings, accessory structures, parking areas, driveways, and other impervious surfaces.

j). **Minimum Open Space.** Not less than 30 percent of the parcel area shall be open space as defined in section 34-4.

k). **Parking.** Off-street parking shall be provided in accordance with the Residential Site Improvement Standards. But in no event shall the parking ratio for one and two bedroom units be greater than 1.5 spaces per unit. No off-street parking shall be located less than twenty (25) feet from any property line. With the exceptions of

**Township of Clark**  
**Ordinance page 5**

garages/carports in townhouse and Townhouse flat developments, no parking shall be located under a building. A carport and adjacent driveway space shall be counted as two spaces.

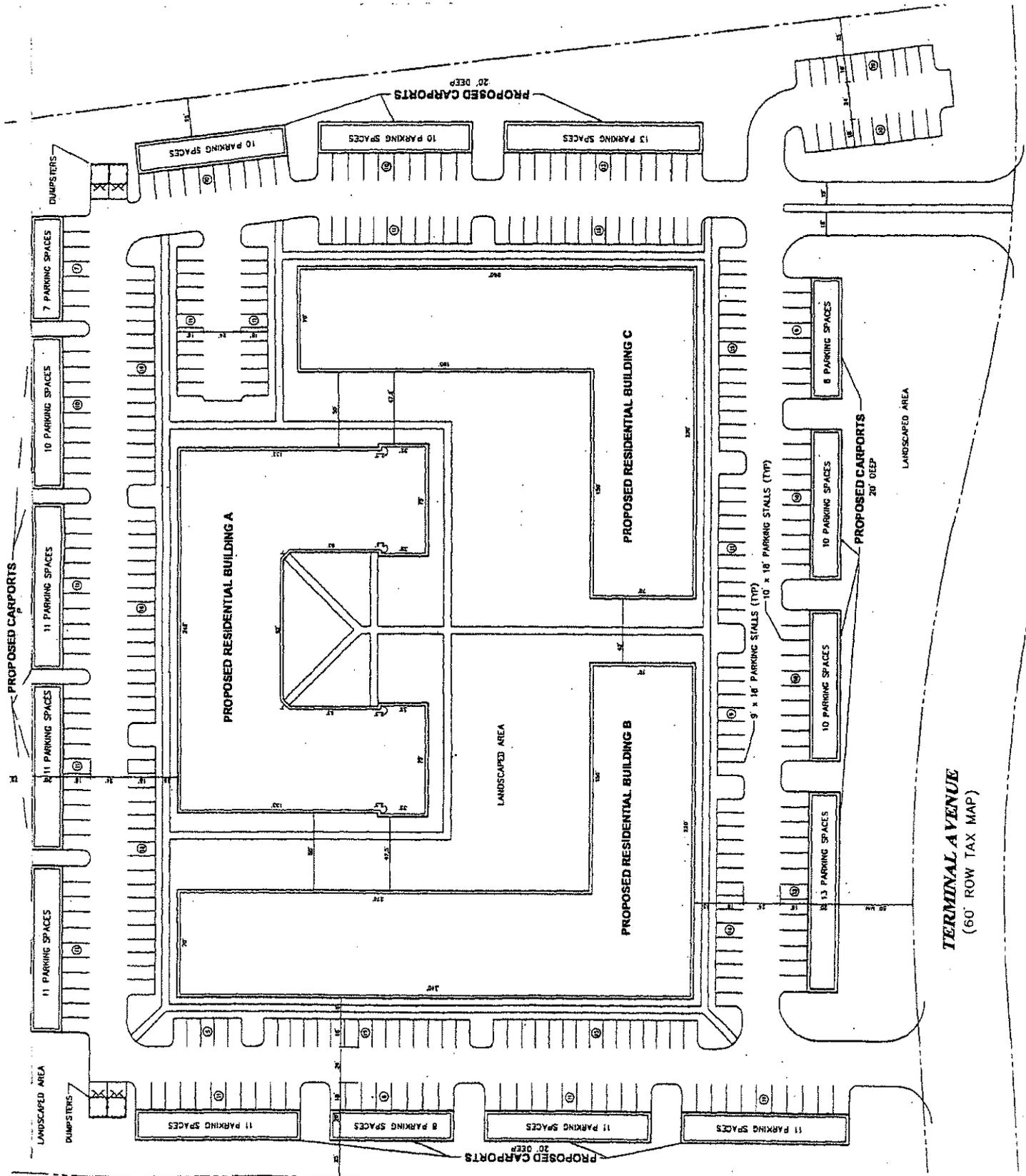
1). Landscaped areas, buffer areas, and recreation facilities. All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped, and be arranged such that appropriate active and passive recreation Opportunities will be provided on-site for the residents of the development (e.g. walking paths, benches, gazebos, or ponds or water features); a suitable landscaped buffer strip of at least **twenty-five (25)** feet in width shall be provided to the property boundaries to form a visual screen.

m). Parking lot Setback and Landscaping. Parking areas shall be attractively landscaped in accordance with the following standards:

1). Parking lots shall be setback a minimum of **twenty-five (25)** feet from the right-of-way of a public street. The setback area shall be landscaped with shade trees and shrubs adaptable to the location and able to provide low level screening of the view of the parking lot, at least one shade tree for each forty (40) feet of frontage shall be provided.

2). In addition to landscaping required along public streets, the interior of parking lot shall be landscaped with at least one (1) tree for every twenty (20) parking spaces, which shall be planted in suitably prepared and protected landscaping islands.

N). Townhouse and Townhouse/Apartment Combination Building Spacing, The minimum spacing between buildings shall be (50) fifty feet between front and front/back, thirty-five (35) feet front/back to side and twenty-five (25) feet end to end. The minimum set backs from driveways and parking areas shall be fifteen (15) feet from primary buildings unless a garage is attached.



**TERMINAL AVENUE**  
(60' ROW TAX MAP)

**TOWNSHIP OF CLARK**  
**Ordinance No. 04-20**  
**Adopted: December 20, 2004**

Introduced: December 6, 2004      Public Hearing: December 20, 2004  
Motion: Albanese                      Motion: Ulrich  
Seconded: Ulrich                      Seconded: Albanese

**AN ORDINANCE TO SUPPLEMENT CHAPTER 34 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF CLARK TO PROVIDE FOR THE ESTABLISHMENT OF AN AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT AT BLOCK 57 LOT 1 IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF CLARK**

**BE IT ORDAINED** by the Governing Body of the Township of Clark that it does hereby supplement and amend Chapter 34 of the Revised General Ordinances of the Township of Clark as follows:

**Section 1**

Section 34-4 is hereby amended to include the following new definitions:

*Dwelling, age-restricted* shall mean a housing unit that is restricted to occupancy by at least one person that is at least 55 years of age or older.

*Age-restricted multi-family residential development* shall mean a residential development containing age-restricted dwellings and providing facilities and services specifically designed to meet the needs of older persons consistent with the guidelines and requirements of the United States Department of Housing and Urban Development (HUD). Affordable housing units in an age-restricted multi-family residential development shall meet all necessary standards and requirements for low and moderate income housing units in accordance with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).

**Section 2**

Section 34-5.1 is hereby amended to include the following new zoning district:

AHO Age-restricted Affordable Housing Overlay

**Section 3**

Section 34-5.2 is hereby amended to include the following new paragraph "f":

- f. The Zoning District Map is amended and supplemented to provide that the AHO, Age-restricted Affordable Housing Overlay District shall apply to Lot 1 in Block 57, which fronts on Old Raritan Road in the Township of Clark. Lot 1 in Block 57 shall also retain its underlying IL, Limited Industrial District zoning designation.

## Section 4

Chapter 34 of the Revised General Ordinances of the Township of Clark is hereby amended to include the following new Section 34-15:

### **34-15. AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT WITH LOW AND MODERATE INCOME HOUSING SETASIDES**

#### **34-15.1 Purpose of District**

The purpose of the Age-Restricted Affordable Housing Overlay District is to permit the construction of an age-restricted multi-family residential development, with a twenty (20) percent affordable housing setaside in accordance with the Township's adopted Housing Element and Fair Share plan, the requirements of the New Jersey Council on Affordable Housing (COAH) and the terms and conditions of the Township's substantive certification. The development of the age-restricted multi-family development shall be an option available to the developer or property owner in addition to that permitted pursuant to the requirements of the underlying zoning district.

#### **34-15.2 Permitted Uses**

Age-restricted multi-family residential development containing a twenty (20) percent setaside for low and moderate income households. The development may be constructed as multi-family dwellings, multiple group dwellings, or garden apartments, townhouses, or townhouse/flat combinations.

#### **34-15.3 Development Standards**

- (a) Minimum Tract Area. 1.9 acres.
- (b) Minimum Frontage. A minimum of 250 feet on a paved public street.
- (c) Density. The maximum density shall be thirty (30) units per acre for multi-family dwellings, multiple group dwellings, or garden apartments, and fifteen (15) units per acre of gross site area for townhouses and townhouse/apartment flat combinations.
- (d) Low and Moderate Income Housing Requirements. A minimum of twenty percent of the age-restricted dwelling units shall be affordable to low and moderate income households in accordance with the standards and requirements specified in Section 34-14.4.
- (e) Building Height. Maximum building height shall be two and one-half stories and thirty-five feet for townhouse developments, three and one-half stories and forty-five feet for townhouse/apartment flats combinations and all other permitted forms of residential development.

- (f) Setbacks. The following setback standards shall apply:
- |             |   |
|-------------|---|
| Front Yard: | 50 feet or the height of the principal building, whichever is greater |
| Side Yard:  | 25 feet   |
| Rear Yard:  | 50 feet   |
- (h) Lot Coverage. Not more than 25 percent of the lot or parcel area shall be covered by buildings and accessory structures.
- (i) Total Lot Coverage. Not more than 65 percent of the lot or parcel area shall be covered by a combination of buildings, accessory structures, parking areas, driveways, and other imperious surfaces.
- (j) Minimum Open Space. Not less than 35 percent of the parcel area shall be open space as defined in section 34-4.
- (k) Parking. Off-street parking shall be provided in accordance with the Residential Site Improvement Standards. No off-street parking shall be located less than twenty (20) feet from the front property line and fifteen (15) feet from side and rear property lines. With the exception of garages in townhouse and townhouse flat developments, no parking shall be located under a building.
- (l) Landscaped areas, buffer areas, and recreation facilities. All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped, and shall be arranged such that appropriate active and passive recreation opportunities will be provided on-site for the residents of the development (e.g. walking paths, benches, gazebos, or ponds or water features). A suitable landscape buffer strip of at least ten (10) feet in width shall be provided to the side and rear property boundaries to form a visual screen.
- (m) Parking Lot Setback and Landscaping. Parking areas shall be attractively landscaped in accordance with the following standards:
- (1) Parking lots shall be setback a minimum of fifteen (15) feet from the right-of-way of a public street. The setback area shall be landscaped with shade trees and shrubs adaptable to the location and able to provide low level screening of the view of the parking lot. At least one shade tree for each forty (40) feet of frontage shall be provided
  - (2) In addition to landscaping required along public streets, the interior of the parking lot shall be landscaped with at least one (1) tree for every twenty (20) parking spaces which shall be planted in suitably prepared and protected landscaped islands.

- (n) Townhouse and Townhouse/Apartment Combination Building Spacing. The minimum spacing between buildings shall be fifty (50) feet between front and back and twenty-five (25) feet end to end. The minimum setbacks from driveways and parking areas shall be twenty (20) feet from building fronts, twenty-five feet from building rears, and twenty (20) feet on building ends.

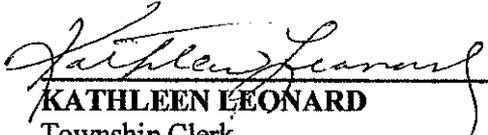
**Section 5**

**Effective Date**

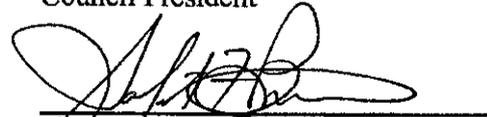
This Ordinance shall be effective only upon the approval by COAH of the Township's application for approval of its Amended Housing Element and Fair Share Plan and the subsequent publication of same according to law.

**ATTEST:**

**APPROVED:**

  
**KATHLEEN LEONARD**  
 Township Clerk

  
**ALVIN BARR**  
 Council President

  
**SALVATORE BONACCORSO**  
 Mayor

Ord04\AffordHousingOverlay L1 B57

	Aye	Nay	Abstain	Absent
Albanese	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bothe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mazzarella	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ulrich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The two preceding Ordinances No. 04-14 and 04-16 adopted by Council on October 18<sup>th</sup> 2004 are being adopted exactly the same this 20<sup>th</sup> day of December 2004 due to procedural deficiencies of the first adoption. It's a housekeeping procedure.

Kathleen R. Leonard  
 Township Clerk  
 (Advice of Township Attorney)

**TOWNSHIP OF CLARK**  
**Ordinance No. 04-21**  
**Adopted: December 20, 2004**

Introduced: <u>December 6, 2004</u>	Public Hearing: <u>December 20, 2004</u>
Motion: <u>Mazzarella</u>	Motion: <u>Ulrich</u>
Seconded: <u>Albanese</u>	Seconded: <u>Albanese</u>

**AN ORDINANCE TO SUPPLEMENT CHAPTER 34 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF CLARK TO PROVIDE FOR THE ESTABLISHMENT OF AN AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT AT BLOCK 58 LOT 4 IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF CLARK**

**BE IT ORDAINED** by the Governing Body of the Township of Clark that it does hereby supplement and amend Chapter 34 of the Revised General Ordinances of the Township of Clark as follows:

**Section 1**

Section 34-4 is hereby amended to include the following new definitions:

*Dwelling, age-restricted* shall mean a housing unit that is restricted to occupancy by at least one person that is at least 55 years of age or older.

*Senior age-restricted* shall mean a housing unit that is restricted to occupancy by Persons that are at least 62 years of age or older.

*Age-restricted multi-family residential development* shall mean a residential development containing age-restricted and senior age-restricted dwellings and providing facilities and services specifically designed to meet the needs of older persons consistent with the guidelines and requirements of the United States Department of Housing and Urban Development (HUD). Affordable housing units in age-restricted multi-family residential development meet all necessary standards and requirements for low and moderate income housing units in accordance with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).

**Section 2**

Section 34-5.1 is hereby amended to include the following new zoning district:

**AHO** *Age-restricted Affordable Housing Overlay*

### Section 3

Section 34-5.2 is hereby amended to include the following new paragraph "F":

- f. The Zoning District Map is amended and supplemented to provide that the AHO, Age-Restricted Affordable Housing Overlay District shall apply to Lot 4 in Block 58, which fronts on Terminal Avenue in the Township of Clark. Lot 4 in Block 58 shall also retain its underlying IL, Limited Industrial District zoning designation.

### Section 4

Chapter 34 of the Revised General Ordinances of the Township of Clark is hereby amended to include the following new Section 34-15:

**34-15. AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT WITH LOW AND MODERATE INCOME HOUSING SETASIDES**

**34-15.1 Purpose of District**

The purpose of the Age-Restricted Affordable Housing Overlay District is to permit construction of an age-restricted multi-family residential development, with a twenty (20) percent affordable housing setaside in accordance with the Township's adopted Housing Element and Fair Share Plan, the requirements of the New Jersey Council on Affordable Housing (COAH) and the terms and conditions of the Township's substantive certification. The development of the age-restricted multi-family development shall be an option available to the developer or property owner in addition to that permitted pursuant to the requirements of the underlying zoning district.

**34-15.2 Permitted Uses**

Age-restricted multi-family residential development containing a twenty (20) percent setaside for low and moderate income households age 62 years and older. The development may be constructed as multi-family dwellings, multiple group dwellings, or garden apartments, townhouses, or townhouse/flat combinations.

**34-15.3 Development Standards**

- (a) Minimum Tract Area. 10.7 acres.

- (b) **Minimum Frontage.** A minimum of 250 feet on a paved public street
- (c) **Density.** The maximum density shall be thirty (30) units per acre for multi-family dwellings, multiple group dwellings, or garden apartments, and fifteen (15) units per acre of gross site area for townhouses and townhouse/apartment flat combinations.  
**Notwithstanding the foregoing, the total unit count cannot exceed 300 dwellings.**

Sixty (60%) percent of the total units approved shall be restricted to occupants 55 years and older in accordance with all applicable laws and regulations.

Forty (40%) percent of the total units approved shall be restricted to occupants 62 years and older in accordance with all applicable laws and regulations. These units shall be located in one building with an additional 5000 square feet dedicated to **recreation/common space.**

- (d) **Low and Moderate Income Housing Requirements.** A minimum of twenty percent of the total age-restricted dwelling units shall be affordable to low and moderate income households (senior age-restricted) ages 62 years or older in accordance with the standards and requirements specified in Section 34-14.4. **But excluding paragraphs B3 and B4.**
- (e) **Building Height.** Maximum building height shall be 45 feet, and 4 stories. The architectural design of the buildings must include the use of design techniques such as hip and cable roof or mansard roof with dormers for the fourth floor to avoid the appearance of a straight block or mid-rise building.
- (f) **Setbacks.** The following setback standards shall apply:

**Buildings:**

- Front Yard:** 50 feet or the height of the principal building, whichever is greater
- Side Yard:** 100 feet
- Rear Yard:** 100 feet

**Accessory Building:**

- Front Yard:** 50 feet
- Side Yard:** 25 feet
- Rear Yard:** 25 feet

- (h) **Building Coverage.** Buildings and accessory structures shall cover not more than 30 percent of the lot or parcel area. **Accessory structures devoted to parking shall count towards total lot coverage.**
- (i) **Total Lot Coverage.** Not more than 70 percent of the lot or parcel area shall be covered by a combination of buildings, accessory structures, parking areas, driveways, and other impervious surfaces.
- (j) **Minimum Open Space.** Not less than 30 percent of the parcel area shall be open space as defined in section 34-4.
- (k) **Parking.** Off-street parking shall be provided in accordance with the Residential Site Improvement Standards. But in no event shall the parking ratio for one and two bedroom units be greater than 1.5 spaces per unit. No off-street parking shall be located less than twenty-five (25) feet from any property line. With the exceptions of garages/carports in townhouses and townhouse flat developments, no parking shall be located under a building. A carport and adjacent driveway space shall be counted as two spaces.
- (l) **Landscaped areas, buffer areas, and recreation facilities.** All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped, and be arranged such that appropriate active and passive recreation opportunities will be provided on-site for the residents of the development (e.g. walking paths, benches, gazebos, or ponds or water features); a suitable landscaped buffer strip of at least **twenty-five (25)** feet in width shall be provided to the property boundaries to form a visual screen.
- (m) **Parking lot Setback and Landscaping.** Parking areas shall be attractively landscaped in accordance with the following standards:
  - (1) Parking lots shall be setback a minimum of **twenty-five (25)** feet from the right-of-way of a public street. The setback area shall be landscaped with shade trees and shrubs adaptable to the location and able to provide low level screening of the view of the parking lot. At least one shade tree for each forty (40) feet of frontage shall be provided.
  - (2) In addition to landscaping required along public streets, the interior of the parking lot shall be landscaped with at least

one (1) tree for every twenty (20) parking spaces, which shall be planted in suitably prepared and protected landscaping islands.

- (n) Townhouse and Townhouse/Apartment Combination Building Spacing. The minimum spacing between buildings shall be fifty (50) feet between front and front/back, thirty-five (35) feet front/back to side and twenty-five (25) feet end to end. The minimum set backs from driveways and parking areas shall be fifteen (15) feet from primary buildings unless a garage is attached.

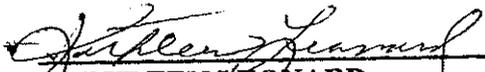
**Section 5**

**Effective Date**

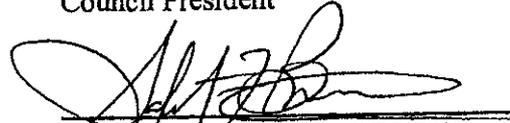
This Ordinance shall be effective only upon the approval by COAH of the Township's application for approval of its Amended Housing Element and Fair Share Plan and the subsequent publication of same according to law.

**ATTEST:**

**APPROVED:**

  
**KATHLEEN LEONARD**  
Township Clerk

  
**ALVIN BARR**  
Council President

  
**SALVATORE BONACCORSO**  
Mayor

Ord04\AffordHousingOverlay L4 B58

	Aye	Nay	Abstain	Absent
Albanese	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bothe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mazzarella	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ulrich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The two preceding Ordinances No. 04-14 and 04-16 adopted by Council on October 18<sup>th</sup> 2004 are being adopted exactly the same this 20<sup>th</sup> day of December 2004 due to procedural deficiencies of the first adoption. It's a housekeeping procedure.

Kathleen R. Leonard  
Township Clerk  
(Advice of Township Attorney)



TOWNSHIP OF

*Clark,*

NEW JERSEY

SAL BONACCORSO  
MAYOR

430 Westfield Avenue  
Clark, New Jersey 07066-1704  
Tel.: (732) 388-3600  
Fax.: (732) 388-0256

August 20, 2007

Ms. Lucy Voorhoeve  
Executive Director, Council on Affordable Housing  
101 South Broad Street, P. O. Box 813  
Trenton, NJ 08625-0813

**Re: Township of Clark – Response to COAH Compliance Mechanism Review**

Dear Mr. Voorhoeve;

Enclosed please find Clark Township's response to the COAH Compliance Mechanism Review Report. The Township received a letter from COAH, dated April 25, 2007, requesting additional information on the proposed affordable housing projects, including new group homes and inclusionary development at the Clark Developers site and the Schwartz Farm site.

**Alternate Living Arrangements**

Clark does not have detailed information on the proposed new group homes included as part of the Township's Fair Share Plan. Although the site(s) for the proposed alternative living arrangement have still not been identified, the Township's commitment to create these new group homes is indicated by the enclosed draft development fee ordinance and the pending plan. The draft resolution of Clark's intent to bond for shortfalls is enclosed herein.

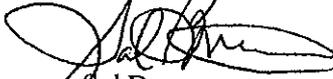
**Age-Restricted Inclusionary Development**

1. Clark Developers site. The Township prevailed in the Villa lawsuit and the litigation on this site ended on June 13, 2007. Clark Developers is now proceeding with their application and is expected to appear before the Planning Board in September 6, 2007. Updated information on different stages of development on this site will be submitted to COAH in the following months.

2. Schwartz Farm site. Since the Township adopted the amended Housing Element and Fair Share Plan, Union County has acquired this property for open space. The site therefore, is no longer available for any development. Once the State's new regulations are in place, the Township will amend its Housing Plan that will not include the Schwartz Farm site.

If you should have any questions, please do not hesitate to contact me at 732.388.3600.

Sincerely,



Sal Bonaccorso  
Mayor

Copy to: Sean Thompson, COAH Supervising Planner  
Keith Henderson, COAH Director of Planning  
John Laezza, Business Administrator  
Joseph Triarsi, Esq., Township Attorney  
Richard O'Connor, P.E., P.P., C.M.E., Township Engineer  
Janice Talley, P.P., AICP, Principal Planner

**RESPONSE TO  
COAH COMPLIANCE MECHANISM REVIEW**

**TOWNSHIP OF CLARK  
UNION COUNTY, NEW JERSEY**

**August 24, 2007**

Prepared by:

**H2M**GROUP

**H2M Associates, Inc.**  
555 Preakness Avenue, Totowa, New Jersey 07512

# Response to COAH Compliance Mechanism Review

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## **Response to COAH Compliance Mechanism Review**

### **INTRODUCTION**

Clark Township submitted to COAH an amended third round Housing Element and Fair Share Plan on November 27, 2006. In response to the amended Housing Plan, Clark Township received a letter from COAH, dated April 25, 2007, requesting additional information on the proposed affordable housing projects and the inclusionary age-restricted development on two sites. The letter required the Township to submit information marked in the Compliance Mechanism Review form.

The Township's amended Fair Share Plan proposes to address their growth share obligation of nineteen (19) units through the construction of age-restricted units on the Clark Developers site, construction of two, three or four-bedroom group homes and through credits received on an existing group home located at 279 Oak Ridge Road.

The following report has been prepared in response to COAH's Compliance Mechanism Review and includes the requested information.

## **Response to COAH Compliance Mechanism Review**

### **ALTERNATIVE LIVING ARRANGEMENT**

The Township's amended Fair Share Plan proposes to construct two, three or four-bedroom group homes to address a portion of the township's growth share obligation (7 units). Funds to construct these group homes will be collected through a development fee ordinance. The draft Development Fee Ordinance has already been submitted to COAH and is currently being reviewed.

#### **COAH Response:**

The COAH Compliance Mechanism Review requested the Township to submit the following information:

1. A general description of the site;
2. A description of the suitability of the site; and
3. A statement of absence or presence and impact of the environmental constraints on the site.

#### **Township Response**

The site(s) for the proposed alternative living arrangement have not been identified. The Township's commitment to create these new group homes is indicated by the draft development fee ordinance and the spending plan, which is included in Appendix A and B, respectively, of this report. The Township's amended Fair Share plan also suggested that in the event that Clark has insufficient funds from development fees to fund the establishment of the group homes, the Township would adopt a Resolution of Intent to Bond any shortfall. The draft resolution is included in the Appendix C of this report.

## Response to COAH Compliance Mechanism Review

### INCLUSIONARY AGE-RESTRICTED DEVELOPMENT

Clark Township adopted an inclusionary overlay zone for age-restricted housing for two sites: the Schwarz farm site and the Clark development site. The two sites support a total of 335 senior housing units, of which 33 are for moderate-income households and 34 are for low-income households. However, Union County has recently acquired the Schwartz Farm site for open space. The site is no longer available for development and will not generate any market rate or affordable units.

<b>Table 1</b>					
<b>AGE-RESTRICTED HOUSING OVERLAY ZONES</b>					
Township of Clark, Union County					
	Block/Lot	Total Units	Market Rate	Mod-Income	Low Income
Schwarz Farm Site	B57, L1	0	0	0	0
Clark Developers	B58, L4	300	240	30	30
<b>Subtotal</b>		<b>300</b>	<b>240</b>	<b>30</b>	<b>30</b>

#### Clark Developers Site

The overlay zone permits a maximum of 300 age-restricted residential units on the Clark Developers site (Block 58, Lot 4), of which twenty (20) percent must be set aside for low and moderate income households. Sixty percent of the total units are to be age restricted to occupants 55 years and older and forty percent of the total units are to be senior units restricted to occupants 62 years and older. Of the sixty (60) affordable units (20% of 300 units), the developer has agreed to provide five (5) non-age-restricted rental units and fifty-five (55) age-restricted units. Clark's amended Fair Share Plan proposes to use 51 of the Clark Developers units to address the Township's prior round obligation. The remaining nine (9) units will be used to address a portion of the Township's growth share obligation.

COAH comments are listed below. The Township's responses to these are included below each comment:

#### COAH Response:

1. Update Project/Program Information Form.

#### Township's response:

## **Response to COAH Compliance Mechanism Review**

See Appendix D.

### **COAH Response:**

2. Adopted zoning or land use ordinance, which includes the affordable housing requirement for the site.

### **Township's response:**

See Appendix E.

### **COAH Response:**

3. Copies of any court decisions related to the site or a statement indicating that the site has not been the subject of any litigation.

### **Township's response:**

Clark Developers site was the subject of litigation, which was decided in June 2007. The court decision has been included in the Appendix F of this report.

### **COAH Response:**

4. Copies of all decisions made on applications for affordable housing development subsequent to adoption of the current zoning.

### **Township's response:**

Clark Developers is currently proceeding with its site plan application before the Planning Board. A public hearing on the application is scheduled for September of 2007.

### **COAH Response:**

5. An explanation as to why the site has not developed, including an analysis of market conditions, or evidence that development of the site is scheduled to commence.

### **Township's response:**

As aforementioned, the site was the subject to litigation and therefore has not been developed. The litigation was related to rezoning of this property as an age-restricted housing overlay zone. The recent court ruling has been included in Attachment F, which demonstrates the end of litigation.

## Response to COAH Compliance Mechanism Review

### COAH Response:

6. General description of the site including:
  - a. Current Zoning and date current zoning was adopted
  - b. History of previous zoning

### Township's response:

- a. The site is currently zoned as an age-restricted affordable housing overlay district (AHO). The site has also retained its underlying Limited Industrial (LI) zoning designation. The AHO ordinance was adopted on December 6, 2004. This can be verified by the ordinance included in the packet titled "Township of Clark – Ordinance No. 04-21" and dated December 20, 2004. The ordinance was later amended, and that amendment can also be found in the packet titled "Township of Clark – Ordinance No. 06-19" and dated November 20, 2006.
- b. Prior to the rezoning this property to its current "AHO" zone, the site was originally zoned as Limited Industrial (LI) District.

## **Response to COAH Compliance Mechanism Review**

### **Schwartz Farm site**

The Township rezoned the Schwarz farm site (Block 57, Lot 1) to an Age-restricted Affordable Housing Overlay (AHO) District on December 20, 2004. Clark's amended Housing Element and Fair Share Plan therefore, included seven (7) affordable units that would be created on this property to address the Township's future growth share. However, since the Township adopted the amended plan, Union County has acquired this property for open space. The site therefore, is no longer available for any development. Once the State's new regulations are in place, the Township will amend its Housing Plan that will not include the Schwartz Farm site. It should be noted that this would not affect the Township's third round plan as the affordable units created on this site were excess units and when built, would have been used to address the Township's future growth share.

**Response to COAH Compliance Mechanism Review**

**APPENDIX A: DEVELOPMENT FEE ORDINANCE**

**TOWNSHIP OF CLARK**  
**“COLLECTION, RETENTION AND USE OF DEVELOPMENT FEES”**

ORDINANCE NO. \_\_\_\_\_ - 2005

**AN ORDINANCE AMENDING AND SUPPLEMENTING THE PREVIOUSLY  
ADOPTED ORDINANCE NO. 782, ENTITLED “AN ORDINANCE TO  
ESTABLISH COLLECTION, RETENTION AND USE OF DEVELOPMENT  
FEES IN, BY AND FOR THE TOWNSHIP OF CLARK, COUNTY OF UNION  
AND STATE OF NEW JERSEY”**

WHEREAS, the Mayor and Township Council of the Township of Clark has complied with the New Jersey Council On Affordable Housing (COAH) and has adopted an ordinance establishing mandatory development fees for the provision of affordable housing; and

WHEREAS, the Clark Planning Board has recommended that the Clark Land Development Ordinance be amended to provide for the collection of affordable housing development fees; and

WHEREAS, the Mayor and Township Council has determined to make such amendment to the Chapter \_\_\_\_\_ of the Township Code, entitled \_\_\_\_\_.

BE IT ORDAINED, by the Mayor and Township Council of the Township of Clark, County of Union and State of New Jersey, as follows:

**Section 1. Purpose`**

- a) In Holmdel Builder’s Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing’s (COAH’s) adoption of rules. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH’s rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH’s rules on development fees.

**Section 2. Basic requirements**

- a) The Township of Clark shall not spend development fees until COAH has approved a plan for spending such fees and the Township of Clark has received third round substantive certification from COAH or a judgment of compliance.

**Section 3. Definitions**

- a) The following terms, as used in this ordinance, shall have the following meanings:
- i. "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development;
  - ii. "COAH" means the New Jersey Council on Affordable Housing;
  - iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules;
  - iv. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor;

**Section 4. Residential Development fees**

- a) Within the R-1, R-2, R-3, R-4, and R-5 districts, residential developers shall pay a fee of one percent of the equalized assessed value for residential development.
- b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

**Section 5. Non-residential Development fees**

- a) Within the GB, IP-1, IP-2, and IP-3 districts, non-residential developers shall pay a fee of two percent of the equalized assessed value for non-residential development.
- b) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent of the

equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

**Section 6. Eligible exactions, ineligible exactions and exemptions**

- a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees.
- b) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
- c) Development fees shall be collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

**Section 7. Collection of fees**

- a) Developers shall pay fifty (50) percent of the calculated development fee to the Township of Clark at the issuance of building permits. The development fee shall be estimated by the Tax Assessor prior to the issuance of building permits.
- b) Developers shall pay the remaining fee to the Township of Clark at the issuance of certificates of occupancy. At the issuance of certificates of occupancy, the Tax Assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at certificate of occupancy and the amount paid at issuance of building permit.

**Section 8. Contested fees**

- a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the Township of Clark. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

**Section 9. Affordable Housing trust fund**

- a) All development fees shall be deposited in a separate, interest-bearing affordable housing trust fund in Independence Bank. All development fees, collected from residential and non paid by developers pursuant to this ordinance shall be deposited into this fund.

- b) Within seven days from the opening of the trust fund account, the Township of Clark shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, Independence Bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
- c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

**Section 10. Use of funds**

- a) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.
- b) Funds shall not be expended to reimburse the Township of Clark for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Township of Clark affordable housing obligation, at least 30 percent of the balance remaining shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance;
  - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle the Township of Clark to bonus credits pursuant to N.J.A.C. 5:94-4.22;

- d) The Township of Clark may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.
- e) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

**Section 11. Monitoring**

- a) The Township of Clark shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

**Section 12. Expiration of Ordinance**

- a) This ordinance shall expire if:
  - i. COAH dismisses or denies the Township's petition for substantive certification;
  - ii. COAH revokes substantive certification or its certification of this ordinance;
  - iii. Substantive certification expires prior to the Township of Clark filing an adopted Housing Plan with COAH, petitioning for substantive certification or receiving COAH's approval of this ordinance.

**Section 13. This ordinance shall take effect as provided by law.**

\_\_\_\_\_  
Sal Bonaccorso, Mayor

ATTEST:

---

**NOTICE**

TAKE NOTICE that the above entitled ordinance was introduced at a regular meeting of the Mayor and Council of the Township of Clark on \_\_\_\_\_ 2006, and will be considered for final passage after public hearing at a regular meeting of the Mayor and Council of the Township of Clark to be held on \_\_\_\_\_ 2006, at \_\_\_\_\_ in the \_\_\_\_\_.

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## **Response to COAH Compliance Mechanism Review**

### **APPENDIX B: SPENDING PLAN**

**DEVELOPMENT FEE SPENDING PLAN**  
**TOWNSHIP OF CLARK, UNION COUNTY, NEW JERSEY**

---

**INTRODUCTION**

The Township proposes to adopt a development fee ordinance. The Township, when petitioned for the second round obligation, adopted a development fee ordinance to address its growth share need. However, since the Township never received substantive certification for the second round, the ordinance never came into effect. This spending plan is prepared in accordance with N.J.A.C. 5:94-6.2(c) and 6.5 and includes the following:

1. Projection of revenues anticipated from imposing fees on development, based on actual proposed and approved developments and historic rate of development activity.
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues.
3. A description of the anticipated use of all development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, pursuant to N.J.A.C. 5:94-6.12, repayment of loans for rehabilitation or affordability assistance, and voluntary contributions.
4. A schedule for the creation and/or rehabilitation of housing units.
5. If the municipality is including a municipally sponsored or 100 percent affordable program, a new construction alternative living arrangement or an affordable housing partnership program, a pro-forma statement of the anticipated costs and revenues associated with the development.
6. The manner in which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

To date, the Township of Clark has not collected any revenue in its affordable housing trust fund.

**1. PROJECTION OF REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated between [insert date of spending plan] and the expiration of substantive certification on [insert date], the Township of Clark considered the following:

- (a) Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals are anticipated to provide \$ 0 in development fees at issuance of building permits and/or certificates of occupancy during the period of substantive certification.
- (b) All projects currently before the planning and zoning boards for development approvals are anticipated to provide \$ 0 in development fees during the period of substantive certification.

- (c) Development projected to begin construction based on historic rates of development is anticipated to provide an additional \$ 602,499 in development fees during the period of substantive certification.
- (d) Payments in lieu of construction from developers pursuant to N.J.A.C. 5:94-4.4(b-e) are anticipated to provide \$ 0 in development fees during the period of substantive certification.
- (e) Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of loans for rehabilitation or affordability assistance, and voluntary contributions are anticipated to provide \$ 0 in fees during the period of substantive certification.
- (f) Interest on the projected revenue in the housing trust fund at the current average interest rate is anticipated to provide \$ 0 to accrue to the affordable housing trust fund during the period of substantive certification.

The Township of Clark projects a total of \$ 602,499 in revenue to be collected between *[insert date of spending plan]* and the expiration of substantive certification. All development fees, payments in lieu of construction and other funds listed above will be deposited in a separate interest-bearing account in \_\_\_\_\_ and all interest earned on the account will accrue to the account to be used only for the purposes of affordable housing.

## **2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

The following procedural sequence for the collection and distribution of development fee revenues will be followed by the Township of Clark:

### **(a) Collection of development fee revenues:**

The planning board secretary notifies the Township Administrator whenever preliminary, final or other applicable approval is granted for a development which is subject to a development fee.

When a request is made for a building permit, the Township Administrator determines if the project is subject to the imposition of a mandatory development fee.

If so, the Township Administrator will notify the township tax assessor to calculate the approximate value of the project and set the fee based on:

*For residential fees: the equalized assessed value.*

*For non-residential fees: the equalized assessed value.*

The developer will pay up to 50 percent of the estimated development fee to the Township Administrator at the time the building permit is issued. The funds are then

forwarded to the Township Administrator and deposited in the affordable housing trust fund.

The balance of the development fee will be paid by the developer to the Township Administrator at the issuance of the certificate of occupancy. The funds are then forwarded to the Township Administrator and deposited in the affordable housing trust fund.

(b) Distribution of development fee revenues:

The Township of Clark Planning Board adopts and forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body resolution in accordance with the COAH-approved spending plan. Once a request is approved by resolution, the Township Administrator releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

### 3. DESCRIPTION OF ANTICIPATED USE OF DEVELOPMENT FEES

- (a) The Township of Clark will dedicate \$ 35,000 per bedroom for a total of \$ 245,000 (\$245,000 = \$35,000\*7 bedrooms) for construction or conversion of two, three or four-bedroom group homes.

- **Group Homes: \$ 245,000**

- (b) The Township of Clark will dedicate \$ 107,249 from the affordable housing trust fund to render units more affordable, including \$ 35,750 to render units more affordable to households earning 30 percent or less of median income by region, as follows:  
The Township of Clark will designate \$ 107,249 of its affordable housing trust fund as a Down Payment/Closing Cost Assistance Fund.

- (c) The Township of Clark will dedicate \$ 71,500 from the affordable housing trust fund to be used for administrative purposes such as salaries and benefits for municipal employees or consultant fees necessary to develop or implement municipal housing programs such as affirmative marketing programs. Administrative funds may be used to income qualify households and monitor implementation. Development fees may be used to defray the cost of staff or consultants that are preparing or implementing a fair share plan.

<b>SPENDING PLAN CALCULATION SUMMARY</b>	
Existing Balance	\$ 0
Pending fees due upon issuance of building permit and/or CO	+ \$ 0
Projects awaiting approval	+ \$ 0
Projection based on historic development activity	+ \$ 602,499
Payments in lieu of construction	+ \$ 0
Projected Interest	+ \$ 0
Other	+ \$
<b>TOTAL PROJECTED REVENUE</b>	<b>= \$ 602,499</b>
Funds used for group homes: \$35,000 per bedroom* 7 proposed units	- \$ 245,000
<b>TOTAL SUBJECT TO AFFORDABILITY ASSISTANCE REQUIREMENT</b>	<b>= \$ 357,499</b>
Affordability Assistance (minimum of 30% of above total)	- \$ 107,249
Affordability Assistance to Very Low Income Households (minimum of 1/3 of above allotment)	\$ 35,750
Administration (maximum of 20% of total projected revenue minus group home contribution)	- \$ 71,500
<b>REMAINING FUNDS FOR OTHER HOUSING ACTIVITY</b>	<b>= \$ 178,750</b>

#### 4. UNEXPECTED SHORTFALL OF FUNDS

Pursuant to the Housing Element and Fair Share Plan, the governing body of the Township of Clark will adopt a resolution agreeing to fund any shortfall of funds required for funding seven (7) bedrooms in the proposed group homes. In the event that a shortfall of anticipated revenues occurs, the Township of Clark will provide sufficient funding by bonding. A copy of the draft resolution is attached.

#### SUMMARY

The Township of Clark intends to spend development fee revenues pursuant to N.J.A.C. 5:94-6.12 and in conjunction with the housing programs outlined in the housing element and fair share plan adopted on December 6, 2005 and amended on October 26, 2006.

The Township of Clark anticipates \$ 602,499 in revenues before the expiration of substantive certification. The municipality will dedicate \$ 245,000 towards group homes, \$ 107,249 to render units more affordable, and \$ 71,500 to administrative costs.

## **Response to COAH Compliance Mechanism Review**

### **APPENDIX C: RESOLUTION OF THE INTENT TO BOND FOR SHORTFALL**

DRAFT

**RESOLUTION OF THE INTENT TO BOND FOR SHORTFALL**

**WHEREAS**, the Township of Clark, Union County, has petitioned the New Jersey Council on Affordable Housing (COAH) for substantive certification of its adopted third round housing element and fair share plan; and

**WHEREAS**, the Township of Clark proposes to create a total of seven new group home bedrooms to address a part of the Township's Growth Share Obligation; and

**WHEREAS**, the Township of Clark has proposed to adopt a development fee ordinance to collect funds for said group homes; and

**WHEREAS**, the Township of Clark anticipates that funding will come from sources including the Township's proposed affordable housing trust fund development fees to fund said group homes; and

**WHEREAS**, in the event that the above funding sources prove inadequate to meet Clark Township's funding obligation, the Township of Clark shall provide sufficient funding to address any shortfalls.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the Township of Clark, Union County, State of New Jersey, that the Mayor and Council of the Township of Clark hereby agree to fund any shortfalls in its affordable housing program that may arise whether due to inadequate funding from other sources or for any other reason; and

**BE IT FURTHER RESOLVED** that said shortfall shall be funded by bonding if there are no other resources.

ATTEST:

APPROVED:

\_\_\_\_\_  
EDIE MERKEL  
Township Clerk

\_\_\_\_\_  
SALVATORE F. BONACCORSO  
Mayor

**Response to COAH Compliance Mechanism Review**

**APPENDIX D: PROJECT/PROGRAM INFORMATION FORM  
(CLARK DEVELOPERS SITE)**

## PROJECT / PROGRAM INFORMATION FORM

(Complete a separate Project / Program information form for each proposed or completed project or program. For RCAs and Partnership Programs, the sending municipality need only complete Part D. RCA receiving municipalities should submit complete information for all projects and programs receiving RCA funding)

### PART A - PROJECT HEADER

Municipality: \_\_\_\_\_ County: \_\_\_\_\_

Project or Program Name: \_\_\_\_\_

Project Status (circle current status and enter date of action for that status)	<u>Date of Action</u>
Proposed/Zoned	_____
Preliminary Approval	_____
Final Approval	_____
Affordable Units under Construction	_____
Completed (all affordable certificates of occupancy (C.O.) issued)	_____
Deleted from Plan (date approved by COAH) _____ )	_____

#### Project / Program Type (circle one)

Assisted Living Facility	Alternative Living Arrangement	Accessory Apartment
Buy - Down	Credits without Controls	ECHO
100 Percent Affordable	Inclusionary	Rehabilitation
		Municipally-Sponsored Rental Units <sup>1</sup>

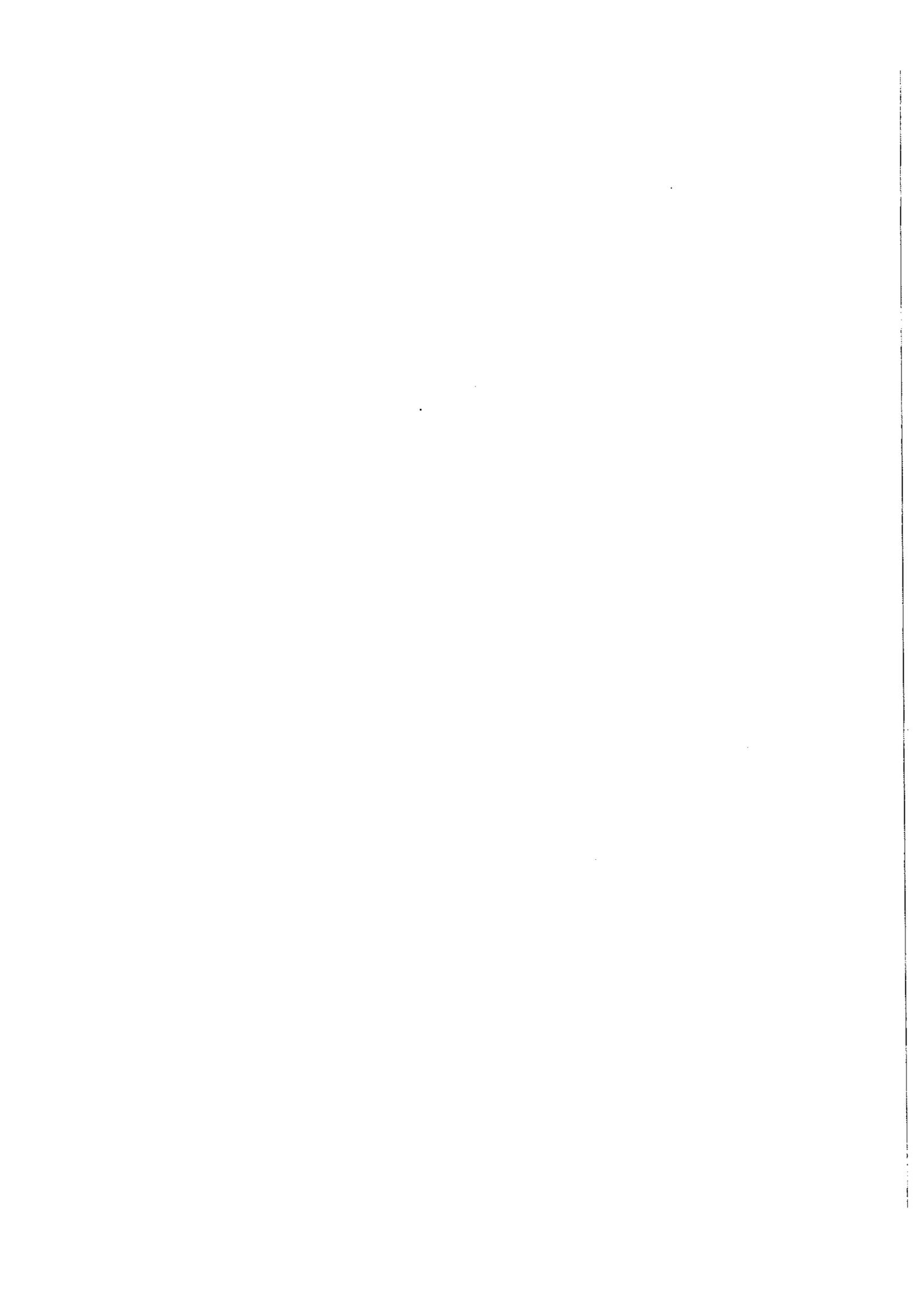
#### If an Inclusionary project, identify type (circle all that apply)

Units constructed on-site	Units constructed off-site	Combination	Contributory
Growth Share Ordinance			

#### If an Alternative Living Arrangement project, identify type (circle one)

Transitional Facility for the Homeless	Residential Health Care Facility	Congregate Living Facility
Group Home	Boarding Homes (A through E) (only eligible for credit for 1987-99 plans)	

<sup>1</sup> See N.J.A.C. 5:94-4.11



**PART B - PROJECT DETAIL** (Complete all applicable sections)

COAH Round Rules Used:      Round 1              Round 2              Round 3

Project Address: \_\_\_\_\_

Project Block/Lot/Qualifier (list all) \_\_\_\_\_

Project Acreage: \_\_\_\_\_

Project Sponsor: (circle one)      Municipally Developed              Nonprofit Developed              Private Developer

Project Developer: \_\_\_\_\_

Planning Area (circle all that apply)

1	2	3	4	4B	5	5B		
Highland Preservation			Highlands Planning Area				Pinelands	Meadowlands
CAFRA			Category 1 Watershed					

Credit Type (circle one)

Prior-cycle (1980 - 1986)              Post-1986 completed              Proposed/Zoned              Rehabilitation

Credit Sub-Type

Addressing Unmet Need              Extension of Controls

Construction Type (circle one)

New (includes reconstruction and conversions)              Rehabilitation

Flags (circle all that apply)

Conversion	Court Project	Density Increase	Granted	Mediated Project
Result of Growth Share Ordinance	High Poverty Census Tract	Off-Site		Partnership Project
RCA Receiving Project	Reconstruction	Part of Redevelopment Plan		

Project Waiver granted      yes      no      Round waiver was granted      R1      R2      R3

Type of Waiver \_\_\_\_\_

Number of market units proposed \_\_\_\_\_      Number of market units completed \_\_\_\_\_

Condo Fee percentage (if applicable) \_\_\_\_\_

Affordability Average Percentage<sup>2</sup> \_\_\_\_\_

For Contributory or Combination Sites

Total payment in lieu of building affordable units on site \_\_\_\_\_

Number of affordable units created with payment \_\_\_\_\_

<sup>2</sup> "Affordability Average" means an average of the percentage of median income at which restricted units in an affordable development are affordable to low and moderate-income households.

Municipal or RCA funds committed to project \_\_\_\_\_

Municipal or RCA funds expended \_\_\_\_\_

Funding Sources (circle all that apply)

County HOME County Rehab Funds CDBG Federal Home Loan Bank HODAG HUD HUD 202  
HUD 236 HUD 811 HUD HOPE VI HUD HOME McKinney Funds Fannie Mae Multi-Family  
UDAG UHORP USDA-FHA Rural Development USDA-FHA - Section 515 Development Fees  
Municipal Bond Municipal Funds Payment in Lieu Private Financing RCA Capital Funding  
Balanced Housing Balanced Housing - Home Express DCA - Low Income House Tax Credit NPP  
DCA Shelter Support Services DDD DHSS DHHS HMFA Low Income House Tax Credit  
HMFA HMFA HOME MONI Section 8 Small Cities Other \_\_\_\_\_

Effective date of affordability controls \_\_\_\_\_

Length of Affordability Controls (in years) \_\_\_\_\_ or Perpetual

Administrative Agent \_\_\_\_\_

**PART C - COUNTS**

**Affordable Unit Counts**

Total non-age-restricted \_\_\_\_\_ Sales \_\_\_\_\_ Rentals \_\_\_\_\_ Total age-restricted \_\_\_\_\_ Sales \_\_\_\_\_ Rentals \_\_\_\_\_

Complete the chart for the number of non-age-restricted and age-restricted units that are restricted for the following income categories (do not report on the income levels of residents currently residing in the units)

<u>Low Income</u>	<u>Non-age restricted</u>	<u>Age-restricted</u>
30% of median income <sup>3</sup>	_____	_____
35% of median income <sup>4</sup>	_____	_____
50% of median income	_____	_____
<u>Moderate Income</u>		
80% of median income	_____	_____

Note: 30% = less than or equal to 30 percent of median income  
35% = greater than 30 percent and less than or equal to 35 percent of median income  
50% = greater than 35 percent and less than or equal to 50 percent of median income  
80% = greater than 50 percent and less than 80 percent of median income

<sup>3</sup> Pursuant to N.J.A.C. 5:94-4.22 units deed restricted to households earning 30% or less of median income may be eligible for Bonus Credit for Very-Low Income Units. (RCA receiving units not eligible for bonus credits)  
<sup>4</sup> Pursuant to N.J.A.C. 5:80-26.3(d) At least 10 percent of all low- and moderate-income rental units must be deed restricted to households earning no more than 35 percent of median income

**Bedroom Distribution of Affordable Units**

Sale units	efficiency low	_____	1 bedroom low	_____	2 bedroom low	_____	3 bedroom low	_____
	efficiency mod	_____	1 bedroom mod	_____	2 bedroom mod	_____	3 bedroom mod	_____
Rental units	efficiency low	_____	1 bedroom low	_____	2 bedroom low	_____	3 bedroom low	_____
	efficiency mod	_____	1 bedroom mod	_____	2 bedroom mod	_____	3 bedroom mod	_____

**Completed Units**

Number of affordable units completed in this project \_\_\_\_\_

Number of affordable units in this project lost through foreclosures, illegal sale or expired affordability controls \_\_\_\_\_

**PART D - (completed by Sending Municipality)**

**For Regional Contribution Agreements (RCA)**

Sending Municipality \_\_\_\_\_ County \_\_\_\_\_

RCA Receiving Municipality \_\_\_\_\_ County \_\_\_\_\_

COAH approval date \_\_\_\_\_

Number of units transferred \_\_\_\_\_ Cost per unit \_\_\_\_\_

Total transfer amount \_\_\_\_\_ Amount transferred to date \_\_\_\_\_

**For Partnership Program**

Sending Municipality \_\_\_\_\_ County \_\_\_\_\_

Partnership Receiving Municipality \_\_\_\_\_ County \_\_\_\_\_

Name of Project \_\_\_\_\_

Credits for Sending Municipality \_\_\_\_\_

Total transfer amount \_\_\_\_\_ Amount transferred to date \_\_\_\_\_

Summary of Sending Municipality's contractual agreement with Partnership Receiving Municipality

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Response to COAH Compliance Mechanism Review**

**APPENDIX E: ORDINANCE - AFFORDABLE HOUSING OVERLAY ZONE  
(CLARK DEVELOPERS SITE)**

**TOWNSHIP OF CLARK**  
**Ordinance No. 06-19**  
**Adopted: November 20, 2006**

RECEIVED

JUL 12 2007

H2M GROUP

Introduced: November 8, 2006 Public Hearing: November 20, 2006  
Motion: Barr Motion: Barr  
Seconded: Whiting Seconded: Whiting

**AN ORDINANCE TO AMEND AND SUPPLEMENT VARIOUS SECTIONS  
OF ORDINANCE 04-21 OF THE REVISED ORDINANCES OF THE  
TOWNSHIP OF CLARK ADOPTED DECEMBER 20, 2004**

**BE IT ORDAINED** by the governing body of the Township of Clark that the following sections of Ordinance 04-21 of the Revised Ordinances of the Township of Clark be amended and supplemented as follows:

**SECTION 1:** Section 34-15.3(d) is hereby amended and supplemented as follows:

(d) Low and Moderate Income Housing Requirements. A minimum of twenty percent of the total age-restricted dwelling units shall be affordable to low and moderate income households (senior age-restricted) ages 62 years or older in accordance with the standards and requirements specified in Section 34-14.4, but excluding paragraphs B3 and B4. However, the characteristics of the affordable units may be modified, at the Township's request, to satisfy the regulations of COAH and to facilitate COAH granting the Township a third round substantive certification.

**SECTION 2:** Section 34-15.3(k) is hereby amended and supplemented as follows:

(k) Parking. Off-street parking shall be provided in accordance with the Residential Site Improvement Standards. But in no event shall the parking ratio for one and two bedroom units be greater than 1.5 spaces per unit. No off-street parking shall be located less than twenty-five (25) feet from any property line. No parking shall be located underground. Parking may be located within a building provided that such parking is no more than two (2) feet below exterior building grade and provided that the height of the building shall be measured from the finished floor of the parking area. A carport and adjacent driveway space shall be counted as two spaces.

**SECTION 3:** Section 5 of Ordinance No. 04-21 adopted December 20, 2004 is deleted and replaced as follows:

Effective Date: Ordinance No. 04-21 adopted on December 20, 2004 shall become effective immediately upon the adoption and publication of this Ordinance.

**SECTION 4: Inconsistent Ordinance**

Any Ordinance or parts thereof inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 5: Effective Date**

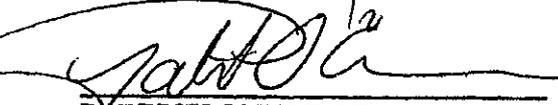
This Ordinance shall take effect upon adoption and upon publication according to law.

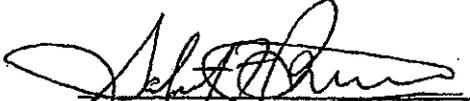
Effective Date: December 13, 2006

ATTEST:

  
KATHLEEN LEONARD  
Township Clerk

APPROVED:

  
PATRICK O'CONNOR  
Council President

  
SALVATORE BONACCORSO  
Mayor

Ord06/Amend 04-21

	Aye	Nay	Abstain	Absent
Albanese	<input checked="" type="checkbox"/>			
Barr	<input checked="" type="checkbox"/>			
Bothe	<input checked="" type="checkbox"/>			
Mazzarella	<input checked="" type="checkbox"/>			
Toal	<input checked="" type="checkbox"/>			
Whiting	<input checked="" type="checkbox"/>			
O'Connor	<input checked="" type="checkbox"/>			

TOWNSHIP OF CLARK  
Ordinance No. 04-21  
Adopted: December 20, 2004

Introduced: December 6, 2004 Public Hearing: December 20, 2004  
Motion: Mazzarella Motion: Ulrich  
Seconded: Albanese Seconded: Albanese

AN ORDINANCE TO SUPPLEMENT CHAPTER 34 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF CLARK TO PROVIDE FOR THE ESTABLISHMENT OF AN AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT AT BLOCK 58 LOT 4 IN ACCORDANCE WITH THE ADOPTED HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF CLARK

BE IT ORDAINED by the Governing Body of the Township of Clark that it does hereby supplement and amend Chapter 34 of the Revised General Ordinances of the Township of Clark as follows:

Section 1

Section 34-4 is hereby amended to include the following new definitions:

*Dwelling, age-restricted* shall mean a housing unit that is restricted to occupancy by at least one person that is at least 55 years of age or older.

*Senior age-restricted* shall mean a housing unit that is restricted to occupancy by Persons that are at least 62 years of age or older.

*Age-restricted multi-family residential development* shall mean a residential development containing age-restricted and senior age-restricted dwellings and providing facilities and services specifically designed to meet the needs of older persons consistent with the guidelines and requirements of the United States Department of Housing and Urban Development (HUD). Affordable housing units in age-restricted multi-family residential development meet all necessary standards and requirements for low and moderate income housing units in accordance with the rules and regulations of the New Jersey Council on Affordable Housing (COAH).

Section 2

Section 34-5.1 is hereby amended to include the following new zoning district:

AHO *Age-restricted Affordable Housing Overlay*

### Section 3

Section 34-5.2 is hereby amended to include the following new paragraph "f":

- f. The Zoning District Map is amended and supplemented to provide that the AHO, Age-Restricted Affordable Housing Overlay District shall apply to Lot 4 in Block 58, which fronts on Terminal Avenue in the Township of Clark. Lot 4 in Block 58 shall also retain its underlying IL, Limited Industrial District zoning designation.

### Section 4

Chapter 34 of the Revised General Ordinances of the Township of Clark is hereby amended to include the following new Section 34-15:

**34-15. AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY DISTRICT WITH LOW AND MODERATE INCOME HOUSING SETASIDES**

**34-15.1 Purpose of District**

The purpose of the Age-Restricted Affordable Housing Overlay District is to permit construction of an age-restricted multi-family residential development, with a twenty (20) percent affordable housing setaside in accordance with the Township's adopted Housing Element and Fair Share Plan, the requirements of the New Jersey Council on Affordable Housing (COAH) and the terms and conditions of the Township's substantive certification. The development of the age-restricted multi-family development shall be an option available to the developer or property owner in addition to that permitted pursuant to the requirements of the underlying zoning district.

**34-15.2 Permitted Uses**

Age-restricted multi-family residential development containing a twenty (20) percent setaside for low and moderate income households age 62 years and older. The development may be constructed as multi-family dwellings, multiple group dwellings, or garden apartments, townhouses, or townhouse/flat combinations.

**34-15.3 Development Standards**

- (a) Minimum Tract Area. 10.7 acres.

- (b) **Minimum Frontage.** A minimum of 250 feet on a paved public street
- (c) **Density.** The maximum density shall be thirty (30) units per acre for multi-family dwellings, multiple group dwellings, or garden apartments, and fifteen (15) units per acre of gross site area for townhouses and townhouse/apartment flat combinations. Notwithstanding the foregoing, the total unit count cannot exceed 300 dwellings.

Sixty (60%) percent of the total units approved shall be restricted to occupants 55 years and older in accordance with all applicable laws and regulations.

Forty (40%) percent of the total units approved shall be restricted to occupants 62 years and older in accordance with all applicable laws and regulations. These units shall be located in one building with an additional 5000 square feet dedicated to recreation/common space.

- (d) **Low and Moderate Income Housing Requirements.** A minimum of twenty percent of the total age-restricted dwelling units shall be affordable to low and moderate income households (senior age-restricted) ages 62 years or older in accordance with the standards and requirements specified in Section 34-14.4. But excluding paragraphs B3 and B4.
- (e) **Building Height.** Maximum building height shall be 45 feet, and 4 stories. The architectural design of the buildings must include the use of design techniques such as hip and cable roof or mansard roof with dormers for the fourth floor to avoid the appearance of a straight block or mid-rise building.
- (f) **Setbacks.** The following setback standards shall apply:

**Buildings:**

**Front Yard:** 50 feet or the height of the principal building, whichever is greater  
**Side Yard:** 100 feet  
**Rear Yard:** 100 feet

**Accessory Building:**

**Front Yard:** 50 feet  
**Side Yard:** 25 feet  
**Rear Yard:** 25 feet

- (h) **Building Coverage.** Buildings and accessory structures shall cover not more than 30 percent of the lot or parcel area. Accessory structures devoted to parking shall count towards total lot coverage.
- (i) **Total Lot Coverage.** Not more than 70 percent of the lot or parcel area shall be covered by a combination of buildings, accessory structures, parking areas, driveways, and other impervious surfaces.
- (j) **Minimum Open Space.** Not less than 30 percent of the parcel area shall be open space as defined in section 34-4.
- (k) **Parking.** Off-street parking shall be provided in accordance with the Residential Site Improvement Standards. But in no event shall the parking ratio for one and two bedroom units be greater than 1.5 spaces per unit. No off-street parking shall be located less than twenty-five (25) feet from any property line. With the exceptions of garages/carports in townhouses and townhouse flat developments, no parking shall be located under a building. A carport and adjacent driveway space shall be counted as two spaces.
- (l) **Landscaped areas, buffer areas, and recreation facilities.** All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped, and be arranged such that appropriate active and passive recreation opportunities will be provided on-site for the residents of the development (e.g. walking paths, benches, gazebos, or ponds or water features); a suitable landscaped buffer strip of at least twenty-five (25) feet in width shall be provided to the property boundaries to form a visual screen.
- (m) **Parking lot Setback and Landscaping.** Parking areas shall be attractively landscaped in accordance with the following standards:
  - (1) Parking lots shall be setback a minimum of twenty-five (25) feet from the right-of-way of a public street. The setback area shall be landscaped with shade trees and shrubs adaptable to the location and able to provide low level screening of the view of the parking lot. At least one shade tree for each forty (40) feet of frontage shall be provided.
  - (2) In addition to landscaping required along public streets, the interior of the parking lot shall be landscaped with at least

one (1) tree for every twenty (20) parking spaces, which shall be planted in suitably prepared and protected landscaping islands.

- (n) Townhouse and Townhouse/Apartment Combination Building Spacing. The minimum spacing between buildings shall be fifty (50) feet between front and front/back, thirty-five (35) feet front/back to side and twenty-five (25) feet end to end. The minimum set backs from driveways and parking areas shall be fifteen (15) feet from primary buildings unless a garage is attached.

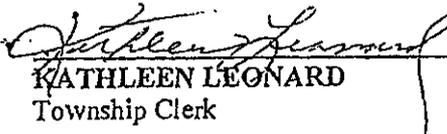
Section 5

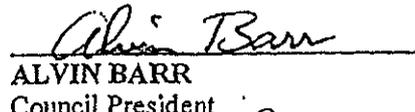
Effective Date

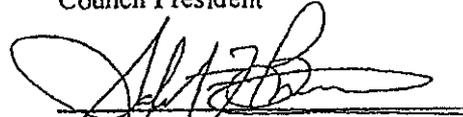
This Ordinance shall be effective only upon the approval by COAH of the Township's application for approval of its Amended Housing Element and Fair Share Plan and the subsequent publication of same according to law.

ATTEST:

APPROVED:

  
KATHLEEN LEONARD  
Township Clerk

  
ALVIN BARR  
Council President

  
SALVATORE BONACCORSO  
Mayor

Ord0-VAffordHousingOverlay L4 B58

	Aye	May	Abstain	Absent
Albanese	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bothe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mazzarella	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ulrich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## **Response to COAH Compliance Mechanism Review**

### **APPENDIX F: JUDGE'S OPINION – THE VILLA LAWSUIT**

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF  
ROSS R. ANZALDI  
PRESIDING JUDGE, CIVIL DIVISION



COURT HOUSE  
ELIZABETH, NEW JERSEY 07207

LETTER OPINION

NOT FOR PUBLICATION WITHOUT THE APPROVAL  
OF THE COMMITTEE ON OPINIONS

June 13, 2007

Joseph Triarsi, Esq.  
Richard Huxford, Esq.  
Triarsi, Betancourt, Walsh & Wukovits, LLC  
P.O. Box 995  
Cranford, NJ 07016-0985

David Hutt, Esq.  
Jonathan Burnham, Esq.  
Hutt & Shimanowitz, P.C.  
P.O. Box 648  
Woodbridge, NJ 07095

Thomas Carroll, III Esq.  
Hill Wallack LLP  
202 Carnegie Center  
Princeton, NJ 08543

Re: ~~City of Clark, et al. v. Scott's Plains Zoning Board, et al.~~  
Docket No. L-1892-06

Dear Counselors:

This dispute arises out of a zoning ordinance adopted by the defendant Township Council ("the Council") for the Township of Clark ("Clark"). The ordinance rezoned a parcel of land on Terminal Avenue in Clark from industrial to residential to allow for the development of age-restricted affordable housing. The plaintiffs are the contiguous property owners along Terminal Avenue. The plaintiffs have challenged the adoption of the ordinance arguing that it is contrary to the municipal land use law; that it is inconsistent with the land use element of the master plan; that it was invalid contract and spot zoning; that the defendants violated the New Jersey Civil Rights Act; and finally that it was arbitrary, capricious and unreasonable.

The plaintiff is the owner of numerous properties along Terminal Avenue, otherwise known as L'Oreal Way, in Clark. The properties along Terminal Avenue are zoned for limited industrial use, with the exception of a day-care facility. The principal tenant of the plaintiff's properties is L'Oreal. L'Oreal is a cosmetics and perfume manufacturer and utilizes these properties for research and manufacturing. The facilities are in operation twenty-four (24) hours-a-day.

The parcel of land which was rezoned by the Council is a 10.7 acre tract identified on the tax map as Lot four (4), Block fifty-eight (58) and is located on the northern side of Terminal Avenue. The property is commonly referred to as the Tycom site. Immediately adjacent to the site is a double set of actively used freight train tracks. The site is owned by defendant Clark Developers, LLC ("CDLLC").

The ordinance in question was adopted by the Council on December 20, 2004. The effect of the ordinance is to rezone the Tycom site from light industrial use to an age-restricted affordable housing overlay district. The defendants plan to construct a 300 unit age-restricted multi-family residential development, with a 20% affordable housing set aside.

Preceding the adoption of the ordinance by the Council, a mediation agreement was executed between Clark and the Council on Affordable Housing ("COAH"). The process began in 1991 when Clark received first round substantive certification from COAH. Subsequently on August 23, 1999, Clark filed a second round petition with COAH seeking substantive certification. There is a dispute between the parties as to what was included in the Housing Element and Fair Share Plan ("HEFSP") at the time Clark filed for second round certification. The plaintiff claims that there was no residential zoning proposed along Terminal Avenue in the HEFSP; rather the petition sought a vacant land adjustment. Based upon this, the plaintiff did not file a written objection with COAH within the forty-five (45) day period. Per COAH guidelines, an objector must file a timely objection to be included in COAH mediation.

~~W, J, I, A, K~~

The defendant Clark and defendants ~~Wayne~~ Caruso and Audrey Palmatier, both objectors, were parties to COAH mediation. The plaintiff alleges that defendant CDLCC was a party to the mediation, despite the fact that they were not a registered objector to the HEFSP. There is no dispute that the plaintiff was not a party to this mediation, despite their attempts to be included. The plaintiff contends that upon hearing rumors regarding the rezoning of the Tycom site they contacted the Mayor. However, they were told that since they had not registered objections within the forty-five (45) day period the matter could not be discussed with them.

The mediation agreement executed by the parties (defendants) on April 19, 2004, provided that Clark was to adopt an affordable housing overlay district for the Tycom site. Following execution of the mediation agreement, Clark amended its HEFSP to include the Tycom property as an age restricted inclusionary site. On July 27, 2004, the Planning Board for the Township of Clark adopted the amended HEFSP. Upon learning that improper notice was given, the Planning Board re-noticed a meeting for a discussion of the proposed amended HEFSP on August 24, 2004. At the August 24<sup>th</sup> meeting representatives of the plaintiff testified before the Planning Board that the proposed rezoning was poor planning. Notwithstanding plaintiff's arguments the Planning Board again adopted the amended HEFSP. On September 7,

2004, the Clark Township Council also adopted the HEFSP. On September 13, 2004, Clark re-petitioned COAH for substantive certification of its amended HEFSP. COAH received 7 objections, including the objection of the plaintiff. On September 20, 2004, the Council first introduced the ordinance in question, with a public hearing set for October 18, 2004. On September 27, 2004, the plaintiff commenced this litigation.

At the October 18<sup>th</sup> hearing representatives of the plaintiff, and others not parties to this litigation, appeared and spoke against the adoption of the ordinance. Plaintiff's counsel offered the testimony of George Ritter, plaintiff's planning expert, who opined that the site was not suitable for the proposed rezoning due to the surrounding industrial uses. In response to this testimony defendant Caruso articulated his belief that while the site is not perfect, it is the best option available. Additionally, Mayor of Clark Sal Bonacorso testified that as a member of the Planning Board he had previously heard the arguments advanced by plaintiff but remained convinced that the positive aspects of the plan outweigh the negative. Following the discussion the Council voted to adopt the ordinance. The Council later learned that the ordinance had been adopted in a procedurally defective manner and thus the ordinance was re-introduced, the meeting was re-noticed and the ordinance was re-adopted on December 20, 2004.

In January, 2005 the defendants filed a motion before Hon. John Pisansky (Retired) arguing that the pending COAH proceedings deprived the Court of jurisdiction over the matter. By way of order dated January 21, 2005, Judge Pisansky denied these motions. By way of order dated September 23, 2005, Judge Pisansky recused himself from any further involvement with the litigation.

On July 29, 2005, plaintiff filed a motion with COAH seeking a cessation of the mediation, requiring Clark to file a third round HEFSP and a transfer of the matter to the Office of Administrative Law as a contested case. Clark thereafter filed a third round HEFSP on December 20, 2005. COAH denied the plaintiff's motion, and plaintiff's appeal was also denied by the Appellate Division as interlocutory.

Following a period of discovery, both parties filed summary judgment motions before this court. This court dismissed several claims by way of order dated November 17, 2006, leaving the remainder for trial. The original trial date was scheduled for the beginning of December however, that date was adjourned as the parties were in settlement discussions. The parties never reached a settlement. This court then began the trial on February 27, 2007. Testimony continued on February 28<sup>th</sup>, and March 20<sup>th</sup>. Testifying before the court were Salvatore Bonacorso, Richard O'Connor, Brenda Villa Weiss, George Ritter, John Erdreich, Felicia Doggett, William Caruso and Elizabeth McKenzie. Thereafter on March 27<sup>th</sup> the parties stipulated that the testimony to be elicited from the 2 remaining defense expert planners would be cumulative of Elizabeth McKenzie's. The parties rested. Numerous exhibits were marked into evidence and referred to by the various witnesses including but not limited to map blow-ups, a DVD of the area, numerous correspondence, the Amended Housing Plan, Master Plan and updates, graphs, photos, tables of sound levels, and ordinances.

It is not necessary to recount in detail the testimony of each of the parties' witnesses; a brief summary of the main points should suffice. On February 27<sup>th</sup> the plaintiff began its case by

eliciting testimony from Mayor Bonaccorso. The Mayor testified that Clark was under no pressure from COAH to rezone the Tycom site for housing. The Mayor conceded that the impetus for the rezoning was in part due to political pressure applied by defendant Caruso. Second the plaintiff called Richard O'Connor, the Township of Clark's Engineer and Planner. Upon questioning it was revealed that Mr. O'Connor was trained as an engineer and received his professional planner designation through a reciprocity agreement between the two (2) fields. Mr. O'Connor also signed the amended HEFSP in his capacity as the Township Engineer, though he had never before drafted a master plan. Plaintiff's counsel also presented the testimony of Brenda Weiss, a representative of the plaintiff. Ms. Weiss expressed her fear that L'Oreal and other tenants would relocate their industrial operations due to anticipated restrictions imposed by the new residential development.

On February 28<sup>th</sup>, plaintiff continued its case presenting their expert planner, George Ritter. Mr. Ritter testified that the properties along Terminal Avenue are occupied by businesses of an industrial nature, primarily the L'Oreal facilities, which manufacture and research cosmetics, and the Mastertaste facility, which develops flavors and fragrances. Consequently, Mr. Ritter testified, there are noticeable unpleasant odors and fumes in this area. In addition, Mr. Ritter stated that there is steady truck traffic along Terminal Avenue to support the local industrial uses. Mr. Ritter found that there are no residential uses along Terminal Avenue, nor are there any retail uses. Mr. Ritter also pointed out that there is an active double set of freight train tracks which run along the northern border of the site, with trains passing throughout the day and night. Further, the adjacent facilities operate twenty-four (24) hours-a-day, continuously emitting light and noise. Mr. Ritter's ultimate conclusion was that based upon the surrounding industrial uses and the nature and size of the proposed development, the site was unsuitable. Finally, plaintiff offered John Erdreich, a noise expert, who opined that the surrounding twenty-four (24) hour-a-day industrial facilities and train tracks would cause a significant disruption to residents of the planned development. Moreover, Mr. Erdreich found that the noise levels surrounding the site are unacceptable according to the Housing and Urban Development noise guidelines for residential uses. Thus, Mr. Erdreich posited that if the development was to be constructed, the surrounding industrial uses would be forced to restrict the noise levels that can be emitted from their facilities pursuant to State law.

On March 20<sup>th</sup> the defense presented the testimony of Elizabeth McKenzie, a Licensed Planner, and Felicia Doggett, a noise expert. The testimony of these two (2) experts essentially rebutted all of the points made by plaintiff's experts. This court does not find it crucial to review the points of contention between the experts, suffice it to say their opinions were diametrically opposed. Ms. McKenzie outlined her view as to why the Tycom site is suitable for the proposed use. Ms. Doggett in addition testified that the noise levels of the adjacent industrial facilities and the railroad tracks could be taken into consideration in choosing construction materials. Ms. Doggett stated that special sound attenuation material and devices would be employed in the construction to lessen the amount of noise residents would be subjected to.

This court, with the consent of the parties, visited the Tycom site on March 28<sup>th</sup> to make personal observations. On that date at approximately 10:41 the court arrived at the subject property. I heard a train whistle and saw a long freight train passing along the rear of the property. There are two (2) sets of tracks at that location. As I walked to the rear of the property I

noticed large electrical poles, approximately fifty (50) feet in height running along the rear property line, parallel to the train tracks. On the other side of the tracks are single family homes set back approximately seventy-five (75) yards. While I traversed the property on foot I could hear a slight hum coming from the factories on the contiguous properties. There was a noticeable odor in the air. Traffic was moderate on L'Oreal way. I could still hear birds singing. From the street front of the property I noticed that though sidewalks existed, they were not in front of every building, ex. Kindercare. I looked toward Central Avenue and could barely see the traffic on that road. I then drove to Central Avenue and once on Central heading towards the Parkway was able to see additional retail and commercial establishments. I estimate they were three to four city blocks away from the site. The video and the various exhibits confirm my personal observations.

The parties submitted trial briefs on April 23rd, and reply papers a week later.

Numerous issues were raised by the plaintiff and responded to by the defendants. This court will attempt to address all of the contested questions raised.

**1. Is the Ordinance contrary to the Municipal Land Use Law?**

The Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 *et. seq.*, provides a municipality with the power to zone. In support of their position, the plaintiff relies upon N.J.S.A. 40:55D-62(a), which provides in pertinent part:

The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structures or uses of land, including planned unit development, planned unit residential development and residential cluster, but the regulations in one district may differ from those in other districts

The plaintiff argues that the defendants' adoption of the ordinance violates the MLUL for several reasons. First, and primarily, the plaintiff advances that the construction of 300 units of age-restricted housing in an active industrial zone is not compatible to the surrounding uses, as the MLUL calls for the consideration of the character of each district when zoning. Second, contrary to the MLUL, the ordinance destroys the zoning uniformity which existed along Terminal Avenue

In their reply, the defendants direct this court to N.J.S.A. 40:55D-2(a-j) which provides:

It is the intent and purpose of this act:

- (a) To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- (c) To provide adequate light, air and open space;
- (e) To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- (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;

- (h) To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- (i) To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- (j) To encourage senior citizen community housing construction.

(emphasis added)

The defendants contend that to the contrary, the ordinance advances many of the purposes of the MLUL, and refer to those portions cited above.

This court finds that the ordinance promotes the purpose of providing senior citizen housing. Therefore the ordinance does not violate the MLUL.

**2. Is the Ordinance Inconsistent with the Land Use Element of the Township's Master Plan?**

The plaintiff again directs this court to N.J.S.A. 40:55D-62, which provides:

...the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance...

The plaintiff argues that the adoption of the ordinance is in violation of N.J.S.A. 40:55D-62 because the ordinance was inconsistent with the land use element of the Master Plan. Accordingly, the defendants were required to adopt an accompanying resolution explaining their reasons for so doing. The plaintiff alleges the defendants failed to do so and thus the adoption contravened N.J.S.A. 40:55D-62.

The defendant's argue to the contrary. They state that the Master Plan identified the need for the development of senior citizen housing. Specifically, they direct this court to page 16 of the Master Plan dated December, 2003, which states:

It is therefore imperative that the Township pursues opportunities to provide senior housing in addition to affordable housing. The optimum potential for this type of housing lies in privately developed, active adult communities. The Township should explore the possibilities of attracting developers who can provide active adult communities in proximity to commercial and public institutions.

Relying upon this stated aspiration, the defendants argue that the adoption of the ordinance was not inconsistent with the Master Plan, and thus there was no need for an accompanying resolution.

A review of the December, 2003 Master Plan makes patently clear that the expansion of senior citizen housing was identified as an area of future development. In addition, although the Master Plan envisions the development of senior citizen housing "in proximity to commercial

and public institutions," the area in which it will be placed is an industrial zone. The Court has stated that "the concept of substantially consistent permits some inconsistency, provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan." Manalapp Realty, L.P. v. Township Committee of the Township of Manalapan, 140 N.J. 366, 384 (1995). This court finds that a material purpose of the Master Plan was the development of senior citizen housing. That the housing will be built in an industrial zone rather than in immediate proximity to commercial and public institutions does not undermine the objective of the Master Plan. The ordinance rezoning land for the development of senior citizen housing is substantially consistent with the Master Plan. Therefore, there was no need for an accompanying resolution.

### 3. Is the Ordinance the result of unlawful Contract Zoning?

A theme emerging from the plaintiff's complaint is the allegation that meetings and negotiations leading to the ordinance between the Township, COAH, the property owner, and developer were all conducted in secret, behind closed-doors, depriving the plaintiffs and other interested parties the right to be heard. With regard to the allegations of improprieties in the COAH proceedings, this court previously has ruled that those issues are properly heard before the Appellate Division. (See Sbd Farm Associates v. Township of Springfield, 366 N.J. Super. 116, 130 (App. Div. 2004) where the court stated "Every administrative proceeding to review the action or inaction of a State administrative agency would be by appeal to the Appellate Division."). What remains of the plaintiff's claims before this court is that the ordinance was the result of a contract executed between the property owner, the municipality and the developer.

"Contract zoning represents an attempt by the governing body of the municipality, by contract with a property owner, to authorize the property owner to use his property in contravention of the zoning ordinance and without compliance with the statutorily established procedures for either obtaining a zoning variance or an amendment to the Master Plan and zoning ordinance." William W. Cox, New Jersey Zoning and Land Use Administration, 34-8.2(b) (2006). The Court has stated "that Contracts thus have no place in a zoning plan and a contract between a municipality and a property owner should not enter into the enactment or enforcement of zoning regulations." Houston Petroleum Co. v. Automotive Products Credit Ass'n., 9 N.J. 122, 129 (1952). It is not the mere formation of an agreement between a developer and a municipality which makes the contract unlawful. The objectionable act, or omission thereof, occurs "when, pursuant to an agreement, the municipality rezones property without complying with prescribed procedures for amending the master plan and zoning ordinance." Toll Brothers v. Township of West Windsor, 334 N.J. Super. 77, 94 (App. Div. 2000).

Thus, in order for the plaintiff to succeed on his claim that the ordinance is the result of contract zoning, it must be shown that the municipality and the developer failed to comply with statutorily prescribed procedures for the adoption of the rezoning ordinance.

As part of the tortured history leading up to the adoption of this ordinance, several meetings and hearings were conducted with improper notice, including the Planning Board's meeting of July 27, 2004, and the October 18, 2004, Township Council hearing. Thereafter, the respective body would, upon learning of the improper notice, re-notice the meeting or hearing in

an effort to correct the procedural defect. The plaintiff seizes upon the fact that when the ordinance was readopted following the October 18<sup>th</sup> hearing, it was *fait accompli*; meaning that despite the procedural defectiveness of the initial hearing, what was decided then would be the final result.

This Court is not persuaded by the plaintiff's *fait accompli* argument. When the Council learned that the October 18<sup>th</sup> hearing was improperly noticed, it did the only thing it could to fix that problem: re-noticing the hearing and re-adopting the ordinance. The same was done regarding the adoption of the amended HEFSP by the Planning Board at the July 27<sup>th</sup> meeting. That an ordinance was re-adopted at a subsequent hearing conducted to rectify a procedural deficiency does not render the ordinance defective for failure to comply with statutorily established procedures.

In addition, with reference to this point the plaintiff again mentions the fact that they were excluded from the COAH mediation sessions, while defendant CDLLC was present despite the fact that they were not a registered objector. The plaintiff makes this argument apparently in an attempt to paint a broad picture showing the defendants failure to comply with prescribed procedures throughout this entire process. As was discussed above, those issues addressing procedural deficiencies of the COAH sessions are properly before the Appellate Division, not this court, and therefore will not be considered.

Therefore because the defendants have complied with statutorily prescribed procedures for the adoption of the ordinance, the ordinance is not the result of unlawful contract zoning.

#### 4. Is the Ordinance invalid due to Spot Zoning?

Another theme of the plaintiff's argument is *quid pro quo* of political contributions for favorable rezoning. The plaintiff insists that because the proposed residential use is entirely incompatible with surrounding industrial uses, the only plausible explanation for the adoption of the ordinance is that CDLLC made a campaign contribution and requested the rezoning. Further Mr. Ritter testified that the rezoning is not the fruit of a comprehensive planning effort undertaken by the defendants.

The parties have both agreed that spot zoning can be defined as "re-zoning of a lot or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive zoning plan." Willam W. Cox, New Jersey Zoning and Land Use Administration, 34-8.2(a) (2006). Spot zoning is illegal because it disregards the requirements of N.J.S.A. 40:55-32 that "regulation be accomplished in accordance with a comprehensive plan to promote the general welfare." Taxpayers Association of Weymouth Township v. Weymouth Township, 80 N.J. 6, 19 (1976).

Ms. McKenzie testified for the defendants that the ordinance does not constitute spot zoning because it was done for the valid municipal purpose of providing both senior citizen and affordable housing. This rezoning, she testified, would benefit the Township as a whole rather than a single owner or developer. Moreover the defendants argue that the rezoning served the

municipal purpose of allowing Clark to meet its constitutional obligations to provide low and moderate income housing.

The plaintiff responds that there is no case law supporting the defendants' position that rezoning for the purpose of COAH compliance negates any claim of spot zoning. Further, the plaintiff argues, there was never any suggestion by COAH that this particular parcel of land be rezoned to fulfill any obligation.

This court concludes, like above, that the development of senior citizen housing was an objective of the Master Plan. This rezoning will serve valid municipal purposes of providing housing for low and moderate income individuals and the elderly. The ordinance will benefit the Township and its residents as a whole. Therefore the Court concludes that this does not constitute spot zoning.

**5. Is the Ordinance a violation of Equal Protection Clause under the New Jersey Civil Rights Act?**

The plaintiff contends that the zoning ordinance creates an irrational and discriminatory distinction between property owners and is therefore invalid as a violation of the Equal Protection Clause. "The federal Equal Protection Clause does not require that government treat all persons identically. It requires only that differences in treatment of persons similarly situated be justified by an appropriate state interest; such distinctions may not be irrational or discriminate invidiously." Taxpayers Association of Weymouth, supra, 80 N.J. at 37. The plaintiff has the burden of demonstrating that the rezoning of the Tycorn site for residential use lacks a rational basis. The plaintiff argues that the rezoning at issue lacks a rational basis because the site was zoned with a density of thirty (30) units per acre, whereas other affordable housing sites were zoned at eight (8) units per acre.

As was discussed previously, this court finds that the ordinance serves a valid municipal purpose, one which was set forth in the Master Plan. That other affordable housing sites were zoned for a lesser density does not mean this zoning density lacks a rational basis. Consequently this court finds that the plaintiff has failed to show that this zoning lacks a rational basis. Therefore the ordinance is not a violation of the Equal Protection Clause.

**6. Is the Ordinance arbitrary, capricious or unreasonable?**

The bulk of the testimony presented and briefs submitted focused on the issue of whether the actions of defendants in adopting the zoning ordinance were arbitrary, capricious or unreasonable. "A zoning ordinance is insulated from attack by a presumption of validity, which may be overcome by a showing that the ordinance is clearly arbitrary, capricious, or unreasonable, or plainly contrary to the fundamental principles of zoning or the [zoning] statute." Riggs v. Long Branch Township, 109 N.J. 601, 610-611 (1988). The party attacking the ordinance bears the burden of overcoming the presumption. Id. Further, this court is not permitted to substitute its own judgment for that of the Planning Board of Township Council. Bow & Arrow Manor, Inc. v. Town of West Orange, 63 N.J. 335, 343 (1973). "It is not the function of the court to rewrite or annul a particular zoning scheme duly adopted by a governing

body merely because the court would have done it differently or because the preponderance of the weight of the expert testimony adduced at trial is at variance with the local legislative judgment. If the latter is at least debatable it is to be sustained." *Id.*

Both parties presented experts who conceded that other experts, when viewing the same site and same proposed redevelopment, could reach different conclusions on site suitability. Despite these acknowledgements, the planning experts both delineated a set of criteria to be considered when answering the question of site suitability. Both sides attacked the credibility of the opposing experts and identified past instances where the expert had testified in similar projects and reached different conclusions. While the expert testimony provided was both instructive and beneficial to this court in helping to determine the suitability of the site, expert opinions alone will not ultimately resolve this dispute.

This court is mindful of the expert testimony elicited from both sides that the State of New Jersey is the most densely populated state in the nation. Accordingly the amount of free space open for development is limited. Ms. McKenzie testified that as a result communities are now turning to development in abandoned or unused commercial and industrial areas in order to meet housing needs. Like the rest of New Jersey, Clark is similarly afflicted with steadily rising housing needs and fewer parcels of available land to construct upon.

The narrow issue before this court is whether the Township Council acted arbitrarily, capriciously or unreasonably in adopting the ordinance. Defendants advance that COAH has previously determined that the Tycom site is suitable for residential development. Whether COAH may have conducted an extensive review of the Tycom site is not before this court. What is before this court is whether the Township Council, in reaching their decision, acted arbitrarily, capriciously or unreasonably in reaching their conclusion. The parties have not asserted, and this court is not aware of any authority, which binds the Township Council or Planning Board to the findings reached by COAH. That COAH found the site suitable for residential development is of no consequence.

The ultimate question is whether a site that is far from ideal and which provides numerous negative aspects such as location, environmental issues, convenience, and etc. can still be utilized to meet a clearly identified community need, to wit: Senior Citizens Housing. There is no real dispute that the Tycom site is not the best or near best location for the proposed development. The property is located in an industrial zone. Railroad tracks make up the northern border of the property; the MasterTaste manufacturing plant is to the west; a L'Oreal building is to the east; and a roadway which has a level of traffic commensurate with the industrial nature of the area makes up the southern border. Retail businesses and municipal services are some distance away.

That being said, this court is not permitted to sit and substitute its own judgment for that of the Township Council. Bow and Arrow Manor, *supra* 63 N.J. at 343. Municipalities are empowered with broad authority to make zoning determinations and "a strictly circumscribed judicial role in reviewing zoning regulations effectuates that broad zoning power." Pheasant Bridge Corn v. Township of Warren, 169 N.J. 282, 289 (2001). There are a variety of possible zoning plans, districts, and boundaries, any of which would represent a defensible exercise of

municipal legislative judgment. Bow and Arrow Manor, supra 63 N.J. at 343. That this court may have acted differently than the Township Council on the ordinance does not mean that this court can therefore invalidate it. Id. The burden is on the plaintiff to demonstrate that an ordinance is arbitrary, capricious or unreasonable, and the plaintiff here has failed to meet that burden.

Though there are reasons to question this particular site for the Senior Citizens Housing, a review of the totality of circumstances leads this court to conclude that the decision reached by the Township Council was made following a full hearing conducted before the Planning Board where experts for both parties testified. Following that the Planning Board recommended to the Township Council that the Tycom site was suitable for the proposed redevelopment. Plaintiff submits the testimony of experts who clearly disagree on the site suitability. This court has made clear its own reservations about this site; however neither this court's hesitations nor the opinions of plaintiff's expert planner are sufficient to overcome the "arbitrary, capricious, or unreasonable" standard.

According to all of the above, judgment is entered in favor of the defendant and the complaint is dismissed. Counsel for defendant Township Council shall submit an appropriate order.



ROSS R. ANZALDI, P.J.Cv.