

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, December 2, 2015 at Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell called the meeting to order at 7:00 P.M. Members of the Town Board present were Councilmember's Bernard Kolber, Patrick Casilio, Peter DiCostanzo and Robert Geiger. Other Town Officials present were Director of Community Development James Callahan, Junior Planner Jonathan Bleuer, Senior Building Inspector David Metzger, Confidential Secretary to the Supervisor Karen Jurek, Town Attorney Lawrence Meckler, Town Engineer Tim Lavocat, Director of Administration and Finance Pamela Cuiello, Planning Board Chairman Robert Sackett and Highway Superintendent James Dussing.

Director of Community Development James Callahan

Public Hearings:

Joseph Nieman 8400 County Road

Applicant is proposing to operate a vehicle sales operation inside the existing accessory structure (barn) on the property. The proposed site is located on the north side of County Road, west of Green Acres Road in existing agriculture and residential property located in the Agriculture Rural Residential Zone. Per the Zoning Law, the Town Board may consider an automotive sales operation as an expanded home occupation in the Agriculture Rural Residential Zone with a Temporary Conditional Permit.

Formal Agenda items:

Eliot Lasky – Roxberry Phase II Gentwood Extension

Applicant is requesting Final Plat approval and road dedication on the 1260+/- linear feet of Gentwood Drive including 19 residential building lots. The proposed site is located north of Main Street, west of Westwood Road as an extension of Gentwood Drive. The previously approved subdivision identified 19 single family lots, construction has been completed as per Development Plans approved April 1, 2015. Per the Subdivision Law, the Town Board has authority to accept roads for public dedication and to accept final subdivision plats. Final approval must be given by the Town Engineer and Highway Superintendent on the road construction. The applicant is also requesting that the Town Board requirement for street lighting be waived for this project. Waiver of a requirement of the Subdivision Law will require a super majority approval by the Town Board ***(Councilman Casilio will recuse from any discussion on this project, his house is adjacent to this development)***.

Domenic Piestrak – Spaulding Green Open Space Design Subdivision

Applicant is requesting Final Plat approval and road dedication on the 1030+/- linear feet of Alderbrook Drive including 33 patio home lots. Construction has been completed on the previously approved phase of Spaulding Green identifying 33 patio home lots per the Development Plans approved on March 4, 2015. The project site is located north of Greiner Road and east of Glenview Drive in a residential classification. Per the Subdivision Law, the Town Board has authority to accept roads for public dedication and to accept final subdivision plats. Final approval must be given by the Town Engineer and Highways Superintendent on the construction. All PIP Permits must be paid in full prior to any building permits being issued.

Towne Automotive Group (Towne Maserati & Alfa Romeo) - 8200 Main Street

Applicant is proposing additions to the existing Louie's Deli/Ballow Law Firm Plaza and to convert the space to an automotive sales/service operation for Town Maserati and Alfa Romeo. The proposed site is located on the north side of Main Street, west of Westwood Road at existing retail plaza (Main-Transit Plaza) located in the Commercial Zone. An automotive sales/service operation will require a Special Exception Use Permit as issued

by the Town Board. Referral to the Planning Board would initiate a formal review of the proposal.

Work Session items for consideration December 16, 2015:

Jeff Palumbo – Woodland Hills Subdivision

Applicant has allowed a wetland permit to lapse and the resulting wetland expansion will impact the approved design. Whether a full redesign is proposed or the elimination of the lots now impacting the wetlands will need to be determined. The previously approved 77-lot subdivision is located on the south side of Greiner Road east of Harris Hill Road in the Residential Single Family Zone. Per the Subdivision Law, the Town Board will guide the review process for any proposed amendments. Applicant will present concepts on how to address the additional wetlands on the property. Referral to the Planning Board to detail any amendments would initiate formal review.

Jeff Palumbo representing Fred Cimato stated that they have been working on this project for nearly 15-years. His client has gone through every imaginable obstacle that you could encounter with this subdivision including the creation of a sewer district, extension of a sewer district, out of district customers and finally reached an agreement with the Town of Clarence regarding capacity and the extension of the line etc. While this was being worked out, the wetlands on the property have expanded. The concept plan that was originally approved was for 77-lots. After the expansion of the wetlands, Mr. Cimato tried to find a way to maintain the number of lots. It is critical to him after all the time and money spent getting this project developed to maintain the 77-lots. A new plan was submitted showing the reconfiguration of 7-lots to the previously designated “common area/open space.” The total amount of open space remains the same, it is just in a different configuration than the original concept plan. Rather than try to impact the wetlands, they have modified the area as you come in off of Greiner Road and expanded the open space in that area, eliminated three lots as you come into the development, two lots in the court and two lots in the middle for a total of 7-lots. A total of 7-lots have been eliminated throughout the subdivision and replaced in the common area/open space. Mr. Palumbo is hoping the Town Board approves this minor modification and allows his client to move forward with final engineering and development plan approval.

Mr. Palumbo stressed that his client is not increasing the number of lots or decreasing the amount of open space, they are just reconfiguring the plan. Mr. Palumbo stated that his client would have to do off-site mitigation if he impacted any more wetlands and he did not want to have to do that. Councilman Casilio suggested mitigation inside the cul-de-sac instead of reconfiguring the houses. Mr. Palumbo stated that they could possibly do that but these are Federal Wetlands and he does not know if the Army Corp of Engineers would allow them to do that. They would have to apply for the permit and that would take several months. Rather than impacting the wetlands by filling it, the Army Corp of Engineers preference is for the developer to stay away from the wetlands altogether. Mr. Cimato can avoid the wetlands by reconfiguring the lots.

Councilman Kolber stated that by reconfiguring the 7-lots, Mr. Cimato will create 7 double frontage lots. Director of Community Development James Callahan stated that this project was approved under an old law which does not exist anymore. Current legislation would not allow for the amended concept plan. If you don't amend the concept plan and remove the wetlands, it would be acceptable. Mr. Palumbo stated that if they were amending the number of lots or changing it in some way other than reconfiguring there might be an issue. The fact that they are only “moving lots around” does not create a trigger for any new application in the law. Mr. Palumbo is looking for

approval to move forward, amend the concept plan, finish the engineering and get the development plan approved so his client can begin construction.

Councilman Casilio questioned whether Mr. Cimato could do his mitigation inside the cul-de-sac by putting in a pond and keep all the lots as shown in the original concept plan. Mr. Palumbo stated that anything they do to impact any additional wetlands or try to mitigate differently than what they have already done will keep them from starting the development in 2016. Mr. Palumbo has been waiting six months for the Army Corp of Engineers to issue a permit for a project in Amherst. It took them four months to come on site to verify the wetlands for this project. It has been a hardship trying to get this project off the ground.

Councilman Kolber would like to get input from the Legal Department and the Planning Board.

Planning Board Chairman Robert Sackett stated that the Planning Board Executive Committee looked at the project as a legal issue and in terms of options, Mr. Sackett would be open to advice from our Legal Department.

Town Engineer Tim Lavocat

- The Parks Department projects are moving forward. There will be some minor Change Orders to address on the lavatories which will be presented at the next Town Board meeting or the first meeting in January 2016.
- Mr. Lavocat will have a recommendation for the next Town Board meeting relative to changing our service provider for operation and maintenance of our heating and ventilation systems in town buildings.

Highway Superintendent James Dussing

- Highway Superintendent Dussing announced an emergency road closure – Tonawanda Creek at Northfield Road. A culvert between two houses has failed. The project will cost in excess of \$100,000 and will be paid for by Erie County. All necessary agencies have been notified (bus garage, fire control, residence etc.).
- Leaf pickup is almost complete. The brush is all ground up at the pit
- The one man salter trucks are operational
- The salt barn is ninety percent complete
- Erie County Director of Engineering Charles Sickler drove Clarence Center Road (at the speed limit - 35MPH) at the curve near the bike path and did not see the need for a guard rail at this location. He will however review the accident reports and go from there. Superintendent Dussing does not know if the County will do anything but suggested a berm or some type of rail to protect the pedestrians on the bike path.

Supervisor David Hartzell

Motions:

- Grant unpaid medical leave of absence for Parks Employee

The Town of Grand Island passed a law prohibiting trapping on Town property. Supervisor Hartzell will forward the information to the Town Board for discussion at the next Town Board meeting.

Councilman Bernard Kolber – no report

Councilman Patrick Casilio – no report

Councilman Peter DiCostanzo

Motions:

- Approve transfer of funds – Planning and Zoning Department 2015 Budget

Councilman Robert Geiger

Clarence Hollow Association is anxious to get their Christmas lights hung on the Ransom Road Bridge. Councilman Geiger is working with Parks Crew Chief James Burkard to accomplish this in a timely manner.

Motion by Supervisor Hartzell, seconded by Councilman Casilio to enter into Executive Session pursuant to § 105(1) D of the Open Meetings Law to discuss current litigation. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, the Work Session adjourned at 7:26PM.

Darcy A. Snyder
Deputy Town Clerk

Motion by Supervisor Hartzell, seconded by Councilman Geiger to adjourn the Executive Session at 7:30 PM. Upon roll call – Ayes: All; Noes: None. Motion carried. No action taken.

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, December 2, 2015 at the Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell called the meeting to order at 7:30 p.m. Pledge to the flag was led by Councilman Robert Geiger followed by a moment of silence.

Members of the Town Board present were Councilmembers Robert Geiger, Peter DiCostanzo, Patrick Casilio, Bernard Kolber and Supervisor Hartzell. Other Town officials present were Director of Community Development James Callahan, Town Attorney Lawrence Meckler and Town Engineer Timothy Lavocat.

Motion by Supervisor Hartzell, seconded by Councilman Kolber to accept the minutes of the morning work session and regular meetings held November 18, 2015. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Kolber to approve an unpaid medical leave of absence to Parks Department employee Kevin O'Connor from December 3, 2015 to and including January 13, 2016.

On the question, Supervisor Hartzell that the granting of this request is due to extreme, extenuating circumstances for Mr. O'Connor. Mr. O'Connor is subject to the provisions of Article 22 – section 22.2 of the Town of Clarence Blue Collar Unit Contract. Any future requests by Mr. O'Connor or any other persons in the future will be taken on a case-by-case basis at the discretion of the Town Board. The Town Board is not creating a precedence setting policy by granting this request.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to approve the transfer of funds from the 2015 Planning and Zoning Department Budget as follows:

\$200.00 from account 001.8010.0472 – Master Plan Expenses to account 001.8010.0471 – Auto Parts and Accessories.

\$100.00 from account 001.8010.0472 – Master Plan Expenses to account 001.8010.0451 – Repairs and Maintenance.

\$100.00 from account 001.8010.0472 – Master Plan Expenses to account 001.8010.0470 Expense and Travel.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman DiCostanzo reminded everyone to lock their cars and homes. A councilman in Newstead saw someone looking in his garage in the middle of the night. People should be aware.

Councilman Geiger said the Youth Bureau held the tree lighting ceremony a week ago and Santa was there.

Motion by Councilman Kolber, seconded by Councilman Casilio that after proper audit and review by the Town Board, the following bills of December 3, 2015 are approved for payment: General Fund - \$1,279,088.69; Highway Fund - \$448,324.02; Water District - \$219.01; Drainage District – \$9,652.25; Sewer Districts - \$73.01; Capital Fund - \$7,642.11; and Trust and Agency 203 - \$10,941.11 for a total amount of \$1,755,940.20. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger to approve the following uses: Clubhouse Applications - A. Day in the Park Committee – Jan 19, Feb 16, Mar 15, Apr 19 & May 17, 2016; Legion Hall Applications - A. Youth Bureau – Dec. 18, 2015; and B. Heather Vallone – Jan 16, 2016. Upon roll call – Ayes: All; Noes: None. Motion carried.

Towne Automotive Group requests a Special Exception Use Permit for an automotive sales/service operation for Alfa Romeo and Maserati dealerships at 8200 Main Street. James Callahan said the location is the north side of Main Street, west of Westwood Road as part of the Main-Transit Plaza in the Commercial Zone. The applicant is proposing a change in use to an

automotive sales operation. The Town Board will be lead agency as the Planning Board commences a formal review.

Bill Wincott, D. R. Chamberlain Corp. was present representing the applicant. They previously appeared for a Special Exception Use Permit for the building behind BMW for a Maserati showroom. Since then, Towne obtained the Alfa Romeo franchise. The other building would not be adequate. They propose to purchase the Ballow and Louie's Deli building and put on an addition to the front for a showroom and an addition to the rear for service. This would be a dual dealership for both. Louie's Deli will relocate into the plaza to a fully renovated space.

Mr. Wincott said they will be adding greenspace as part of the Town requirements. Lighting will be changed to the same lighting as Towne Mini next door. It will be less than it is now. There will be less traffic than generated by Louie's. The building will get a new façade to freshen it up. They have a contract to purchase the building, which is separate from the plaza.

Councilman Kolber asked if a zero lot line is an issue.

James Callahan said it is a pre-existing non-conforming property. It is a separate piece.

Mr. Wincott said they will have plantings across the front of the showroom and on the islands shown on the drawing that do not currently exist.

Councilman Geiger asked if there is access through the other property to Westwood Road?

Mr. Wincott said the DOT requests cross access. They can cross to Westwood.

Councilman Casilio said he understands that there will not be a lot of traffic generated, but there will be employees. He also asked about another exit to Westwood shown on the drawing. He wonders if it is in error or are they trying to include it.

Mr. Wincott said that is a mistake. They are not touching the Mini property at all. The storage in the back is a leased area that is occupied. They will not have a high inventory of cars for these dealerships.

Motion by Councilman Kolber, seconded by Supervisor Hartzell to refer the request by Towne Automotive Group for a Special Exception Use Permit for an automotive sales/service operation for Alfa Romeo and Maserati dealerships at 8200 Main Street to the Planning Board for review. On the question, Councilman Casilio asked that the Planning Board consider involving a traffic study to their review and the possible impact on Westwood Road and the general area. Upon roll call – Ayes: All; Noes: None. Motion carried.

A Public Hearing was held to consider a Temporary Conditional Permit for an automotive sales operation at 8400 County Road. James Callahan said the location is the north side of County Road, west of Green Acres consisting of a residential use in the Agricultural Rural Residential Zone. The Town Board may consider the use after the required public hearing. Joe Nieman said this application is not part of his business and is purely for a hobby type use.

Councilman Casilio said there has been a lot of activity there, while he says he is not running his business from there.

Mr. Nieman said all he has done is allow friends of the former owner to continue to store their cars in the back building for the winter. They approached him and asked if they could at least store the cars this winter.

Councilman Casilio asked if he is aware of the no display restriction.

Mr. Nieman said he is. This is his home, he has a six-week old child and he has no intention of having customers come to his house to see cars. He likes to dabble in a couple high-end cars a year. Having the dealership license allows him better access to acquire and dispose of inventory. It is a more legitimate way to operate.

Councilman Casilio asked if he could obtain his license at his place of business rather than here.

Mr. Nieman said it is a totally separate thing located downtown. He is not looking to blend the two at all. The business is purely an electronic and digital workplace. He is not going to have cars out for sale with stickers. There is capacity for 30 cars to be stored inside on his property. The most he would have is three cars and it is not his main business. Cars would not be on the lawn for sale.

Councilman Casilio asked if there are any used car operations in the Agricultural Rural Residential Zone.

James Callahan said there are on Keller Road and on Salt Road.

Mr. Nieman said he would not have delivery to his property.

Councilman Kolber said his biggest concern is setting a precedent in this zone.

Councilman Casilio said he also has a concern with it being in this neighborhood.

Speaking to the subject:

Dave Stengel said he lives across the street from this property. His concern is that he has a set of dealer plates and does not have a license. You have to be able to display cars and have signage to get a license. He does not believe that we have the manpower to police this project if it is approved. He does not want to see cars displayed out there.

Councilman Kolber said that is his concern also, but a Temporary Conditional Permit can be pulled.

Mr. Stengel said restrictions were placed on the business next to him that are not being met and no one is policing them.

Ron Mohr said he is afraid that their neighborhood has become commercial. His wife has emailed a few people in the Town about the business next store and never received a response. He is afraid that this project could also get out of hand. It is a residential neighborhood. The nursery never put up trees, shrubbery and a fence along his lot line. It was on the plans.

James Callahan said it is being worked on. There are issues with wetlands and the Department of Agriculture and Markets.

Frank Pellegrino said he does not have a problem with a person running a business from their home. His concern is with the Town policing these businesses. There was a business that was a vegetable stand that turned into a gift shop that ended up burning down. Now we have another business that is not being policed either. The traffic is increasing in this area as it is.

Councilman Kolber said this is a major artery through the town.

Supervisor Hartzell said they have tried to get the County to lower the speed limit and they would not do it.

Councilman Kolber said can someone have the formal distinction for the business with no delivery, no display, not more than 4 or 5 vehicles stored inside be in this neighborhood. If the conditions are not followed and the permit is not renewed, a letter goes to the DMV and he would lose his license. There would be a lot hanging over his head.

Mr. Pellegrino said he had no problem with the storage of the cars. There was never servicing of cars. His only problem is if this gets out of hand and is not what is stated.

Joanne Kohnen said they are not in favor of a business of this type. She has a home business. She was required to get a written letter from five neighbors saying they approved her having a business. She never received such a request from the other businesses that have come along. She wonders who is dropping the ball. They do not feel that they can trust the Town to monitor what is going on. When people do not get their way, they go over the Town's head to a higher department and all the rules set by the Town are now negated.

Councilman DiCostanzo said this application is not required to get letters.

Mrs. Kohnen said the neighborhood feels that by opening the way for all of the things to come in, they have to deal with it when they get out of hand. They want the Town to keep an eye on it. She now has flashing lights from the Christmas tree sales across the street.

Councilman Kolber said Temporary Conditional Permits are issued for a certain length of time with conditions. When they come up for renewal, the first question is have we received any complaints. The Board has not renewed them until they are in compliance.

Councilman Geiger asked if she would be willing to give him six months.

Bob Kohnen said he is not in favor of this. He does not think we should open the door for this because he says it is a hobby. They are a little gun-shy because of what has happened at the nursery across the street.

Councilman Kolber said he has mixed feelings about this. He likes to help people, but also protect the neighbors.

Councilman Casilio asked about the dealer plates that he may already have.

Mr. Neiman said he has wholesale license which allows him two transport plates to be able to buy and sell with a dealer. He is new to the neighborhood and apologizes for the way they are meeting. He can sympathize with the neighbors. The last thing he wants to be is a nuisance. He would like to try and resolve it now if possible.

Councilman Kolber said it sounds that these are his immediate neighbors and it would be wise for him to promote goodwill by talking to them to see if they can come to a compromise.

Councilman Casilio said he has a concern with this location also.

Supervisor Hartzell suggested they go out in the hall and discuss this and come back later to see if they can resolve it tonight.

Eliot Lasky requests Final Plat Approval for Roxberry Subdivision Phase 2 including approximately 1,260 linear feet of Gentwood Drive to accommodate 19 residential building lots. James Callahan said this subdivision was granted Development Plan Approval in April 2015. It is now complete and ready for final plat.

Sean Hopkins, attorney for the applicant said they are ready to move forward and the only remaining issue is a waiver from the street lighting required. This is directly next to the parking lot of Eastern Hills Mall which has significant lighting. There are no street lights on the streets leading back into this area of the subdivision. He asked that the Board consider a minimal amount of street lighting to provide safe access.

Town Engineer Tim Lavocat said we follow our street lighting plan which is every other lot. This would be 4 to 5 lights. Every development is looked at individually.

Mr. Hopkins is asking for a deviation from that requirement.

Motion by Supervisor Hartzell, seconded by Councilman DiCostanzo to grant the request of the applicant for Final Plat approval for Phase-2 of the Roxberry Subdivision including the dedication and the acceptance by the Town of Clarence of approximately 1,260 linear feet of Gentwood Drive to accommodate 19 residential building lots, subject to the following:

1. Final approval of all conditions by Town Engineer and the Highway Superintendent on the construction.
2. All applicable fees.
3. Town Engineer has final approval of street lighting for this project.
4. All documents for the road dedication and any easements are to be submitted to the Town Attorney for review and approval.
5. No building permits shall be issued until the road deeds and easements are filed with the Erie County Clerk's Office and proof of same is submitted to the Town Attorney's Office.

Upon roll call – Ayes: Councilmembers Geiger, DiCostanzo, Kolber and Supervisor Hartzell; Noes: None. Recuse: Councilman Casilio. Motion carried.

Domenic Piestrak requests Final Plat Approval for Spaulding Green Phase 11 including approximately 1,030 linear feet of Alderbrook Lane to accommodate 33 residential patio home lots. James Callahan said the location is the north side of Greiner Road, east of Glenview Drive. Development Plan Approval was granted in March of 2015.

Domenic Piestrak said he has met all of the requirements.

Motion by Councilman Kolber, seconded by Councilman Geiger to grant the request of the applicant for Final Plat approval for Ph-11 of the Spaulding Green Open Space Design Subdivision and the road dedication and acceptance by the Town of Clarence of approximately 1,030 linear feet of Alderbrook Lane to accommodate 33 residential patio home lots, subject to the following conditions:

1. Final approval of all conditions by Town Engineer and the Highway Superintendent on the construction.
2. All applicable fees.
3. All PIP Permits must be paid in full prior to any building permits being issued.

4. All documents for the road dedication and any easements are to be submitted to the Town Attorney for review and approval.
5. No building permits shall be issued until the road deeds and easements are filed with the Erie County Clerk's Office and proof of same is submitted to the Town Attorney's Office.

Upon roll call – Ayes: All; Noes: None. Motion carried.

The public hearing for 8400 County Road resumed.

Joe Nieman said he believes he made some friends and they are on the same page. If he screws up, the permit is removed.

With no one else speaking to the subject, motion was made by Councilman Kolber, seconded by Councilman Casilio to close the public hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman DiCostanzo to adopt the following resolution:

RESOLVED, that after a public hearing duly held on December 2, 2015, and after all interested parties having been heard, the Clarence Town Board grants a Temporary Conditional Permit to the applicant, Joe Nieman, to operate a vehicle sales operation inside the existing accessory structure/barn at the property located at 8400 County Road, subject to the following conditions:

1. Permit granted for six (6) months.
2. No outside display of vehicles for sale.
3. No delivery or transport of vehicles.
4. No repair or detail on the premise.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Geiger thanked the neighbors for working this out.

There being no further business, Supervisor Hartzell adjourned the meeting at 8:35 p.m.

Nancy C. Metzger
Town Clerk