

Town of Clarence
One Town Place, Clarence, NY 14031
Planning Board Minutes
Wednesday June 19, 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

Marie Hibscheiler
Agricultural Rural Residential

Requests a Minor Subdivision Approval to create one (1) new residential building lot at 8670 County Road.

Item 2

Essex Homes of WNY
Planned Unit Residential Development (PURD)

Requests Amended Development Plan for Waterford Greens located on the north side of Roll Road, between Shimerville Road and Thompson Road.

Chairman Robert Sackett called the meeting to order at 7:31 p.m.

Director of Community Development James Callahan led the pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett
2nd Vice-Chairman Paul Shear
Richard Bigler

Vice-Chairperson Wendy Salvati
Timothy Pazda
Steven Dale

Planning Board Members absent: George Van Nest and Gregory Todaro

Town Officials Present:

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

Other Interested Parties Present:

Sean Hopkins
Marie Hibscheiler

Phil Nanula

Motion by Timothy Pazda, seconded by Steve Dale, to **approve** the minutes of the meeting held on June 5, 2013, as written.

Steve Dale	Aye	Richard Bigler	Aye
Timothy Pazda	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Chairman Sackett explained the procedure for this meeting. Mr. Callahan will introduce each project, the petitioner will have a chance to make additional comments and have a dialogue with the Board. The public is then offered the opportunity to ask questions or comment on the project. The petitioner and/or the Board will answer any questions they can. The Board will then take an action.

Item 1

Marie Hibscheiler
Agricultural Rural Residential

Requests a Minor Subdivision Approval to create one (1) new residential building lot at 8670 County Road.

DISCUSSION:

Mr. Callahan provided the background on the project noting that it is located on the northeast corner of County Road and Green Acres Road. It is existing agricultural and residential property located in the Agricultural Rural Residential Zone. Per the Subdivision Law the Planning Board has final review and approval authority.

Marie Hibscheiler is present and speaking on behalf of herself and her siblings, they are all, at present, the owners of the property. This is her mother estate that they are settling.

Chairman Sackett made the applicant aware that if sometime in the future the applicant decides to petition one more lot it would become a major subdivision rather than a minor subdivision which would involve a more extensive review.

ACTION:

Motion by Richard Bigler, seconded by Paul Shear, pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Short Environmental Assessment Form as prepared and issue a Negative Declaration on the proposed minor subdivision at 8670 County Road.

Steve Dale	Aye	Richard Bigler	Aye
Timothy Pazda	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

ACTION:

Motion by Richard Bigler, seconded by Paul Shear, to **approve** the Minor Subdivision at 8670 County Road per the site plan and surveys as submitted by Foit Albert Associates dated January 28, 2013.

ON THE QUESTION:

Mr. Pazda noted that all setback requirements have been met.

Steve Dale	Aye	Richard Bigler	Aye
Timothy Pazda	Aye	Paul Shear	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Wendy Salvati arrived at 7:38 p.m.

Item 2

Essex Homes of WNY
Planned Unit Residential Development (PURD)

Requests Amended Development Plan for Waterford Greens located on the north side of Roll Road, between Shimerville Road and Thompson Road.

DISCUSSION:

Jim Callahan provided the background on the project noting that it is located on the north side of Roll Road between Shimerville Road and Thompson Road. It was a previously approved Planned Unit Residential Development (PURD) Zoning with an approved site plan for a 100+/- patio home lots. The applicant is present seeking an amendment to the previously approved design. The Town Board will have final review and approval authority on this matter.

Sean Hopkins, of the law firm of Hopkins and Sorgi, is present on behalf of Essex Home of WNY, Inc. President of Essex Homes, Phil Nanula, is also present. They are present this evening in connection with portions of the previously approved Waterford Building PURD. Essex is under contract to purchase the Waterford Greens and the Waterford Landings portion of the project that consists of single-family homes, as well as the attached townhomes that surround the Waterford Campus portion of the project. Essex is not the perspective purchaser with respect to the Waterford Campus portion of the project. They are not under contract to purchase anything else. They are asking for three (3) proposed changes, the first is the relocation of a storm water management pond. The original layout had a pond that was surrounded on all three sides by roadway. Mr. Nanula did not think this was a good idea for several reasons. If there was ever an event where there was too much water in the pond it would flood and block roadways. By moving the pond to the west it allows an increase of depth to some of the shallow lots that are in close proximity, it also allows the utilization of the pond as an amenity for those lots. The Campus portion of the project does not have any onsite storm water management facilities. As part of the Essex contract to purchase the Greens and the Landings, they are granting easements to allow them access the storm water management improvements that Essex will be implementing. The applicant is aware the he will have to submit the changes to the Engineering Department where the revision will be reviewed and approved by Tim Lavocat.

The second request of the applicant is the elimination of the sidewalks that were previously proposed by the project sponsor. Upon review of the plan, Mr. Nanula found that, while sidewalks are a nice amenity, the biggest problem here is a safety concern. Because of the depth of the lots, the vehicles that are parked in the driveways would block the sidewalks. This can lead to accidents and other safety issues. Three (3) perspective crossings have been provided over to the future bike path based on

input the applicant has received during three (3) meetings of the Planning Board Executive Committee. In those meetings there was also discussion of the applicant's participation in the possible installation of the bike path. With respect to that inquiry Mr. Hopkins noted that his client is not purchasing that property, he has no ownership interest in it. The negotiations of this property have been going on for almost a year due to several complicated issues, they do not want to go back to the table and bring up any new issues. There is a condition that is part of the original approval that the project sponsor Waterford Village, LLC (an entity that does still exist) is responsible for contributing the materials for the future installation of that path. That obligation remains with Waterford Village, LLC and is clearly acknowledged in the contract.

Mr. Hopkins noted that some of the previously approved street names have been changed by Essex and those changes have been approved.

The applicant intends to close on the purchase within the next 2-3 weeks, once they have approvals in place, they would like to start development of the site immediately. There will be development phases.

The owners of Waterford Village, LLC are Cimato, Marrano, the Patrick Group and the Steinwachs.

Chairman Sackett noted that in the previous site plan approval it was the project sponsor's legal responsibility to put in the sidewalks. Mr. Hopkins said at that time the Town was not interested in sidewalks, it was at Kevin Curry's (of the Patrick Group) request that the approval was modified to add the sidewalks; the Town was not insisting on them. Chairman Sackett said the petitioner is asking the Board to relieve the project sponsor's obligation of the sidewalks. Mr. Hopkins said Essex is purchasing those lots so in theory that responsibility could go forward with Essex. Mr. Nanula likes sidewalks and has done many projects in Western New York with sidewalks, but with the configuration of these lots, there is no way of fitting them. Chairman Sackett referred to the safety hazard involved with respect to the sidewalks; he also noted that there are obligations. Essex does not own the area that the bike path is on. Chairman Sackett asked if the applicant would consider an alternative to the sidewalk that would assist in the access of pedestrian traffic. Mr. Hopkins noted that they met with the Executive Committee and based on their input they have provided three connections to the future bike path. Chairman Sackett asked if they will do something in addition to that. Mr. Hopkins said there is not another feasible option. There isn't the width to consider a bike path along the roadways. Chairman Sackett asked if the applicant would consider construction assistance towards the bike path. Mr. Hopkins said that not knowing what the extent of the assistance would be he cannot make a commitment to that. Chairman Sackett said he would leave it to the applicant as to what assistance they can offer. Mr. Hopkins does not know what that means. Chairman Sackett said he is asking Mr. Hopkins what it means, could he offer any assistance for the construction of the bike path. Mr. Hopkins said they could plant some trees. Mr. Nanula said there is already assistance in place; the bike path is a requirement of the overall approval of the development, those sponsors need to be held responsible for that. There are other issues related to the property that Mr. Nanula is not in control of.

Mr. Pazda asked for clarification on what part of the project Mr. Nanula is purchasing. Mr. Hopkins said the 17 townhouse units that surround the Campus are part of what they are purchasing. Mr. Pazda asked how Mr. Hopkins knows if the ponds they propose to build will be big enough without the knowledge of what is going there. His reply is that the plans have been previously reviewed and engineered. There are subdivision approvals in place for the lots as they exist today so they are confident that the ponds will be adequately sized. Mr. Hopkins knows that he must demonstrate that the minor changes they are proposing will work from a technical perspective. It is not a guess, it has been engineer approved. Mr. Pazda said it is a guess for him because he does not know what is going

on the parcel the applicant is not purchasing. Mr. Hopkins explained that when the engineering was originally done they assumed a relatively large percentage of that will be impervious surface, so as long as that is accounted for in the engineering it will be fine; it does not matter if it is a 2 or 3 story building or commercial or townhouse. Chairman Sackett pointed out that there is an approval for the Campus already in place. Mr. Pazda said it is always going to be uncomfortable that the Planning Board is approving this project with a big blank in the middle of it. Mr. Hopkins said it has already been approved. He also said they know who the perspective purchaser of the Campus is, they met with the Executive Committee and discussed potential future plans; given the close physical proximity of the two different owners, they know they must work together. Deputy Town Attorney Steve Bengart said they have not met with the Executive Committee yet but there has been a reach out.

Wendy Salvati asked for clarification that the Landings are a part of the Essex Development. Mr. Hopkins confirmed that they are. Mrs. Salvati asked if Essex will be constructing the easterly road to provide access to the line of townhouses. Mr. Hopkins noted that the contract obligation states whoever needs that road first is responsible for putting it in and then there will be a shared cost mechanism. It is factored into the overall project storm water calculations.

Mr. Hopkins said it is acceptable to the applicant if the Board deems it appropriate to have easements in place as easements are already in their agreement. Mr. Shear agreed that it is appropriate to make sure easements are in place, but also that when the Engineering Department looks at the project and the retention ponds currently proposed that they are deemed adequate to also accommodate whatever ends up in the campus based on the current approved project. Mr. Hopkins said the perspective purchaser is going to want to re-evaluate the layout. So if they make changes that require additional storm water management facilities, Essex is not taking that obligation to provide that storm water storage. The potential buyer would come to Essex to work out a solution.

Mr. Pazda asked what the planned phasing schedule is at this point. Mr. Nanula said there are four (4) phases. The first phase will consist of 34 lots, two drainage ponds will be installed and connectivity to creek needs further work as part of the engineering drawings. Mr. Nanula pointed out the second and third phases that lie in the middle of site and the fourth phase being at the back side of the property; the fourth phase includes the final retention pond. When phases three (3) and four (4) go in the appropriate turnarounds will be stubbed for safety purposes.

Mr. Pazda voiced his concern over the driveway that will service the units. Mr. Hopkins responded that under the current plans, the driveway is needed. If and when the homes are ready to built, and it occurs prior to the campus taking place, they will install the driveway and will be reimbursed for a percentage of incurred costs. Mr. Nanula said the townhomes will go in during the first phase. Mr. Hopkins said they are comfortable that if the Landings are built before the Campus is complete, there are adequate protections. Mr. Nanula said the builder Paul Bliss does not want to increase the density he wants to reconfigure the site to make it work. They will be luxury multi-family units.

Mr. Shear referred to a photograph that showed a 25 foot setback from the edge of the pavement to the garage and asked if that was the case for the whole project. Mr. Hopkins said yes, for the patio homes. He explained the way the interior ring of lots, that would be part of a future phase, were approved are so shallow that the applicant intends on going to the WNY Land Conservancy to see if they can retain another 10 feet in order to make the lots usable. The road would need to be shifted, that would occur in Phase 2. The current depth of those lots 80'. Mrs. Salvati asked what happens if the WNY Land Conservancy does not agree to give up 10 more feet. Mr. Hopkins said there is product that can fit on the lots as they exist but the backs of homes would be closer than anyone really wants.

Mr. Nanula said there are five (5) different base size units which consist of 1600 square feet to 2000 square feet on the first floor; there are second floor options for some units bringing those sizes up to 2500 square feet.

Mr. Pazda said there does not seem to be a lot of excess parking area for visitors. The applicant does not own the commercial parking area so that cannot be utilized. Mr. Hopkins said each unit has an attached two (2) car garage and two parking spaces in front of that garage. There is surplus parking available at certain aspects of the site. Mr. Nanula said pursuant to the Homeowner Association Agreement that will be formed there will be a restriction that does not allow any parking on the street overnight, but there will be parking for guests during the day.

Mr. Shear said if it is prudent to give up sidewalks is there a possibility to accommodate pedestrian or bike traffic perhaps by way of a bike lane, on one or both sides of the street. Mr. Hopkins said there is not adequate width for a bike lane, they are going to accommodate onsite parking and the roadways are narrower because they are private roads. Mr. Nanula voices his concern with safety if there is a bike lane installed, cars would have to cross the bike lane frequently to get to their homes and there will be 50-60 homes with driveways that cross the bike lane.

Mr. Hopkins pointed out that the design of the project provides some traffic calming; there are no long stretches of roadway where you won't have to stop, yield or make a turn. The proposed crossways that lead to the bike path will have appropriate signage and there will be awareness.

Chairman Sackett said he understands that the applicant may not be in position to solve the problem but even though they have provided crossways and even though the developer has agreed to provide blacktop that does not get us to the bike path. He said it appears that, even though there is a safety issue, there is a financial relief for sidewalks. Chairman Sackett said he believes the Board is saying that the developer of the design should put in the bike path. The Board's frustration is that the plan does not have a bike path, there are no sidewalks, nor does it have a bike trail, with all good logic, but nevertheless the Board would like to find a way to extend the bike path from its terminus to Roll Road. The Town Board will have to work with the LLC in consideration of this new plan to provide a bike path. The agreement is in place for the blacktop, but there is still the issue of the installation of the bike path. Mr. Nanula said you can't put blacktop on top of property that is problematic.

Mr. Pazda said the proposed street is 24' wide, if parking is allowed on both sides of the street, at 16' of space, there is only 8' left, how is a fire truck going to get down the street. Mrs. Salvati said the right of way is 54', there is a 24' drive isle, so if cars are going to park they will need to park in that right of way. Ms. Salvati said all of this plays into how the applicant is going to accommodate parking as well as anyone using the roadway for walking or biking. Mr. Hopkins said the applicant is fine with the Planning Board's recommendation containing language that the applicant needs to look at this issue.

Mr. Bigler asked if the 25' foot setback allows for current utility setbacks required by law. Mr. Hopkins said yes.

Mr. Dale cannot believe that the applicant cannot accommodate a bike path or lane with 54 feet of area to work with. Mrs. Salvati clarified that the road is only 24 feet wide. Mr. Nanula said the right of way is where the utilities are, it is part of the lawn. If a bike path was installed it would still have the same safety issues as a sidewalk. Mr. Dale said the applicant is already showing connectors from the road to the bike path, which acknowledges that people will be riding their bikes on the road. Mr.

Nanula said they were requested to do that. Mr. Dale said anything they can do to improve that situation on the safety, even if it is a bike lane, it may not be the perfect answer but it is a step closer. Mr. Nanula said he lives in Spaulding Lake, there are no sidewalks and people walk their dogs and ride their bikes in the roadway. Mrs. Salvati said there are rarely cars parked on the street in Spaulding Lake. Mr. Nanula said he doesn't agree with that statement, there are cars parked on the street.

Mr. Bigler voiced his concern that Essex who owns most of the project will not be responsible for the bike path, but the people that own the least amount will be held accountable and will be responsible for the bike path. Mr. Hopkins clarified that the party that is responsible for the bike path is the original project sponsor Waterford Village LLC, it's their obligation and Essex's contract with Waterford Village LLC acknowledges this. It has nothing to do with who owns what percentage of the property. This is actually the smallest portion of the project. Mr. Nanula likes the idea of parking on only one side of the street for safety reasons.

Mr. Shear asked if the lots were the same size when the PURD was approved and Patrick agreed to do sidewalks. Mr. Callahan said yes and went on to explain that the original approval did not have sidewalks. When Kevin Curry bought out Marrano, he wanted the sidewalks, but it is basically the same configuration, same lot size. Mr. Shear said if the plan was approved with sidewalks and now we are looking at the photos saying sidewalks can't be put in, how does that happen? Deputy Town Attorney Steve Bengart said he doesn't think the Board is hearing "can't", the applicant is saying it is not prudent. Mr. Hopkins said that he and his client cannot speak for what the notion was as to how that was going to work in a safe way at the time it was approved.

Mrs. Salvati reminded the Board that upon review and approval of the site plan for Rivera Green there was a compromise struck in which the developer agreed to install sidewalks on one side of the development. Mr. Hopkins explained that there are sidewalks proposed for one side of this project and that is what the current applicant is trying to get rid of. Mr. Nanula said whether sidewalks are on 1 side or both sides, a safety issue still exists.

Mr. Pazda feels that the Board's back is against the wall and they are negotiating away a bike path. He feels this way because there is no bike path in the plan. Mr. Nanula said it is in a previous resolution, he also pointed out that there is a bike path to the north.

Mrs. Salvati reiterated the consistency of the Board's decision making. What is the Board basing their decision on? Mr. Pazda said the Board no longer has PURD's which make it more difficult.

Deputy Town Attorney Steve Bengart clarified that the lots of Rivera Green are deeper than this project. Mr. Shear said Rivera Green started out with a blank sheet of paper but this project is a pre-approved project that we are attempting to modify to make it workable for all involved parties.

Mr. Dale said if the applicant is going to approach the WNY Land Conservancy for additional property to expand those lots, why couldn't the applicant ask for more property? Mr. Hopkins said WNY Land Conservancy Land that has to be donated over was largely wetlands to begin with, it was DEC and Federal Wetlands. As part of the agreement in the wetland permitting process which involved both the DEC and the Army Corp of Engineers, there were discussions about donating property to the WNY Land Conservancy, they wanted it to go through a third party. This transfer has not yet happened, but is required. They are also required to do an extensive wetland mitigation within that property. So while the applicant could ask the WNY Land Conservancy for 10', there is probably not much more available because of the jurisdictional wetlands. Mrs. Salvati would not support digging into that land,

which was part of the Open Space percentage and she suggested leaving it alone. Mr. Hopkins explained that if they obtained 10 or 15 feet from the WNY Land Conservancy, they would put a deed restriction on it and leave it as a buffer. Mr. Dale asked for clarification on obtaining property from the WNY Land Conservancy. Mr. Hopkins explained that the whole area would be moved slightly to the west and the property that they would retain would have a deed restriction that it cannot be developed. This is conceptual.

ACTION:

Motion by Wendy Salvati, seconded by Paul Shear, to **approve** the amended development plan on the proposed Waterford Greens Patio Homes Development within the Waterford Village PURD as submitted by Metzger Civil Engineering dated June 19, 2013 subject to the following conditions:

1. Town Board approval of the final site plan for this portion of the PURD will be conditioned upon Town Engineer review and approval.
2. Equivalent dwelling units for this portion of the PURD must be identified and approved by the Town Engineer as having sewer capacity per the original review of the Clarence Hollow Pollution Abatement Project.
3. Per original approvals, the Waterford Village LLC will supply asphalt per Town specifications to extend the bike path and recreational trail.
4. The developer shall provide access to such trail from Summerset Lane, Bancroft Lane and Covington Lane.
5. Appropriate easements are put in place to accommodate storm water discharges from the future Campus Development as necessary.

ON THE QUESTION:

Chairman Sackett suggested the following be added to the list of conditions: Based on the amended site plan the Town Board should require the Waterford LLC to construct the bike path from its current terminus to Roll Road. Wendy Salvati agreed to amend the motion to include this condition. Deputy Town Attorney Steve Bengart does not think it is appropriate to add this condition as it has already been approved in a previous motion. There is no second to add this condition to the motion.

Mr. Pazda asked how the Planning Board can put a condition on this developer that says another developer has to do something. It is clarified that the condition that pertains to the other developer is already in place.

The Planning Board has determined that the modifications as proposed do not cross any applicable thresholds requiring additional environmental review pursuant to SEQRA and that the amended Development Plan is consistent with the original Findings Statement developed in conjunction with the Environmental Impact Statement and review for the Clarence Hollow Pollution Abatement Project dated August 2001.

Mrs. Salvati said the 54' road was discussed. It is unclear as to what will go outside the 24' paved area; there could be cars on both sides of the road. There needs to be some consideration of safety and access for emergency response. Mr. Pazda said that consideration could be parking on one side of the street with appropriate signage.

Mr. Pazda asked if a rumble strip will be installed. It is noted that the Highway Superintendent will probably not want a rumble strip due to plowing activity that will need to take place. Striping the road is suggested.

Steve Dale	Nay	Richard Bigler	Aye
Timothy Pazda	Aye	Paul Shear	Aye
Wendy Salvati	Aye	Robert Sackett	Aye

MOTION CARRIED.

Meeting adjourned at 8:38 p.m.

Carolyn Delgato
Senior Clerk Typist