

Town of Clarence  
One Town Place, Clarence, NY 14031  
**Planning Board Minutes**  
Wednesday April 17, 2013

**Work Session 6:30 pm**

Status of TEQR Coordinated Reviews  
Review of Agenda Items  
Miscellaneous

**Agenda Items 7:30 pm**

Approval of Minutes

**Item 1**

Lavocat’s Family Nursery  
Agricultural Rural Residential

Requests review of a proposed nursery/greenhouse use at 8441 County Road.

**Item 2**

Dominic Piestrak  
Residential Single Family

Requests Preliminary Concept Review of a proposed Open Space Design Subdivision located on the south side of Clarence Center Road, east of Creekview Drive.

**Item 3**

Northwoods Open Space Design Subdivision  
Residential Single Family

Public Hearing on Draft Supplemental Environmental Impact Statement (DSEIS).

Chairman Robert Sackett called the meeting to order at 7:30 p.m.

Richard McNamara led the pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett  
Timothy Pazda  
Richard Bigler  
Steven Dale

2<sup>nd</sup> Vice-Chairman Paul Shear  
George Van Nest  
Gregory Todaro

Planning Board Members absent: Vice-Chairperson Wendy Salvati

Town Officials Present:

Director of Community Development James Callahan  
Junior Planner Michael Hutchinson  
Deputy Town Attorney Steven Bengart

Other Interested Parties Present:

Bill Coffed	Dave Horbinski	Ralph G. Schaller
Dorothy B. Schaller	Rick Ravjiu	Ann Marie Stengel
Jeffery Marquart	Lori Barany	Ronald Mohr
Lynn Honsberger	Sandra Honsberger	Rita M. Grabowski
Thomas Fini	Charles Greene	Chris Greene
Bill McGrath	Kenneth Peterson	Kenneth Moreno
Tom Gaffney	Phyllis Whitchurch	Lisa Smith
Susan Lozinak	Mark Lozinak	Mickey Druar
Jack Hesslink	Barb Walleshauser	Karen Willyoung
Rob Lane	Dan Ettipio	Steven Jagord
Paul Hufnagel	Cheryl Hufnagel	Beverly Polito
Sharon Siminski	Bob Dickinson	Marilyn Jelliff
David Spoth	Peggy Spoth	Vincent Salvatore

In the absence of Vice-Chairperson Wendy Salvati, alternate Planning Board member Steve Dale will be participating in all discussions and voting on all agenda items this evening.

Motion by Paul Shear, seconded by Gregory Todaro, to **approve** the minutes of the meeting held on March 20, 2013, as written.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Abstain	George Van Nest	Abstain
Timothy Pazda	Aye	Paul Shear	Aye
Robert Sackett	Abstain		

MOTION CARRIED.

Motion by Paul Shear, seconded by George Van Nest, to **approve** the minutes of the meeting held on April 3, 2013, as written.

Steve Dale	Abstain	Gregory Todaro	Abstain
Richard Bigler	Aye	George Van Nest	Aye
Timothy Pazda	Abstain	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Chairman Sackett explained that Mr. Callahan will provide information on the projects and will advise whether the Planning Board has approval authority or if that authority lies with the Town Board for each project. The petitioner will discuss the project with the Planning Board. The public will be invited to speak. The Board and/or the petitioner will address the questions/comments from the public. The Planning Board will then take an action.

**Item 1**

Lavocat’s Family Nursery  
Agricultural Rural Residential

Requests review of a proposed  
nursery/greenhouse use at 8441 County Road.

**DISCUSSION:**

Jim Callahan provided the history on the project noting that it is located on the south side of County Road, east of Westminster Drive. It is existing vacant land located in the Agricultural Rural Residential zone. The proposed nursery/greenhouse use is identified as a permitted use in the Agricultural Rural Residential zone. The project has been referred by the Town Board to review the specific site plan details associated with the project.

Sean Hopkins, of the Hopkins and Sorgi Law Firm, is representing the Lavocat family. Don Lavocat, Don Lavocat Jr., Chris Lavocat and various family members are present. Mr. Hopkins said that pursuant to §229-37 of the Town Zoning Code greenhouses and nurseries are permitted uses, thus the property is properly zoned. The project consists of a 19,000 square foot single story greenhouse. The Lavocat's purchased the property earlier this year, prior to proceeding with the closing of that purchase they checked to confirm that the property was properly zoned. The Lavocat family has been in business in Clarence for approximately 32 years. They currently have a nursery located at 9855 Heroy Road; it is also an agricultural use. They have a great reputation, no history of any problems with the Town of Clarence or any other governmental agencies. The project will create about 10 jobs. This is the next step in terms of the evolution of the Lavocat's family agricultural businesses, Mr. Lavocat hopes his children will continue the business. In terms of the SEQRA this is a Type II Action, meaning it is categorically exempt from any environmental review pursuant to SEQRA. The applicant has met with the Planning Board Executive Committee and was before the Town Board, they believe their attendance at those meetings, along with this meeting, is voluntary. They don't believe this project requires any discretionary approvals from any Town of Clarence municipal boards, but they recognize the importance of doing their best to working with the Town's boards as well as adjoining property owners and they will do their best to address their concerns.

The applicant's met with the Planning Board Executive Committee who suggested some changes to the plan. One suggestion was to move the parking spaces so vehicles won't shine headlights onto adjoining properties, that change has been made. Another suggested change had to do with deliveries to the site, the applicant now shows a driveway leading back to the middle of the greenhouse that will be utilized for such deliveries. A dumpster had been added and will be properly screened and landscaped. Green space and landscaping has been added along County Road. They will meet with the Town's Landscape Committee to finalize the landscaping.

The applicant was previously requesting a variance for a parking lot on County Road; they are no longer seeking that request.

Per State Law, the local municipality's ability to regulate this agriculture use is limited, however the applicant has agreed to certain conditions that were prepared by the Planning Department. Those conditions are:

- a. No outside storage of bulk materials in the required front yard setback areas; there will be no bulk storage along County Road.
- b. No equipment storage in the required front yard setback area. Any equipment stored outdoors would be on the east side of the proposed greenhouse.
- c. Parking areas and driveways to be paved.

- d. No other non-agricultural related businesses, including landscape contracting and sales of items not normally associated with a nursery/greenhouse operation.
- e. Subject to review and approval by the Town Engineer associated with grading and drainage facilities on the site including any necessary permits and stormwater management techniques.
- f. Subject to review and approval by the Town of Clarence Building Department for required building permits and compliance with NYS Uniform Fire Protection and Building Code.
- g. Subject to review and approval by the Erie County Health Department for on-site sanitary facilities.
- h. Subject to landscape plan approval by the Landscape Committee prior to final Certificate of Occupancy.

Mr. Hopkins said the site plan shows 48 parking spaces because they want to make sure all customers can park in the parking area and not on County Road, especially during their busy season. The applicant would like to start the project this year and be ready for occupancy by Spring of 2014. The hours of operation will be from 8:00am-8:00pm (sundown) during their busy season which is Spring to Fall.

Chairman Sackett asked for details on outside lighting. Mr. Lavocat said they did not get that specific with the plan, yet, but would have lights on the greenhouse shining onto the parking area, just facing the street. Any lighting would not go beyond the property line.

Mr. Dale asked where the bulk material would be stored. Mr. Hopkins said an example of storage would be mulch or equipment such as fork-lifts, those items would be stored behind the greenhouse, far away from the adjoining property owner on County Road. It is clarified that storage would be restricted from the front yard setback and also from the outdoor growing area.

Mr. Todaro asked if there was an expansion of parking where would that occur. Mr. Hopkins said additional parking could be added to the east side of the driveway that runs back to the dumpster and the greenhouse.

Mr. Hopkins said the Lavocat family has an existing landscaping business in which they provide landscape services, that business will remain at their existing location and will not be coming over to the County Road location.

Mr. Bigler asked about signage at the proposed location. Mr. Hopkins said signage has not been discussed yet, but the applicant would do something tasteful and they are aware of the requirement to obtain a sign permit.

Mr. Shear explained that dark sky lighting means that all the lighting is down and remains on the property. The applicant understands this. Mr. Shear asked how many days a week the business will be open. Mr. Hopkins said the business hours will generally be 8:00am-5:00pm on Sundays, and 8:00am-8:00pm (or dark) Monday through Saturday.

Mr. Lavocat said they do not grow the Christmas trees that they will sell. Mr. Hopkins noted that this is permitted per the NY State Agriculture and Markets Law. Mr. Lavocat said they make Christmas wreaths to sell, as well.

Lisa Smith lives on Westminster Drive. She is an attorney with Phillips Lytle. She checked the zoning of this property before she purchased her home on Westminster Drive. It is her understanding that at the March 27, 2013 Town Board meeting they decided to send this project to this Board to define the parameters of what the Lavocat business can and cannot do on the property. This is a successful family business grown in Clarence that is very valuable and should probably be kept in the Town. On the other hand there is a neighborhood of adjacent homes that have been valued by the Town between \$400,000 and \$700,000; these are owned by people who are also making investments in the Town. Ms. Smith said the Town can be on the hook when a development causes water encroachment on neighboring property. She is concerned with two big issues: one, is this a use that is permitted in the zoning classification and two, what about the water? Where will it go and who will be responsible for damage caused by it? It is clear to Ms. Smith that the permitted use in the Agricultural Rural Residential zone does not include a retail nursery or greenhouse; a non-retail nursery or greenhouse is permitted. This project is clearly a retail operation as evident by the 48 parking spaces for customers. She referenced the Zoning Law and asked where a retail nursery and greenhouse is permitted. She said it is explicitly provided for in a Commercial zone under Article X. This property is not zoned Commercial so she would submit to the Planning Board that this is not a permitted use. She requested that this Board do a careful review and recommendation and make the recommendation back to the Town Board. She said there seems to be an acceptance that this particular use is within the zoning. She said half of the Lavocat property is designated FEMA floodplain and Federal Wetlands, some of her property is designated Federal Wetlands. What will this project do with the water? She believes that SEQRA review is required because of the wetlands; an environmental impact statement would be a good thing to have for this project for many reasons. It would protect the Town's and the taxpayer's interests. She has not heard anything regarding the use of fertilizers on this property.

Attorney Tom Gaffney is present on behalf of a few of the residents. He said the zoning issue is clear and crucial. The Agriculture and Markets Law has to be taken into consideration as well. That law says that if you grow something on a piece of property you are able to sell it there. Because of the distinction in the Zoning Laws a commercial operation cannot be operated in that location. Mr. Gaffney thinks that a greenhouse has already been determined to be a permitted use; how far the Lavocat's can go with it is what the Planning Board is here to determine. The idea that this is already approved isn't entirely true based on that limitation.

David Stengel lives 150' from the project. He holds up an aerial view of the Lavocat's current business location and voiced his concern regarding the appearance. He said they are in violation of the State Building Codes and the Agricultural Codes. Mr. Stengel presents six (6) copies of a report for review by the Planning Board members; the copies are distributed. He is looking for the Board's consideration; this project doesn't meet the zoning.

Ronald Mohr owns the property on the west side of the project site. He is concerned about the location of the parking lot and how close it will be to his property line. The whole project runs along the side of his property; he would have no privacy in his backyard. He is also concerned with what the applicant will store there, will there be chemicals? He voiced his concern with safety issues, County Road is busy, people jog and bike on that road. He questioned the need for so many parking spots. Of all the other businesses he sees in the area he does not know of anyone who has that many. He doesn't believe this business should be in his neighborhood, it should be down the road where it is zoned

differently. He thought that if it is considered a greenhouse what you grow there you can sell, but they talked about deliveries coming in there with mulch and other items. If they start with mulch, then they will bring in top soil and then what's next?

Lori Peroni, of 8522 County Road, has reason to believe that the Lavocat's intent is to operate a retail commercial business. If this is true, then it is not compatible with adjoining land uses. She wants to preserve the character of the neighborhood which consists primarily of single family homes in a country setting. A nursery garden center will not be consistent with the character of the neighborhood. The predominant land use is residential. As of 2012 there were a recorded 91 homes on County Road, any businesses are east of Heise Road in an industrial zone. This garden center is going to generate a significant increase in traffic resulting in a demand on community services like police and fire protection. In addition, they will be using herbicides and pesticides resulting in poor air quality as well as fumes from cars. The noise from the cars and daily operations will exceed ambient noise levels. Ms. Peroni said she has photos showing her concern over their housekeeping; she said town codes are being broken. She said all the neighbors are worried this will occur at this site too. The photos are distributed to the applicant to review. Ms. Peroni said the Lavocat's list this land as 23 acres, this is not correct. She explained that part of the acreage was divided and sold to seven different neighbors on Westminster Drive resulting in the Lavocat's owning only approximately 9 acres. She wants to know how much of that 9 acres is wetlands versus farmable land.

Mike Olsen lives behind the project site and asked what the distance is from the back of the greenhouse to the back property line. He asked if there would be lights shining on the back of the property.

Salvatore Mameli, of 8505 County Road, said he main concerns are nursery, growing outside, pesticides and other chemicals being used, drifting of the air, air quality, water quality. He is surrounded by wetlands. He is a disabled Vietnam Veteran with Agent Orange being one of the problems that he has; he tries to minimize being in the midst of any other exposure. It becomes a major issue when he goes out in his yard and he smells pesticides, it affects him.

Sharon Siminski, of 8485 County Road, is concerned with the water. She is surrounded by wetlands. Since the new gated community she has more water being pushed into her backyard and it doesn't dry out right away; she can't cut the yards until late into the Summer.

Mr. Hopkins addressed the comments that suggested this is not a permitted use, he referred to §229-37 (L) of the Zoning Code which lists greenhouses or nurseries as a permitted use. He addressed the comment suggesting that a SEQRA review is necessary and that the result of that review would be a Positive Declaration and the preparation of an environmental impact statement. Mr. Hopkins referred to the SEQRA Regulations 6NYCRR Part 617.5E & C3 which states: agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures and other land use changes consistent with generally accepted principles of farming are designated Type II actions which do not require the preparation of an environmental assessment form and are not subject to compliance with the State Environmental Quality Review Act. There is also case law that states this standard repeatedly.

Mr. Hopkins said there are homes close by that are very valuable and very nice, but the site is zoned Agricultural Rural Residential and this proposal is an allowed use. For the past couple decades the Town has gone out of its way to ensure the agricultural uses that exist are protected, new agricultural uses are permitted and to preserve the agricultural heritage of the Town of Clarence, this is recognized

in the Zoning Code and Master Plan 2015, the Town's Right to Farm Law, etc. The Lavocat's will work with the neighbors to address their concerns as best they can; they want to be good neighbors.

Mr. Lavocat addressed the photos that were provided showing their business on Heroy Road. He said they are involved in a plastic recycling initiative where they take all of their plastic to Niagara Falls where it is shredded and used for diesel fuel. They even encourage their customers to bring back their plastic for recycling. The neighbor took pictures of those boxes/containers that hold the plastic. One of the other pictures shows a pile of cardboard because they recycle all of their cardboard as well. Mr. Lavocat addressed the water concerns noting that there will not be any more run-off from this property than there is now. The ditches in the area are in such poor shape that the applicant is going to get the County out there to clean up the ditches. As far as the pitch of the land, there is 3' of pitch on the front of the land from one corner of the property to the other so there will be no standing water problems; there is good drainage out there. Mr. Hopkins said they will have to technically prove that there will be no drainage problems and they are ok with that.

Chris Lavocat clarified that there is approximately 300' between the back of the greenhouse and the back property line. He goes on to say that they have already addressed the property line and will install a 4' hedgerow along the corner of the property to help buffer the neighbors of Westminster Drive. The applicant has no problem with the Board requiring Landscape Committee Approval.

Mr. Lavocat said they use minimal pesticides, they do not use herbicides. They use insecticides and fungicides but it will be minimal and only used in the back of the greenhouse. They use chemical auto-foggers which limits the amount of pesticides and limits the water so that there is no run-off. The auto-foggers are used at night and inside the greenhouse, there will be no drift in the air whatsoever. Mr. Lavocat is licensed by the DEC to use pesticides and his storage of pesticides was just recently inspected by the DEC. Shrubs will be grown outside the greenhouse but they do not spray the shrubs with pesticides or herbicides or insecticides or fungicides.

The applicant agreed that the Town Engineer will need to review and approve the stormwater management plan. The applicant will ultimately be responsible if the rate of run-off on the property has increased after development. The applicant's intention is to put a water collection system on the greenhouse so most, if not all, the water will be reused for water application inside the greenhouse.

Chairman Sackett said there is a 15' side yard setback requirement; the applicant shows 16' on the plan.

The applicant confirmed that there will be no lighting on the back of the property or on the growing fields.

Mr. Lavocat explained that this is not a commercial operation. Everything that will be sold on the site as far as plant material will be grown on site. They will grow perennials, annuals and shrubs which will then be sold from the site.

It is clarified that the location of any floodplains will be identified through the building permit issuance process and through engineering approvals.

**ACTION:**

Motion by George Van Nest, seconded by Gregory Todaro, to identify the proposed nursery/greenhouse operation located at 8441 County Road in the Agriculture Rural Residential Zone as an as of right use and as a Type 2 Action under SEQRA with the understanding that the proposed use is to sell the products grown on the property and such other products as identified and acceptable in Agriculture and Markets Law. This action is identified as per the site plan from Arete Architects dated 4-09-13 and subject to the conditions previously identified and stated by the applicant’s council, Mr. Hopkins, and as agreed to by the applicant this evening, specifically conditions a-h.

**ON THE QUESTION:**

Condition (a) is amended to read: No outside storage of bulk materials in the required front yard setback or outdoor growing areas. Mr. Van Nest and Mr. Todaro both agree to the amendment.

All lighting is to be dark sky lighting; no lighting shall spill over to adjacent properties. This condition is added to the motion and agreed to by Mr. Van Nest and Mr. Todaro.

It is noted that in the area of the project site, there is primarily a south west wind so if there were emissions it would be carried in that direction.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	George Van Nest	Aye
Timothy Pazda	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

**Item 2**

Dominic Piestrak  
Residential Single Family

Requests Preliminary Concept Review of a proposed Open Space Design Subdivision located on the south side of Clarence Center Road, east of Creekview Drive.

**DISCUSSION:**

Jim Callahan provided the history on the project noting that it is existing vacant land located in the Residential Single Family zone. The applicant is present to discuss an Open Space Design Development and to request an initiation of an environmental review. The project was previously referred by the Town Board and introduced to the Planning Board in May 2012. The action was tabled pending additional information.

Dominic Piestrak is present. He explained that the plan involves an alley way and houses that you would expect to be built in the early 1900’s. The lot sizes vary. A public hearing was held and some concerns included traffic, density and water problems. Mr. Piestrak is proposing the continuation of the alley way to Kamner Drive with a blockage of a break-away pole in case the fire department ever had to gain access. He could accommodate three ranch style homes but that is not the style he wants to do.

Chairman Sackett said the environmental review may impact the design, making it premature to discuss the design but he asked how there would be public access to the retention basin on the south side of the property. Mr. Piestrak said he is proposing the continuation of the bike path to connect to Clarence Center. Chairman Sackett said the width of the alley ways will be dependent on the fire department's input. He also noted that if Mr. Piestrak had used the whole area as a development he could have put 60+ homes in. The Town has recently created a Clarence Center Overlay Committee who will review the Concept Plan and offer their input.

Mr. Pazda asked about the main roadway. Mr. Piestrak said that will be a public road and the alley ways will be private roads maintained by the Home Owners Association.

Mr. Dale asked if parking will be allowed on the alley ways. Mr. Piestrak said he hadn't thought about that. There will be space for at least two cars behind the garages. The alleys have to be wide enough for a fire truck to get down so a vehicle could probably be parked on one side. The alley ways are currently designed 14' wide.

Vince Salvatore, of 9725 Clarence Center Road, asked how deep the buffer is on the south end of his property, as well as the east side. He voiced his concern regarding the proposed density saying it is a tremendous difference from what we see in the Town in terms of current development. If you look at the existing lot sizes of the homes in the area compared to what is proposed, you could fit five properties on the project site. If this is approved, there will be more projects of this nature to follow, there will be more commercialization, there will be a widening of Clarence Center Road. He said maybe 15 homes could go there, not 39. He asked how many floors will be in the homes. There will be a drastic change in the landscape and he does not think it should be done.

Phyllis Whitchurch, self-employed attorney, lives at 8795 Stahley Road. His mother, Elizabeth Whitchurch, owns 5871 Kamner Drive and has lived there for 51 years. Phyllis Whitchurch understands the property characteristics and knows the drainage issues personally; she grew up playing on the proposed project site and knows where the problems are. She has been asked by the Honorable Michael Powers to advise the Planning Board of his firm objection to this project. He was unable to be at the meeting tonight but has stated that he will be submitting his written comments to the Board for consideration. Ms. Whitchurch wants to know why this project has been separated and is being considered independently from the overall Spaulding Green development. If you look at all the original maps and applications for Spaulding Green, this piece of property is there and is listed as an exception. She has been told there is now going to be a connection with a bike path so this proposal is nothing more than an expansion of Spaulding Green and if this is the case then this project should have been presented with the original application. For that reason alone, this should not be considered because it is now a back-door application. There is no basis for authorizing this project under the prior impact studies. She voiced her concern regarding increased traffic. The soccer complex adds major traffic congestion to the area. She mentioned lead and asbestos concerns because people did a lot of target shooting in that field. There is a sandbank full of ammunition that runs along the edge of the creek; it would be beneath that extension for the retention pond.

Paul Hufnagel of 9715 Clarence Center Road said his concern is that a huge number of people are being moved in next to an agricultural property. During the Summer an irrigation pump is operated so there is a noise issue. During the Spring and Fall there is plowing that goes on so there may be a dust issue. During the growing season there is agricultural dust used, so there may be an issue with insecticides. Mr. Hufnagel asked if this density is seeking condo status.

Ralph Schaller has lived at 5921 Kamner Drive for over 40 years. He said assumes the alley way is through the fire laws, in other words this cannot be built without that alley way. He bought his property because there was no through traffic in the area. It had security, anyone who came into the area you could identify easily. Now there are a lot of children there and they use the jogging track, which is safe. With that alley way open that safety is gone. There will be high impact housing and those people will come down to Kamner and Creekview Drive. This is not good for the security of the area. If the alley way is not a State Law or a fire law he is opposed to any type of alley way to Kamner Drive.

Mark Lozinak, of 5930 Creekview Drive, said a huge concern last year was with this was the problem with Sewer District #2 and he wondered if this has been solved/addressed. He referred to the private alley and said he was told that it is not the developer's choice what goes in there; it is the Town's choice. If the Town said they want a road there, a road goes in. The developer can't say, "I want an alley." The developer has no say as to whether a road or an alley goes in there. If he lived there he would not want an alley running behind his house. Anyone who backs up to the alley will put up a fence. Mr. Lozinak said this proposal is too dense, 15 homes in that area would be good.

Dave Spoth, of 9815 Clarence Center Road, invited the Board members to visit his home to see what he looks at from his deck, there is a field and is totally different from what is being proposed. He understands that something will be built there. This goes beyond "not in my backyard", it is "not in my Town."

Bill McGrath, 5891 Kamner Drive, he asked if there is a 60' public road at the front of the lots. He asked about lighting around that road and across the various alleys. What concerns would be made for security? Is there any protection to the Kamner Drive residents that that open space is not encroached on from the alleys and then becomes a parking lot for boats and recreational vehicles?

Ken Moreno, of 5865 Kamner Drive, said there is a 100' open space buffer, those properties behind his house are not 100', and he wants to know what the distance is there. He came to Clarence for the sprawl.

Chairman Sackett said an environmental review has been suggested for this proposal. He explained that an environmental review considers the comments heard this evening, the written comments over the next 30 days and the comments of the involved agencies. The site plan is not being approved this evening, nor is the density or the width of anything.

Mr. Piestrak said Sewer District #2 believes they have capacity that was brought about by the decommissioning of the lift station. Mr. Piestrak will still have to run some tests to satisfy the DEC and Erie County Sewer. Originally, this was an exception in the impact statement because there was no sewer capacity, there was no way to get an approval until sewer capacity became available.

Mr. Piestrak wants to make this project its own Home Owners Association. He would like to put old fashioned lights in the neighborhood. He referred to the question regarding the 100' buffer and said it looks to him like 80'; the lots can be re-sized. The open space will be controlled by an easement.

Chairman Sackett explained that the Executive Committee asked Mr. Piestrak not to make this project part of Spaulding Green because they recently approved Phase 11 (eleven). There have been numerous amendments and changes; it was time to put an end to the change process and this should be considered as a standalone project.

Chairman Sackett noted that Kamner Drive is a truncated road, which means you can expect it to be extended at some point. When you don't see a turn-around on a road that means the plan is to extend it. Chairman Sackett said the Planning Board Executive committee meets on Monday mornings at 9:00 am; this meeting is open to the public. The committee sets the agenda and makes suggestions of the petitioner that they think will make things easier. It was specifically asked if Phase 11 was part of Spaulding Green and the answer was no. It was no listed as an exception, it was listed as a blank.

Mr. Piestrak is not building the homes, Mr. Pazda asked how he will control the style of home that will be built. Mr. Piestrak said he will submit the plans to the new board in Clarence Center, and he will come up with a manual showing the features that will be maintained in the home. The homes will be 2-story. He is not applying for condo status. He would like to build the bike path going east, but it is not definite, yet.

Mr. Shear wants to make sure everyone understands that this is an Open Space Design, which requires 50% open space. The plan depicts the areas that are to remain green in exchange for higher density and smaller lots. He reiterates that this property is not connected to Spaulding Green and is in Sewer District #2. Whether there is capacity in that district to service this project is yet to be seen. Mr. Shear said there is a TND (Traditional Neighborhood District) guideline for Clarence Center; it is part of what the oversight committee of Clarence Center will use to look at the various facets of what the applicant is proposing.

Mr. Dale said in light of the disclosure regarding the use of the land for shooting and lead being present should the environmental assessment form be amended to indicate that this is a possibility. Mr. Van Nest said it is not known for sure that it has been disposed of there, there are allegations that shooting took place but whether or not it exists in the soil on the site will have to be determined by Phase II, which the applicant may or may not wish to do. Deputy Town Attorney Steve Bengart said by including a statement on the EAF, to be distributed to involved agencies, will acknowledge the issue.

**ACTION:**

Motion by Paul Shear, seconded by George Van Nest, pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Part 1 Environmental Assessment Form as amended and to **recommend** that the Town Board seek Lead Agency status and commence a coordinated review under SEQRA on the proposed Open Space Design Subdivision south of Clarence Center Road and east of Creekview Drive. This Type I Action involves the development of a 39 lot residential subdivision in the Residential Single Family Zone.

**ON THE QUESTION:**

Mr. Shear noted that the maximum build-out available to the applicant is 60-65 homes; this proposal is significantly smaller in terms of the number of houses, the sizes of the lots and the sizes of the houses.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	George Van Nest	Aye
Timothy Pazda	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Timothy Pazda recused himself and left the dais.

**Item 3**

Northwoods Open Space Design Subdivision  
Residential Single Family

Public Hearing on Draft Supplemental  
Environmental Impact Statement (DSEIS).

**DISCUSSION:**

Jim Callahan provided the background on the project noting that it is located on the north side of Greiner Road between Shimerville Road and Thompson Road. It is existing vacant land located in the Residential Single Family zone. The applicant has proposed an Open Space Design Subdivision for which a Positive Declaration and a Draft Supplemental Environmental Impact Statement (DSEIS) have been accepted. This hearing represents the public hearing on that DSEIS, seeking public input on that draft.

Corey Auerbach of Damon Morey LLP is present on behalf of the petitioner; he is joined by Mr. Cimato and the engineer on the project. Mr. Auerbach said they are present to receive comments and recommendations on the environmental issues associated with the project.

Chairman Sackett said the comment period will be left open until May 1, 2013. The document is on file in the Planning and Zoning Office as well as the Clarence Library.

Thomas Fini, of 5447 Shimerville Road, asked if the creek that runs north on the west side of the property will be opened up by the Town or by the people doing this project so that water can flow down easily. That area floods now.

Karen Willyoung, of 9080 Greiner Road, referred to the wetland designations and said wetland "c" which is behind her property, has increased from .96 acres in 2001 to 2.29 acres the last time it was surveyed. She asked why it would increase and is it likely to increase more? She asked if there is any information on the oil pipeline that runs through the property.

Mr. Bigler asked if the sewer count includes the existing homes on Country Club Lane; will those homeowners be offered an opportunity to join the sewer district. Mr. Cimato said he has 150 taps available to him; he needs 149 for this project. It is clarified that right now Country Club Lane would not be included. Mr. Bigler asked if the road will be improved if this project moves forward and will it be used as a construction access point for the development. Mr. Cimato said the road would be improved and brought up to Town standards. As far as construction access, construction would probably start at Roll Road and work its way in.

Mr. Dale said a buffer of no less than 50' will be required along the Gott Creek tributary and that buffer may need to be adjusted.

Mr. Shear noted the comment that was made regarding the change in size of the wetland and asked if the applicant could comment on that issue. Jess Sudol, of Passaro Associates, said one reason the size of the wetland changed was because in 2010 the wetland regulations were modified, the regulations were different in 2001. An update to the study was conducted which reflected the change in size, they do not expect any future changes to the wetland unless the regulations change again.

Chairman Sackett makes the following observations:

1. Final design shall identify and create sewer capacity within the proposed transmission system within Northwoods Open Space Design Subdivision to provide sanitary sewer service in the future to neighboring unsewered areas in the vicinity of the project pursuant to Master Sewer Plan priorities.
2. Final design shall include improvements to Country Club Drive to the acceptance of the Town Highway Superintendent.
3. To support a walkable community, a bike path/recreational trail must be developed to connect to the Waterford Bike path/Recreational Trail and to future connections to the east along the Heise-Brookhaven Trunk Sewer Line Easement. In addition, sidewalks will be required to provide a neighborhood connection to the bike path/recreational trail.
4. The proposed stormwater system shall be designed so as to provide access for long term public maintenance of any public drainage facilities.

**ACTION:**

Motion by Richard Bigler, seconded by Steve Dale, to **table** action on the Northwoods Open Space Design Subdivision DSEIS and leave open a written comment period until May 1, 2013. Final Supplemental Environmental Impact Statement (FSEIS) to be developed subsequent to all public comments being received.

**ON THE QUESTION:**

Deputy Town Attorney Steve Bengart said the Public Hearing needs to be closed with written comments being accepted until May 1, 2013. Mr. Bigler accepted this change to his motion, Mr. Dale accepted this change as well.

Steve Dale	Aye	Gregory Todaro	Aye
Richard Bigler	Aye	George Van Nest	Aye
Timothy Pazda	Recuse	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Meeting adjourned at 9:25 p.m.

Carolyn Delgato  
Senior Clerk Typist