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SUPERIOR COURT OF NJ
SOMERSET COUNTY
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Attorney for Interested Party, Kerwin – Savage Partnership

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IN RE: TOWNSHIP OF CLINTON	:	SUPERIOR COURT OF NEW JERSEY
(HUNTERDON COUNTY) COMPLIANCE	:	Law Division – Hunterdon County
WITH THIRD ROUND MOUNT LAUREL	:	Docket No. HNT –L-315-15
AFFORDABLE HOUSING OBLIGATION	:	Summary of Testimony on Behalf of
	:	Kerwin-Savage Partnership By
	:	Members of the Partnership, Michael
	:	Savage, John Kerwin and Walter
	:	Wilson
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Interested Party, Kerwin and Savage, a New Jersey Partnership (hereinafter “Kerwin and Savage”), with an address at 86 Mt. Airy Road, Bernardsville, New Jersey 07924, respectfully submit the following information to the Court and to all required parties or their Attorneys:

1. The Plaintiff, the Township of Clinton (hereinafter referred to as “Plaintiff” or “Township”) has not presented for review any proposed Ordinances to effectively carry out the terms of the proposed settlement. Current land use ordinances and regulations, including the Township’s Land Use Application Fee and Escrow requirements for inclusionary developments, have not been amended and no draft ordinances have been included in the proposed Settlement Agreement as set forth in the Letter Agreement presented. Since the “devil is in the details”,

proposed draft ordinances and draft amendments to the Township Master Plan should be presented prior to any finalization of the Settlement Agreement. Current Ordinances provide for extremely expensive and over-burdening fees and escrow requirements for inclusionary developments. Proposed ordinances should provide for limitations on the amounts required in total for escrow deposit replenishments. Compared to surrounding municipalities, the Townships fee and escrow requirements are multiples higher. Review of required studies and reports for development are excessive and “cost-generating” as set forth in current ordinances and should be modified in any proposed Ordinance modifications and additions. As currently composed, the Ordinances fail to create a realistic opportunity for the Township’s fair share of affordable housing to be approved and constructed.

2. The Plaintiff must provide assistance to the Kerwin-Savage Partnership in acquiring potable water supply and sewer treatment capacity from the adjoining Town of Clinton, whose water and sewer lines currently exist along and under the perimeter public roads that adjoin the Kerwin-Savage Property. Preliminary discussions with the Public Water and Public Sewer provider (the Town of Clinton) have indicated potential availability for both required utilities. In the case of this Property, which adjoins the municipal boundary of the Town of Clinton, public water and sewer lines exist in public roadways that completely surround the subject Property. Current practice of the Town of Clinton requires the active participation and cooperation of the Township as the Town of Clinton discourages direct negotiations with developers outside the Town’s municipal boundaries.

3. The New Jersey Department of Environmental Protection monitors wastewater treatment plant actual flow against permitted capacity. Pursuant to the authority of NJPDES Permit #NJG0157767 (also NJ0020389), the Town of Clinton Wastewater Treatment Facility is

permitted and built to 2.03 MGD as evidenced by the January 18, 2018, report attached as Exhibit "KS-1". Further, Exhibit "KS-2", also attached hereto, indicates current average daily flow through the Town of Clinton plant to be 1.035 MGD during the period of October, 2017 to January, 2018. The Town of Clinton plant serves the Town of Clinton as well as portions of Clinton Township, Union Township, the Borough of High Bridge and Franklin Township. Based on the NJDEP reporting it appears clear that the sewer plant serving the region is operating at approximately 50% of capacity; hence sufficient treatment capacity appears to be available in the region if requested and pursued with the cooperation and assistance of the Plaintiff, the Township of Clinton.

4. Further to the issue of wastewater (sewer) treatment capacity, the Plaintiff, Township of Clinton, states that it has no sewer capacity available and has, as a result, included a "durational adjustment" in the settlement agreement. The Township has an existing sewer treatment agreement with the Town of Clinton to allow for up to 200,000 GPD of treatment capacity for the so-called "Annandale Sewer District" within the Township. It would seem that it is this sewer treatment capacity that the Township refers to and relies upon in making its statement that it has no sewer treatment capacity. This statement, however, is misleading and needs to be further explored. The Township of Clinton, in fact, does not in and of itself, have any sewer treatment capacity. Sewer Treatment is provided by the Town of Clinton Sewer Plant located in and owned and operated by the Town of Clinton. Sewer issues within the Plaintiff Township are managed and controlled by the independent Clinton Township Sewerage Authority. Regarding the Annandale Sewer District, an area within the Township with defined boundaries, the system as managed provides no treatment within the Township. It is a collection and conveyance District only. Other limited areas within the Plaintiff Township are also under the control and

authority of the Clinton Township Sewerage Authority. For example, the homes within the “Deer Meadow” development within the Township convey wastewater through lines to the Town of Clinton Sewer Plant for treatment. Similarly, the “Oak Knoll” development of condominiums within the Township conveys wastewater to the Town of Clinton Sewer Plant for treatment. There is a small treatment plant serving the “Twin Oaks” development which is now operated and controlled by the Clinton Township Sewerage Authority. There are two (2) large private Sewer Plants located within the Township. One serves the State of New Jersey Department of Corrections Facility along Petticoat Lane and the other serves the large and now expanding Exxon-Mobile Facility located between Routes 22 and 31 within the Township. We further believe, based on news reports from approximately a year ago, that negotiations between the Township and the Town of Clinton sewer plant had broken down, although upon information and belief those negotiations were unrelated to the obtaining of additional treatment capacity but rather to billing practices. There does appear, upon information and belief, to be additional sewer treatment capacity that may be owned by several individuals or entities for use in the Township. Upon information and belief there remain several formal Agreements which include the Township and the Clinton Township Sewerage Authority regarding Sewer Treatment Capacity in the Township. In short, the availability of sewer treatment capacity is more complicated than the Township’s simple “we have no capacity available” statement. It does appear that the Township is incorrect in suggesting that no sewer capacity can be obtained from the existing Town of Clinton Sewer Plant Operator.

5. The Kerwin-Savage Partnership is the contract purchaser of the Site the Settlement Agreement identifies as the “Alton Place Development”. The “Alton Place” site being identified on the Clinton Township Tax Map as Block 79.07, Lot 1, (with a common address of 108 Alton

Place) is uniquely situated adjacent to the Town of Clinton municipal boundary, unlike any of the remaining sites proposed for development in the settle agreement. The site consists of approximately 16.17 acres of land and is currently improved with a large single-family home, swimming pool, and driveway, as well as other improvements appurtenant thereto. It is surrounded by townhome and condominium developments that are all served by public water and public sewer from the Town of Clinton. The site is also located completely within current sewer and water service areas. As a result, we are in position to most directly connect into the existing sanitary conveyance and water supply systems from within the Town of Clinton.

6. The Kerwin-Savage Partnership respectfully requests that the Settlement Agreement provide (a) that the Alton Place development can bypass the Township's Sewerage Authority entirely and, with a statement of the Township's full and unequivocal support and authority, negotiate and work directly with the Town of Clinton as the Sewer Plant Operator to secure conveyance and treatment capacity and (b) that the Township will endorse as necessary and without any further prosecution or cost any required permits to effectuate the conveyance and treatment of wastewater from the development and for water service to the development. We will stipulate that to the extent we convey through infrastructure owned by the Township that we will seek their approval, which approval shall be NOT be unreasonably withheld, and without the need for system improvements. In the event the Township cannot or will not agree to the provisions above, the alternative is to place the sole onus for acquiring sanitary sewer and water service squarely on the Township. They must commit to use all reasonable and prudent means, without further delay, in obtaining sufficient sewer and water capacity from the Town of Clinton to render the settlement agreement effective as a realistic opportunity to deliver the affordable housing as stipulated. In addition, based upon its superior location within an existing water and

sewer service area, the Alton Place Development shall NOT be placed in a subordinate, prejudicial or “non-priority” position towards receiving an allocation of water and/or sewer capacity in favor of any other affordable development that does NOT enjoy the benefits of being within a current water and sewer service area. **The Kerwin-Savage site provides the clearest path to the actual construction and occupancy of affordable housing in the Plan.**

7. The Settlement Agreement generally proposes a density of 10 units/acre and includes a requirement for twenty-eight (28) affordable units on our Alton Place property. We have provided on several occasions a proposed plan of 60 individual building lots including (i) 58 new lots to be created by subdivision, (ii) 1 lot to accommodate the existing home on the property and (iii) 1 lot to accommodate a 12-Unit affordable rental unit building. This 60-lot plan totals 71 dwelling units. This plan yields densities of 3.71 building lots per acre and 4.45 dwelling units/acre. The basis for this plan is our desire to address the single family detached housing market as our site is bordered by 2 condo/townhouse developments, one as part of a PUD know as Beaver Brook and the other being an affordable housing inclusive development in the Town of Clinton known as “Alton Place”. Our research and analysis demonstrate that market conditions in Clinton Township and the region surrounding Clinton Township do not provide the type of housing product that is envisioned and proposed for this site. Affordable rentals fill slower than market units. Our project is not a “how many can we build at 10 units/acre” type of development. We have been working on this unique product for several years. It satisfies a missing niche` in the market, proposing a housing product designed and built for the younger generation moving to Hunterdon County and the aging generation seeking to remain in the Township but with a smaller housing product. Regrettably, the vision for this site that we carefully developed is put at risk by the proposed multi-family zoning overlay (exact terms

undefined as of yet) and the requirement of inclusively building twenty-eight (28) affordable units rather than 15 affordable units with a rental credit for another 15, providing an additional 2 affordable units from this site. Our Plan as initially proposed and still desired (as detailed above) called for a total of 71 units (market and affordable), of which twelve (12) were to be affordable rental units. This calculated inclusionary number was based upon the existing Clinton Township Ordinance that requires a 15% set-aside of affordable units if same are offered as rental units.

Our desire for this plan was demonstrated by the coincidental appearance of two of our members at the Clinton Township Council meeting at which the Township Council, after Executive Session, voted to approve the current Settlement Agreement, to present the 71 unit plan to Council for information purposes and to generate a further discussion. Our strongest preference continues to be to build the development as we planned. A 15% set aside would actually result in a required 10.65, or 11 units; we proposed 12. A 20% set aside would be 14.2, or 15 units. If we add the additional 3 affordable units to the total we would have 74 total units rather than 71. The result with a 20% set aside would still be 15 affordable units (14.8 or 15), on 60 total lots.

While this result is what we prefer, if the Settlement Agreement is approved without change we would agree to provide twenty-eight (28) units of affordable housing rental units, as called for in the "numbers" portion of the Settlement Agreement. Nevertheless, we still seek a modification in the manner in which those units and the market units will be provided as the enabling Ordinances are developed, and urge that **an appropriate approval by the Court of the Declaratory Judgment action should include the preparation and approval of the enabling Ordinances.**

8. The Settlement Agreement further calls for a 50' buffer around our tract. Given our proposal to address the market with single family detached homes, the inherent setbacks that

serve as adequate buffers and the extent of open space or roadways bordering the property, this imposition of buffers under our development proposal seems unreasonable. Again, our objection to the Settlement Agreement is that it should, but does not, include the proposed enabling Ordinances that will form the framework for the “numbers” to be met. To leave these details unresolved simply invites delay and difficulty from the actual development side of the equation. If the intention is truly to build the affordable units and the market units as described in the Agreement, the details are a critical requirement, and must be clearly and completely negotiated and resolved. We note there was no discussion with any partner or representative of the Kerwin-Savage Partnership prior to our seeing the Settlement Agreement on the night it was approved.

9. **Rental Credits.** Prior to its rescission, the Third Round Rules (from which the concept of a “durational adjustment” is derived) provided a 2:1 credit for affordable rentals (i.e. 25 affordable rentals translated into 50 units). Accordingly, the scheduled units to be developed on the Alton Place tract should be either 28 “for sale” units or 14 “rental” units to address the proposed affordable housing in the settlement. Rental credits should be addressed in the Settlement Agreement. Also too be addressed is the existing Township Ordinance which allows for a 15% inclusionary set-aside if the affordable units are rentals, again highlighting the need to include all of the enabling Ordinance changes and additions in the Settlement Agreement.

10. **Schedule of Land Use Fees.** Attached as Exhibit KS-3 is a table comparing the fees assessed by the Township as well as the surrounding municipalities for land use review. Clearly at two to three times the neighboring municipalities fees, Clinton Township’s fees are simply cost generative, as that term has been used in Court Opinions. In conjunction with the Settlement and to promote the approval and construction of affordable housing, the Court is requested to amend the land use fees in line with the adjacent communities.

11. In summary, although not consulted prior to the approval of the Settlement Agreement, the Kerwin-Savage Partnership in a general sense, acknowledges the Agreement but seeks modifications as described herein. The Kerwin-Savage Partnership does not wish to seek approvals nor does it wish to construct a development of the magnitude and density as described in the Settlement Agreement with 160 units. The Partnership takes no formal position on the “numbers” portion of the Agreement and Hearing (intervention for participation in that portion of the proceeding having been denied). The Partnership urges the Court to direct the Parties, most notably the Plaintiff Township of Clinton, to prepare and present the Ordinances and Ordinance Amendments required to carry out the terms of the Settlement with Fair Share Housing Center. The Court is respectfully requested to require the participation and oversight of either the existing Appointed Master or another Master to assist and oversee the implementation of the Plan as proposed and as ultimately approved. The Settlement Agreement should also make clear the Township’s continuing obligation to provide cooperation for the implementation of the Settlement and assistance insofar as County, State and Outside Agency (including the Highlands Council) approvals are required. Modifications to the Township fees should be required for inclusive and 100% affordable developments included in the Plan.

13. Potential witnesses who may testify on matters set forth herein on behalf of the Kerwin-Savage Partnership are the members of the Partnership, being Michael Savage, John Kerwin and Walter Wilson. Their testimony will be offered to clarify the statements offered and presented herein, and to be available for any questions or cross-examination on any point set forth above.

14. The Kerwin-Savage Partnership herein states its desire, through its members as above to be heard by the Court at the Fairness Hearing. The above statements represent the written summary of the testimony anticipated.

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January 29, 2018

BY HAND

Hon. Thomas C. Miller, J.S.C.
Somerset County Courthouse
North Bridge Street
Somerville, NJ 08876

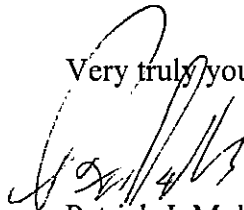
Re: In Re Township of Clinton Affordable Housing
Docket No. HNT- L-315-15

Dear Judge Miller:

Please be advised this office will be representing the interests of the Kerwin-Savage Partnership in regard to the above-referenced matter. Please find enclosed a Summary of Testimony on behalf of the Partnership submitted by Partners Michael Savage, John Kerwin and Walter Wilson.

Thank you for your time to this matter. Should you have any questions, please do not hesitate to call.

Very truly yours,



Patrick J. Mullaney

PJM:sv
Enclosure

CC: Jonathan E. Drill, Esq. (VIA EMAIL)
Kevin Walsh, Esq. (VIA EMAIL)
Michael P. Bolan, PP, AICP (VIA EMAIL)

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