

Town of Clarence
One Town Place, Clarence, NY 14031
Planning Board Minutes
Wednesday December 10, 2014

Work Session 6:30 pm
Status of TEQR Coordinated Reviews
Review of Agenda Items
Miscellaneous

Agenda Items 7:00 pm
Approval of Minutes

Item 1

Regency Builders, LLC/Elliot Lasky
Residential Single Family

Requests an amendment to the previously approved Concept Plan for a 7-lot subdivision at the Helenwood Extension/Roxberry Subdivision Phase 2.

Item 2

Thomas Hall
Agricultural Floodzone

Requests Minor Subdivision Approval to create three (3) new residential building lots at 8845 Sesh Road.

Chairman Robert Sackett called the meeting to order at 7:00 p.m. Town Attorney Steve Bengart led the pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett
2nd Vice-Chairperson Wendy Salvati
Gregory Todaro
Jeffrey Buckley

Vice-Chairman Paul Shear
Richard Bigler
Steve Dale

Planning Board Members absent: Timothy Pazda.

Town Officials Present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Robert Geiger

Other Interested Parties Present:

Leanne Voit
Gregg Smith
Robert Ballard
David Mathis

Leising
Bialkowski
Frank B. Endres
Craig Mathis

Joseph David
Eileen Ballard
Mary Ann Endres
Al Schultz

Chairman Sackett noted that in the absence of Planning Board member, Timothy Pazda, Planning Board Alternate member, Jeffrey Buckley, will be participating in all discussions and voting on all agenda items this evening.

ACTION:

Motion by Paul Shear, seconded by Wendy Salvati, to **approve** the minutes of the meeting held on November 12, 2014, as written.

Jeffrey Buckley	Aye	Steve Dale	Aye
Gregory Todaro	Aye	Richard Bigler	Aye
Wendy Salvati	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED

Chairman Sackett explained that Mr. Callahan will introduce the project. The applicant will have a chance to add comments if they wish. The people from the audience will be invited to add their comments and questions, addressing the Board, not the applicant. The applicant will then be provided an opportunity to answer the questions if he wishes. The Board will then take action as they see fit.

Item 1

Regency Builders, LLC/Elliot Lasky
Residential Single Family

Requests an amendment to the previously approved Concept Plan for a 7-lot subdivision at the Helenwood Extension/Roxberry Subdivision Phase 2.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located south of Sheridan Drive as an extension of Helenwood Drive. It consists of approximately 7.8 acres in the Residential Single Family and Restricted Business zones. The project received a Negative Declaration and Concept Approval for a two (2) cul-de-sac, 10-lot design in February 2013. The project sponsor is requesting a project amendment to allow a one (1) cul-de-sac, 7-lot design.

Leanne Voit, of Greenman Pedersen, Inc., is present on behalf of Elliot Lasky. Ms. Voit said as they got into the final design of the 2 cul-de-sac design, they had some hydrant tests done and found that fire flow wasn't sufficient to service all the lots. After working with the Water Authority, the Town Engineer and the client, they found that the only option they had to improve the fire flow to the end of Helenwood Drive and beyond was to replace the 6" fire water line that runs along Helenwood Drive. That line would be upgraded to a 10", and the Water Authority backs up this concept. The construction of a significant length of 10" water line became cost prohibitive. The petitioner decided to remove one of the cul-de-sacs so this decreases the project to seven (7) lots and an exception parcel. This allows him to lower the cost of the development still being able to put in the 10" water line. The 10" water line will improve the fire flow for the residents that currently live and are serviced off of that line along Helenwood Drive.

Ms. Voit noted that the exception parcel is 2.8 acres in size and is zoned RB, which is a business district. The client does not know what he wants to do with that parcel yet. Another concern regarding this parcel was whether or not multi-family can be considered. At this point the petitioner has worked with the

Board and has come to an agreement on a condition as follows: “The 2.87 acre exception parcel shall not be developed for multi-family purposes since it does not comply with the minimum lot size of 5 acres for a multi-family project as required by the Town’s Multi-Family Law as adopted by the Clarence Town Board on July 23, 2014. If the exception parcel as depicted on the approved Concept Plan, that is mostly zoned RB, is developed for Commercial purposes in the future, then the project sponsor shall be prohibited from installing a driveway connection to Helenwood Drive to provide access to such a commercial project.” The applicant is willing to accept this condition.

Ms. Voit said the other concern that was discussed is the length of the cul-de-sac. If you measure the cul-de-sac back to the first intersection there are 16 lots, both existing and proposed, this exceeds the allowable density of 12. Mr. Hopkins submitted a letter, which is on file and in the record, which addresses the zoning issues and some of the legal ramifications that are involved.

Mr. Voit said that by putting a cul-de-sac at the end of Helenwood Drive it will improve emergency vehicle accessibility. Currently there is just a dead-end street, there is no turn around. There is no way for snow plows or emergency vehicles to turn around. By providing the cul-de-sac it will allow them to loop around and get out in a safe manner. There is no other way to access this parcel except for off of Helenwood Drive, the surrounding property to the south is a large wetland area that is owned by the Western New York Land Conservancy and to the west is Eastern Hills Mall, which is a privately owned entity.

Chairman Sackett referred to the environmental review and the concern about the acceptance of the cul-de-sac as a fire safety issue. In order for the applicant to get a variance to put more than 12 houses on the cul-de-sac, the Board feels the applicant needs to obtain a letter from the Harris Hill Volunteer Fire Company stating that they deem the proposed to be a safe extension. Without that letter the Board could not recommend the project to go forth to the Town Board for a variance.

Chairman Sackett noted that a second issue deals with the variance itself. The Law says there can be no more than 12 houses **and** be no more than 1500 feet from the intersection. Because both of these requirements apply, the applicant would need to go to the Town Board and seek a variance to that condition. The conditions for that variance would mean that the applicant would have to demonstrate a hardship.

Mr. Shear said that at some point, if the exception lot becomes a residential lot, it now becomes number 17 on the cul-de-sac. This may be something the applicant wants to address now rather than come back at a future date.

Mrs. Salvati asked for clarification on the water line, she asked if the 10” water line will provide sufficient pressure for the existing homes as well as the proposed homes. Ms. Voit said it will specifically improve fire flow. She also confirmed that there will be no blasting.

Mr. Todaro asked where the 10” water line will start where it has to be replaced. Ms. Voit said there is an existing water meter pit closer to Sheridan Drive, but not all the way to Sheridan Drive. She does not know the length, but it is the majority of the length of Helenwood. Mr. Todaro asked if all the reclamation will be part of the cost. Ms. Voit said yes.

Mr. Dale asked, “Would that 10” line be of sufficient size to cover the original configuration, the original 10 lot configuration with 2 cul-de-sacs?” Ms. Voit will check with her engineers for a definitive answer.

Mr. Bigler asked if the land between the two homes where the other cul-de-sac was going to go in originally will be left undisturbed. Ms. Voit said at this point yes. It would be a good place for a driveway for a single family home, however, there are no plans.

Ms. Voit clarified that the water line is in the right-of-way.

Robert Ballard, of 4725 Helenwood Drive, said he is unclear regarding the 16 homes that have been mentioned. Chairman Sackett explained that the count starts at the intersection of Brentwood and goes to the end of the cul-de-sac, the number 16 includes the existing homes. So the applicant has produced a cul-de-sac with 16 lots, which violates the code. The Town Board is the only agency that has the authority to grant a variance, with a super majority vote, that has to be based on the applicant showing a hardship.

Chairman Sackett clarified for the audience, that the applicant is building seven (7) new homes, there are nine (9) existing homes that are part of the cul-de-sac. An audience member asked if anyone studied the traffic. Chairman Sackett said a traffic study was done on the original approved plan. Mrs. Salvati clarified that this project was previously approved for 10-lots, the applicant is now proposing seven (7) lots.

ACTION:

Motion by Wendy Salvati, seconded by Gregory Todaro, Whereas, the Planning Board has previously issued a Negative Declaration under SEQRA based upon a 10 lot design with two separate cul-de-sac roads and,

Whereas, the applicant is requesting an amendment to allow for 7 lots with a one (1) cul-de-sac design and one (1) exception lot,

Now, therefore the Planning Board identifies that the Negative Declaration remains in force with the reduction in lots identifying that the reduced number of lots will not have a significant negative impact upon the environment and no additional or further action is required under SEQRA, pending a favorable review and approval by the Harris Hill Fire Chief.

ON THE QUESTION:

Mr. Todaro suggested adding “unapproved” to the description of the exception lot. Deputy Town Attorney Steve Bengart said because it needs an open lot approval, if they want to come back, technically all they have is an exception, which is not approved. Mr. Callahan has identified that it is not an acceptable building lot because it does not have minimum frontage required in the Residential Single Family zone. It can’t be an Open Development because that is not an as-of-right use unless the Town Board approves it. The only thing it could be without Town Board approval is a commercial lot but only with the Planning Board’s approval. By law, it is not an approved lot.

That portion of the motion is amended to read as follow: “Whereas, the applicant is requesting an amendment to allow for 7 lots with a one (1) cul-de-sac design and one (1) **unapproved** exception lot,”

Jeffrey Buckley	Aye	Steve Dale	Aye
Gregory Todaro	Aye	Richard Bigler	Aye
Wendy Salvati	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

ACTION:

Motion by Paul Shear, seconded by Richard Bigler, to **refer** the proposed amendment to the Helenwood Extension (Roxberry Subdivision Phase 2) to the Town Board for consideration of a variance to the Subdivision Law to allow for more than 12 lots on a dead end cul-de-sac, pending a favorable review and approval by the Harris Hill Fire Chief.

ON THE QUESTION:

Chairman Sackett noted that the proposal does not go forward to the Town Board until the condition of receiving a favorable review and approval by the Harris Hill Fire Chief has been met.

Mrs. Salvati asked if the developer agrees that the 2.87 acre exception parcel will not be developed for multiple family residential purposes and that any future commercial use of this 2.87 acre exception parcel shall be prohibited from installing a driveway or road connection to Helenwood Drive. Ms. Voit agreed.

Mrs. Salvati said this variance needs demonstration of extraordinary hardship and requires a super majority vote by the Town Board.

Mr. Shear said if the exception lot becomes a residential lot on Helenwood Drive it represents the 17th home on the cul-de-sac.

Jeffrey Buckley	Aye	Steve Dale	Aye
Gregory Todaro	Aye	Richard Bigler	Aye
Wendy Salvati	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Item 2

Thomas Hall
Agricultural Floodzone

Requests Minor Subdivision Approval to create three (3) new residential building lots at 8845 Sesh Road.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located on the south side of Sesh Road, east of Northfield Road. It is an existing residential and vacant agricultural property located in the Agricultural Floodzone. Per the Subdivision Law the Planning Board has approval authority for such minor splits.

Joe David, with Realty USA, is present and representing Thomas Hall. Mr. David said they are proposing three new building lots with a minimum of 150' road frontage, approximately 2500 feet in depth. This equates to approximately 8.5 acres per lot. The applicant feels this is an adequate approach to the area based on the surrounding properties in the neighborhood. It is approximately 50 acres in total.

Dave Mathis, of 8800 Sesh Road, asked what will happen to the rest of the land which is lot 4. Will it end up another 3 or 6 lots? You will end up with 6 houses on an area of road that can't handle it. Maybe the guy across the street will want 6 or 8 houses, next thing you know you will have a subdivision on a street that is a floodzone.

Craig Mathis, of 880 Sesh Road, asked if there is any consideration given to the person who buys the lot and then figures out that they can't manage the water on it. When Mr. David sells these lots is there something that protects the people so when they buy the lot they know that they can actually build on it? Does the seller need to prove to the Board damages if they don't get approved to split this into three lots, if they are requesting to sell two large lots for the same amount of money and there is more potential leeway and value to the new purchasers and the builders? Does the seller have an obligation, if they were held to the idea of 4 lots, does the sale of two of those lots have to be less valuable than a smaller price on three lots, is this considered part of the approval process? Chairman Sackett said, no that has nothing to do with this step. What the Board is considering at this meeting is the lot split only, if it was a different configuration it would have to be a separate application and process. Mr. Mathis asked if a condition of the lot split approval could be damages should it not be approved, should it be held to a standard of four or is it within the Board's purview to put the stipulation on that you will approve it pending that lot 4 can never be added to and become a large subdivision. Chairman Sackett said that would be another application and another consideration. So it is neither a request nor a stipulation at this point. Mr. Mathis said by approving this it will not limit them in making this a 6 lot property in the future, which any common sense says that will be the next step. Chairman Sackett said if there are any changes to the plan that is currently before the Board it would have to be a separate application. Mr. Mathis asked if somebody buys a lot it might be impossible to build on a 150' lot, three of them in a row and meet the environmental study, are they under any obligation to study that prior to selling the lots.

Jason Reitmeier, built next to the parcel in question 8 years ago, he grew up across the street. He had to have at least 210 foot of frontage because of the water table. There is a lot of water that flows through the area and if you look at the way the land is laid out and the way the houses are laid out on Sesh Road, there is no way you can put three houses there like that, it won't even look right. The houses are at least 200 feet apart and he thinks it is because of the waterways. If three houses are built there they will be built up to get out of the floodplain. Chairman Sackett reminded everyone that the Board is not looking at building homes at this meeting, he does note however that building a home does require engineering approval. Mr. Callahan said all the property is located in the Density Floodzone, the Town has a separate ordinance related to the Density Floodzone and how you can build in it. On east west roads the minimum frontage is 150', the minimum depth is approximately 500' to get to 1.33 minimum acres. When the Zoning Law was created they matched the Density Floodzone requirements in the Town Floodplain ordinance. The north south roads have a minimum of 350' of frontage. This project complies with the Flood Law. Any future construction has to go through the Floodplain Administrator which is the Town Engineer, which Mr. Reitmeier did when he applied for his building permit, the same things have to happen. This represents the minimum frontage allowed in that zone on an east west road in the Density Floodzone.

Mr. David said they felt the minor subdivision was appropriate for this parcel, with 50 acres they could have approached the Board with a major subdivision, this is not their intention. The applicant talked to the Planning Department and the Engineering Department before they proposed the three lots. Engineering felt the first 600-800 feet are not in the Floodplain based on the current maps. The applicant would need elevation surveys before anyone was to build there. Mr. David was involved with all the parcels that were split to the other side and three (3) out of the six (6) were not in the Floodplain were they built which is approximately 200 feet back. They have all intentions of making sure these are saleable buildable lots before they sell them, which would be a condition in the contract. Mr. David referred to the 25 acre parcel with the old barn house on it, lot 4, and said he leaves that open. He would not say that they would never come to the Board for an Open Development there, that may be in the future, but not at this time. There are no plans for that at this time.

ACTION:

Motion by Gregory Todaro, seconded by Steve Dale, pursuant to Article 8 of the Environmental Conservation Law, to **issue** a Negative Declaration on the proposed Hall Subdivision located at 8845 Sesh Road. This Unlisted Action involves the approval of a minor subdivision to allow for three (3) new building lots in the Agriculture Flood Zone. After thorough review of the submitted site plan and EAF it is determined that the proposed action will not have a significant negative impact upon the environment.

ON THE QUESTION:

Deputy Town Attorney suggested the motion include the following: To **accept** the Short Environmental Assessment Form as submitted and prepared as complete.

Gregory Todaro agreed to amend the motion to include the above, Steve Dale also agreed.

Jeffrey Buckley	Aye	Steve Dale	Aye
Gregory Todaro	Aye	Richard Bigler	Aye
Wendy Salvati	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

ACTION:

Motion by Gregory Todaro, seconded by Steve Dale, to **approve** the minor subdivision application of Thomas Hall to allow for 3 new lots in the agriculture Flood Zone as per the submitted site plan as submitted on 12/1/14, with the following conditions:

1. Subject to Flood Plain Administrator review and approval for future construction activities.
2. Subject to Erie County Health Department approval on any future on-site sanitary systems.
3. Subject to Town Building and Engineering approval on any future construction on the new lots.
4. Subject to Town of Clarence Highway Department review and approval on any future driveway access points off of Sesh Road to the new lots.

ON THE QUESTION:

Mrs. Salvati said that if this proposal comes back in the future for any additional lots it would be considered a major subdivision.

Mr. David asked if lot 4 was eligible for an Open Development, would that mean major subdivision approval. Mr. Callahan said the Open Development requires a Full Part I Environmental Review and a full coordinated review among all involved agencies, whether it's minor or major. Mr. David understands.

Jeffrey Buckley	Aye	Steve Dale	Aye
Gregory Todaro	Aye	Richard Bigler	Aye
Wendy Salvati	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Meeting adjourned at 7:40 p.m.

Carolyn Delgato
Senior Clerk Typist