

Town of Clarence
One Town Place, Clarence, NY 14031
Planning Board Minutes
Wednesday July 17, 2013
(revised)

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

McGuire Development
Traditional Neighborhood

Requests an Action under the State Environmental Quality Review Act (SEQRA) and Concept Plan Approval for the construction of a proposed Professional Office Building at 8321 Main Street.

Item 2

Northwoods Open Space Design Subdivision
Residential Single Family

Recommendation on a Final Findings Statement on the completed Supplemental Environmental Impact Statement.

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

Councilman Peter DiCostanzo led the pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett
2nd Vice-Chairman Paul Shear
George Van Nest
Gregory Todaro

Vice-Chairperson Wendy Salvati
Timothy Pazda
Richard Bigler
Steven Dale

Planning Board Members absent: None

Town Officials Present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Councilman Peter DiCostanzo

Other Interested Parties Present:

David Horbinski	Karen Willyoung
Michael Metzger	Jim Dettinger
Jeff Hazel	Jeffery Palumbo
Fred Cimato	

Motion by Paul Shear, seconded by Timothy Pazda, to **approve** the minutes of the meeting held on June 19, 2013, as written.

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

MOTION CARRIED.

Chairman Sackett explained the protocol for this meeting which will begin with Jim Callahan providing the background on the project. The Board and the applicant will discuss the item. With respect to Item 1 but not Item 2, the public will be asked to participate. The applicant will be asked to address any concerns brought forth from public comment. The Board will then take action. Public comment was closed on May 1, 2013 for agenda Item 2.

Item 1

McGuire Development
Traditional Neighborhood District

Requests an Action under the State Environmental Quality Review Act (SEQRA) and Concept Plan Approval for the construction of a proposed Professional Office Building at 8321 Main Street.

DISCUSSION:

Jim Callahan provided the history on the project noting that it is located on the south side of Main Street west of Susan Drive. It is existing residential property located in the Traditional Neighborhood District. The applicant is proposing to demolish the existing structures on the property and construct a 19,000 +/- square foot professional office building. The applicant is present seeking a recommendation under the State Environmental Quality Review Act (SEQRA) and a recommendation on the proposed Concept Plan. Per the Zoning Law, the proposed action will require a Special Exception Use Permit (SEUP) due to the size of the proposed office building, making the Town Board the Lead Agency and final approval authority.

Michael Metzger, with Metzger Civil Engineering, is present along with Jim Dettinger, president of the McGuire Development Company. Jeff Hazel is also present representing Silvestri Architects.

Mr. Metzger said he and Mr. Dettinger met with the neighbors in order to try and alleviate any concerns the neighbors may have. Mr. Metzger noted that on June 24, 2013 Erie County Sewer District #5 (ECSD#5) met and granted an out-of-district sewer status to this project. The project is not located within a sewer district but it located immediately adjacent to ECSD#5 and in lieu of having to put in an on-site sewage treatment system, the applicant was successful in obtaining the out-of-district status, so this project will be served by public sewers.

Mr. Metzger noted that the applicant hired an archeologist who studied the site and found nothing, thus they are not recommending any further action under archeological review. They have completed their report and have sent it to the State Historic Preservation Office (SHPO); Mr. Metzger anticipates having that report back within 30 days.

At the request of the Planning Board, the applicant conducted a tree survey and it has been submitted to the Town. As the project moves forward the on-site trees will be taken into consideration as much as possible. The back, or south, property line has a stand of trees that the applicant has committed to preserving.

Mr. Dettinger noted that the location of the dumpster has been moved due to a neighbor comment, it will now be adjacent to another business as opposed to behind the residences. There are also some wildlife issues at the site and that has been addressed with the neighbors as well. Woodchucks and foxes have been sited and they will be trapped and re-located.

The applicant's preference for screening and buffering is landscape. One neighbor that the applicant met with had a strong desire for an eight (8) foot fence, it is an expensive fence. The applicant would rather put landscaping in. The applicant is proposing a stone wall as buffering for the parking, there was some discussion about extending this stone wall along the front of the property on Main Street. There will be plantings along the east property line as well. Mr. Dettinger said his company will meet with the neighbors, as they have done in past projects, and work with them to see where buffering is needed. He thinks any pedestrian path would go through their parking lot to Main Street, not through the neighbor's yards; however they are still working on that issue with the neighbors.

Mr. Dettinger said his company and their client are aware of the fact that any future expansion will require another action by the Town Board and or/the Planning Board for it to happen. However, the expansion is nowhere in the current plan nor is it in the 5-year plan. The applicant just wanted to be upfront with the Board and the neighbors.

Mr. Metzger respectfully requests a Negative Declaration under the SEQRA process, an authorization to remove the existing structure on the property, a Concept Plan Approval and a recommendation to the Town Board for a Special Exception Use Permit (SEUP).

Chairman Sackett said the Board likes this project. It improves the property. He referred to the eastern side of the property shown on the tree survey and said 100' from the southern border the brush stops. There is approximately 12' between the proposed building and parking lot and the eastern boundary. Chairman Sackett asked if the applicant would be prepared to leave the brush in that 12' to the greatest extent possible and fill in the remainder of that area that doesn't have any brush with similar landscaping. Mr. Metzger said yes and noted that it is his clients desire to maintain as much of the natural vegetation as possible. He cautioned the Board that there has been some preliminary work done on the site design and there is a drop from the back of the property to the front. The floor elevation needs to be the same on this size building; it also needs to be handicap accessible and the parking lot needs to be safe, not too steep. It will be a challenge to minimize the grading towards the property line which is what you need to save the vegetation. They will do everything they possibly can to do that. Chairman Sackett asked if the applicant is willing to replace the vegetation that cannot be saved, so there remains a buffer. Mr. Metzger said absolutely. Chairman Sackett said there are trees on the western property line and asked if the applicant will preserve those. Mr. Metzger said yes, those trees will be much easier to save because grading cannot be done past the property line. Chairman

Sackett said whatever buffer will be used in the parking lot will be used along Main Street to act as a visual barrier to the detention pond.

Mr. Van Nest clarified that the buffer planned for the frontage along Main Street should include the east and west sides of the driveway.

Chairman Sackett noted that the site plan that the Board is approving this evening is for a 19,000 square foot building, it does not approve the expansion. It assumes the dotted parking area will be greenspace. Mr. Metzger confirmed the dotted area would only be needed if the second phase of the project came to fruition. Chairman Sackett explained that per the law it is not permitted within the zoning because of the open space.

Mrs. Salvati said a revised site plan that was received on July 8, 2013, that plan does not show the proposed development on it. Mr. Metzger said the plan was discussed at a Planning Board Executive meeting in which Deputy Town Attorney Steve Bengart was in attendance. Mr. Bengart recommended the applicant utilize the plan that is on the screen with the understanding that there be text put into the minutes to ensure that the applicant understands that while the plan is shown and if the Planning Board is so inclined to approve it, the second phase could only occur if the applicant was successful in obtaining a variance from the Zoning Board of Appeals for the Open Space requirement. Chairman Sackett said the Board is more inclined to approve the plan without the expansion. Mr. Callahan pointed out that the applicant and the Chairman are saying the same thing.

Mr. Shear noted that in the Part I EAF the applicant indicated that there will be blasting. Mr. Metzger said that blasting is a possibility; however, they have not done any soil work yet. He is very familiar with the soil condition a few 100 yards south of the project site, where there is at least 6' of overburden on top of the rock. As you come closer to Main Street it could come closer to the surface and if they need to remove it for utility work there is a possibility they would have to blast. Mr. Dettinger said the last thing they want to do is blast. Mr. Shear said there is a concern because there is a school within 1500' of this project, which kicks in some State requirements. Mr. Metzger understands this.

Mr. Shear referred to the suggestion from the applicant that there may have to be some adjustments made to elevations because of the slope towards Main Street on the property. He asked if the applicant is going to bring in fill and raise some of the front or are they using it off the back of the property. Mr. Metzger said they do not yet know what the balance is going to be on the site, but he thinks they will probably not have to import any soil; it would be a re-balancing on the site. Mr. Shear said if there is re-grading on the site there may be some tree roots exposed which means those trees would be lost. Mr. Metzger said that is why he brought up the re-grading issue because it will have an impact on what they can and cannot save. It is confirmed that the trees in the back of the property will not be touched.

Mrs. Salvati asked if the applicant has a letter from ECSD#5 indicating they have been granted out-of-district sewer status. Mr. Callahan was in attendance at the meeting where the ECSD#5 Board of Managers approved the status; those minutes are on file.

Mrs. Salvati noted that Dark Sky compliant lighting fixtures are suggested for lighting the site. Mr. Dettinger said that is one of their standard requirements and will be used at this project site. Mr. Pazda asked if the parking lot lights can be completely turned off and only security lights left on. Mr. Dettinger said his standard is a photo cell on a timer, which typically turns the light off at 11:00 pm. In the event there was ever a security issue they would keep the lights on for a longer period of time. His

client's typical office hours are 7:00am-6:00pm Monday thru Friday and Saturday and Sunday mornings during tax season which is February thru April 15.

Mrs. Salvati noted that the Clarence Historic Preservation Commission reviewed the structures on the property and they did not find anything that was of local historical significance, so demolishing the buildings will not be a problem.

ACTION:

Motion by Wendy Salvati, seconded by Timothy Pazda, pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Part 2 and 3 Environmental Assessment Form as prepared and amended and **recommend** a Negative Declaration on the proposed McGuire Office building located at 8321 Main Street. This Type I Action involves the demolition of a structure built prior to 1950 and the construction of a 19,000 +/- square foot office building in the Traditional Neighborhood District Zone. After thorough review of the submitted site plan and Environmental Assessment Form it is determined that the proposed action will not have a significant negative impact upon the environment.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

ACTION:

Motion by Wendy Salvati, seconded by George Van Nest, to **approve** the Concept Plan, as per the site plan dated June 4, 2013 and received July 8, 2013 submitted by Silvestri Architects, for the proposed McGuire Office Building located at 8321 Main Street, with the following conditions:

1. Subject to review and approval by the Landscape Committee on the final landscape plan.
2. Subject to NYSDOT approval on the driveway apron connection to the NYS Highway System Route 5 and for any tree removal in the right-of-way.
3. Subject to installation of Dark Sky Lighting Fixtures to ensure that lighting spill is limited to protect adjoining residential neighbors.
4. Subject to Erie County Water Authority approval on water system connections.
5. Subject to all applicable fees.
6. Subject to engineering approval for storm water management and blasting, if necessary.
7. Subject to screening of the proposed storm water detention basin in a manner consistent with the screening which is already required for the parking on the Main Street side of the building.

ON THE QUESTION:

Mr. Pazda asked for clarification on whether the Planning Board can approve the plan or if they are a recommending body only. Mr. Callahan explained the Concept Plan is the domain of the Planning Board. He suggested the Board recommend a Special Exception Use Permit.

Mrs. Salvati said the Planning Board has asked that the trees be saved along the southern boundary and within the NYS right-of-way, and to the greatest extent possible they ask that the trees along the eastern and western boundaries be saved to buffer existing residential uses. The landscaping plan should be designed to buffer adjoining residential areas, including supplemental plantings.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

ACTION:

Motion by Wendy Salvati, seconded by Timothy Pazda, to **recommend** the Town Board approve a Special Exception Use Permit (SEUP) for the proposed structure located at 8321 Main Street.

ON THE QUESTION:

Per the Zoning Law any structure greater than 10,000 square feet in the Traditional Neighborhood District requires a Special Exception Use Permit.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Item 2

Northwoods Open Space Design Subdivision
Residential Single Family

Recommendation on a Final Findings Statement
on the completed Supplemental Environmental
Impact Statement.

Public comment on the Final Findings Statement closed May 1, 2013.

Timothy Pazda recused himself from the discussion and vote on agenda Item 2 and left the dais.

DISCUSSION:

Jim Callahan provided the history on the project. It is located on the north side of Greiner Road between Shimerville and Thompson Roads. It is a proposed Open Space Design Subdivision for which a Positive Declaration has been issued and a Supplemental Environmental Impact Statement has been accepted. Per the State Environmental Quality Review Act (SEQRA) process the last stage of review is adoption of the findings. The Town Board is Lead Agency; the Planning Board is a recommending body under SEQRA.

Copies of the Findings are available for the public. The applicant has a copy of the Findings.

Jeffery Palumbo, of Damon Morey, LLP, is present along with petitioner Fred Cimato. Mr. Palumbo referred to the section in the Findings Statement entitled Specific Design Issues (1) which refers to a recreational trail. Mr. Palumbo said their position on this trail, all along, has been a sidewalk that would eventually connect through to the adjacent subdivision across the street, Waterford, at Dana Marie Parkway. He referred to the Open Space Design Development Overlay §229-108(A)(9) which states final designs shall incorporate connectivity to surrounding areas and be developed with walkways, sidewalks and/or trails that provide access to public areas. The sidewalk would be taken up to Roll Road; it would extend from Roll Road through the subdivision out to Greiner Road. There is no other location to put a trail given the location of the wetlands and the retention ponds that will ultimately be dug on this property.

Chairman Sackett noted that there is a recreational trail planned to go through the Waterford PURD, which is north of the property in question. He said sidewalks are looked at as an internal mechanism for the neighborhood, bike paths are looked at as connecting neighborhoods. The Town would like the applicant to design a bike path, a recreational trail, that links the planned terminus of the Waterford PURD bike trail to the terminus in Northwoods, whether it be Country Club or Greiner Road or both. Mr. Palumbo is unclear on this point. Chairman Sackett said number 1 is talking about a bike path. Mr. Palumbo asked for a suggestion on where that bike path will go. Mrs. Salvati said it could just be striping on the street, it may not necessarily have to be a separately designed multi-use trail, it could be a bike lane as part of the street layout so bicycles have a designated lane to ride through the site. Mr. Palumbo said one of the other options was to have the sidewalk a little wider to accommodate bikes as well as pedestrians. Chairman Sackett said the design is left to site plan approval. Mr. Shear agreed with Mrs. Salvati and went on to say that based on the wetlands located on the site it will be difficult to put a stand-alone bike path through the piece of property. Mr. Palumbo said he has no problem with a bike lane next to the street.

Mr. Palumbo referred to the last sentence in number (1) under Specific Design issues and said the entire trail cannot be put it because the entire road will not be installed in one phase. The sentence talks about the trail being completed prior to the start of construction, that is not going to happen. They are going to build in phases off Roll Road; they may not be out to Greiner Road for ten (10) years. Chairman Sackett thinks the intent is for the phasing of the houses, the trail for Phase One houses would be completed before the Phase One houses are built. The last sentence is amended to read, "Construction of the recreational trail will be completed prior to the start of construction on any phase of the development."

Mr. Palumbo referred to item number 2 under Specific Design Issues and said he has put together a design that he believes meets all the requirements and intent of the Open Space Design Plan, including the open space area. Mr. Palumbo referred to §229-108 (A)(7) which reads: "Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved." The applicant has done these things. The open vista, if that is a vista, within the confines of the housing can't be seen from the existing public roadway. There is nothing in the document that speaks to the obligation to have the public provided vistas for every portion of a property. It speaks to the visibility from existing public roads and preserving those vistas. The applicant has now added access to that open area for the public. Mrs. Salvati said that is different than the statement Mr. Palumbo read regarding the open space surrounding the Greiner Road vista. Mrs. Salvati said at Site Plan time she expects that what will be discussed is that that stays natural. Mr. Palumbo has no problem with that.

Mr. Van Nest asked for clarification on the intent of the finding. Chairman Sackett said the intent of the finding is, at the very least, to minimize isolated open space. So to the greatest extent possible make that land accessible to the entire subdivision and the Town. Mr. Palumbo believes his client has done that. This will be reviewed at the Concept Plan stage. Mr. Palumbo does not see any wording in the document such as “to the greatest extent possible”. Chairman Sackett said that is the interpretation and the recommendation of the Planning Board.

Mr. Palumbo referred to number 3 under Specific Design Issues and noted that they won't get to the Greiner Road area for a number of years and they will not want to bring construction vehicles down a road the just developed. Mrs. Salvati agreed and said the applicant should be allowed to bring construction vehicles in off of Greiner Road in the later phases of the project. It is agreed that the first sentence in number 3 will be amended to read, “The project construction access will be located off of Roll Road and Greiner Road...”

Mr. Cimato said they agreed to reconstruct Country Club Drive to Town standards, construction vehicles will have to be brought in at that point. The second sentence in number 3 is amended to read, “No construction vehicles shall utilize Country Club Drive to access other portions of the site that are being developed.”

Mr. Palumbo said the next issue is under the Wetland & Gott Creek Tributary Impacts. He referred to number 1 and said the wetlands have been identified but they have not been confirmed yet. It is agreed that the first sentence in number 1 shall read, “...have been identified and confirmed by the NYSDEC...” Mr. Palumbo said the Army Corp has confirmed the Federal Jurisdiction. The applicant has a joint application in for the stream crossing for both the DEC and the Army Corp; they are awaiting approval of that. Mr. Palumbo would like to see the last sentence of number 1 include the words, “if necessary” at the end of the sentence. It is agreed that the last sentence will be amended to read, “On-site mitigation will be performed by the applicant, if required.”

With reference to number 2 under Wetlands & Gott Creek Tributary Impacts, Mr. Palumbo suspects the lots that will be impacted by the 50' required buffer will be monumented if DEC requires it.

Mr. Palumbo referred to number 3 under Wetlands & Gott Creek Tributary Impacts. He reiterated that there is a federal wetland delineation confirmed by the Army Corp which set forth the areas that are wetlands based on the hydrology of the plans and the hydric soil. The applicant has avoided those areas completely; there are no impacts to the federal jurisdictional areas. There may be areas that have hydric soil that are not wetlands. There is nothing to prevent the applicant from developing those areas. Mrs. Salvati referred to a 2011 map submitted by Passaro that showed hydric soils and in the calculation of what was not going to be touched by development were those hydric soils, it was depicted on that map, that is what this item in the Findings Statement is referring to. Mr. Palumbo said the hydric soils map was provided to determine the number of lots not for the purpose of whether or not those areas could be developed. Mrs. Salvati said in the calculation the applicant specifically called out how many acres of hydric soil which was part of what was being removed.

Mr. Van Nest said unless it is a wetland what is the basis of carving it out? Mrs. Salvati said the law calls out what is to be left out when calculating open space which includes wetlands, hydric soils and a number of other things. Mr. Van Nest said hydric soils and wetlands have regulatory technical definitions and unless it is a wetland as determined by the DEC or the Army Corp he is not sure the Board has a basis to say the applicant can't build there. The applicant does not want to be restricted

from building on hydric soils. Chairman Sackett confirmed that the DEC made no reference to hydric soils in their comment letter.

Mrs. Salvati referred to a map submitted by Passaro Associates in June 2011 entitled An Existing Conditions Plan for Northwoods Subdivision. The map shows all the things that were subtracted, there were 4.21 acres of areas deemed unfavorable as hydric soils which was based on what was to be taken out when the calculation was done for what should be removed for open space design. Those hydric soils are along the Gott Creek corridor and others are associated with the wetland area LA8. So they were removed and considered not appropriate for development. This is what number 3 is referring to. Chairman Sackett said there is an overlap in terms of the buffers and the wetlands.

Mr. Todaro said hydric soils were added into the calculation but the open space exists within the plan itself, the fact of the matter is you can still develop on that property.

Mr. Callahan suggested the last sentence in the number 3 be deleted. Although the discussion is proper, if it is just a hydric soil and not a wetland it could probably be developed. The calculation determined the number; the wetland delineation will tell you where you cannot build. Mr. Palumbo is in favor of deleted the last sentence in number 3.

Mrs. Salvati said most of the lots where the hydric soils are also fall within the 50' buffer of Gott Creek, so those lots will have to be adjusted anyway. She said the Planning Board is not saying the number of lots has to be reduced; it will remain at 148.

Mr. Van Nest referred to the June 2011 site plan submitted by Passaro Associates, although the prior hydric soils map identifies the hydric soil area as 4.21 acres, the actual site plan does not necessarily omit the 4.21 acres, there may be slight impingement with a few lots which is probably the location of where they overlap with buffers for wetland or Gott Creek.

Mr. Palumbo referred to number 2 under Specific Design Issues and asked if the word "will" in the third sentence can be changed to "may". Mrs. Salvati said it (the location of the designated open space) will need to be revised based on getting some of those lots out of the 50' buffer area. Mr. Palumbo said that is a different section. Chairman Sackett said there is an isolated space that is not consistent with the Board's interpretation of the Open Space Design. They think the isolated open space needs to be minimized and that is their recommendation. Chairman Sackett said Open Space is not to be isolated for the project but to the greatest extent possible be for the general public. The middle space within those 25 lots is basically an extension of those lots. Although that space is accessible to the public it does not create the vistas it is capable of producing. Mr. Todaro noted that the applicant changed the plan to include two access points to that open space.

Mr. Bigler said that the problem with this design is that the people that abut the property that is supposed to be open area eventually take it over. There is no monitoring of it, the next thing that happens is grass clippings pile up on it or a shed is put up on it and it's gone. The Planning Board tries to get rid of this scenario in every project they can. Mr. Palumbo said it will be owned by a Homeowners Association. Collectively, the Board said that doesn't matter, it still happens.

It is agreed by the Planning Board members that the word "will" in the third sentence under number 2 of Specific Design Issues is changed to "may".

Chairman Sackett summarizes:

-The last sentence in number 1 under Specific Design Issues is amended to read, "Construction of the recreational trail will be completed prior to the start of construction on any phase of the development."

-The word "will" in the third sentence under number 2 of Specific Design Issues is changed to "may".

-In number 3 under Specific Design Issues has been amended to include construction access off Greiner Road as well as Roll Road. Country Club will not be used to access other parts of the development other than Country Club itself.

-Under Wetland & Gott Creek Tributary Impacts, number 1: the word "identified" is replaced with "confirmed". The mitigation will be performed by the applicant, if required.

-The last sentence in number 3, under Wetlands & Gott Creek Tributary Impacts, has been deleted.

Mr. Bigler said he wants to make sure it is clear that the bike path may just be a line on the road, not a separate piece of pavement. Mrs. Salvati said it could be a painted designated area. Chairman Sackett said yes, it is not necessarily a separate piece of pavement.

ACTION:

Motion by Richard Bigler, seconded by Gregory Todaro, pursuant to article 8 of the Environmental Conservation Law, to **recommend** the Town Board **accept** the Final Findings Statement as prepared and finalized on July 17, 2013.

ON THE QUESTION:

The action includes the amendments that were discussed and finalized at this evenings meeting.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Paul Shear	Aye	Wendy Salvati	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Meeting adjourned at 8:49 p.m.

Carolyn Delgato
Senior Clerk Typist