

Town of Clarence
Planning Board Minutes
Wednesday March 4, 2009

Work Session 6:30 pm

Roll Call
Update on Pending Items
Zoning Reports
Committee Reports
Miscellaneous

Agenda Items 7:30 pm

Approval of Minutes

Item 1

Metzger Civil Engineering
Agricultural Floodzone

Requests Preliminary Concept Review of a proposed Major Subdivision on Lapp Road, east of Transit Road.

Chairman Gerald Drinkard called the meeting to order at 7:30 p.m. Councilman Peter DiCostanzo led the pledge to the flag.

Planning Board Members Present:

Chairman Gerald Drinkard
2nd Vice Chairman Wendy Salvati
Timothy Pazda
Richard Bigler

1st Vice Chairman Albert Schultz
Jeffrey Grenzebach
George Van Nest
Gregory Todaro

Other Town Officials Present:

Director of Community Development James Callahan
Planner Brad Packard
Councilman Peter DiCostanzo
Deputy Town Attorney David Donohue

Other Interested Parties Present:

Sue Baird
Thelma Lavelle
Tom Meyers

Nancy Braunscheidel
Michael Metzger

Motion by Jeffrey Grenzebach, seconded by Timothy Pazda, to **approve** the minutes of the meeting held on February 4, 2009, as written with the following corrections:

-Page 3, first line of second paragraph is corrected to read, "...the water pressure **testing** issue."

-Page 3, the word "as" is deleted from the third sentence in the third paragraph.

-Page 5, numbers 4 and 5 are deleted from the variance list and added as conditions to the motion.

-Page 7, the second condition for the motion shall read, "The wetland buffer will be delineated, marked and **a solution will be** proposed at Development Plan." The fourth condition shall read, "A Special Exception Use Permit (SEUP) will be required for outside storage **of equipment.**"

Richard Bigler	Aye	George Van Nest	Abstain
Timothy Pazda	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Al Schultz	Abstain
Gerald Drinkard	Aye		

George Van Nest and Al Schultz abstain from the vote as they were not present at the February 4, 2009 meeting.

MOTION CARRIED.

Chairman Drinkard explains that the Planning Board is a recommending body that may vote to refer agenda items to other committees such as the TEQR Committee, Fire Advisory and Traffic Safety for their study and comment. The Planning Board may vote to recommend an action to the Town Board with conditions. The Town Board is the governing body and as such will have the final vote on all items. The procedure for agenda items starts with Jim Callahan introducing and providing a brief history of the item. The applicant will then have the opportunity to speak on the project. The Planning Board members will then have an opportunity to ask questions. The public will be offered the opportunity to speak on the subject; all commentary will be addressed to the Planning Board and will be limited to three (3) minutes. The applicant will then have the opportunity to respond to the public comment. A motion will be called for with a roll call vote.

Item 1

Metzger Civil Engineering
Agricultural Floodzone

Requests Preliminary Concept Review of a proposed Major Subdivision on Lapp Road, east of Transit Road.

DISCUSSION:

Jim Callahan provides the history on the project. The property is located on the north side of Lapp Road, east of Transit Road. It is existing vacant land consisting of 26 acres in the Agricultural Floodzone. It is also located within the Density Floodzone and partially within Erie County Sewer District #5. The Town Board previously approved three (3) minor splits off the parent in September 2008. The applicant was referred from the Town Board to consider a major subdivision to develop the remainder of the property.

Michael Metzger, of Metzger Civil Engineering, is representing the applicant. Mr. Metzger explains this portion of the property is 17.4 acres. The applicant is looking for five (5) additional lots. Mr. Metzger believes there are unique circumstances that will allow for consideration of waivers for a

few provisions of the Subdivision Regulations. The minimum lot width requirement in the Agricultural Floodzone is 150' and the minimum lot size is 1.33 acres. The applicant is offering nothing less than 200' in width and the majority of the lots will be three (3) acres with one of them being five (5) acres in size. A special set of requirements for the Density Floodzone states the minimum lot size is 102' in width and the minimum depth is 570'. This property is 635' deep thus restricting the available residential options for frontage development. There is no ability to install an interior system of roads. There is no water line running across the front of the property, the water comes in from the west and east. The parcel is currently unserved by public water. There is a sanitary sewer approximately 600' to the west of where the five (5) lots begin. The sewer is pushing the limits of the minimum depth as it is required by the County. The applicant does not have the ability to extend the gravity sewer further east to run across this property. There are requirements from the Erie County Department of Environmental Planning that will not allow sanitary sewer or pump stations for subdivisions that have less than 75 lots. The applicant is aware that the Subdivision Regulations restrict major subdivisions from having lots that are less than five (5) acres in size unless there are public sewers. A water line extension would be expensive; the applicant would spend in excess of \$100,000 to run a water line across the frontage. Not only would the residents of the proposed subdivision benefit from a water line, but the Town would as well because it will provide another loop to the system. The project would have individual curb cuts.

Wendy Salvati asked how the water system was proposed when the applicant was granted the previous three (3) lots. Mr. Metzger said the water would be extended from the west. The applicant was hoping to get the three (3) lots approved and sold, but the lots have not been sold yet. Ms. Salvati asked if the applicant couldn't sell the first three (3) lots, why is he asking for five (5) more? Mr. Metzger does not know.

Chairman Drinkard asked about the Fill Permit that the applicant applied for. Mr. Metzger said the Fill Permit was not granted, the Town Engineer asked the applicant to take another look at it. The applicant is asking for floodplain permits for the individual lots.

Erie County Sewer District #5 runs along the frontage of the site but not the entire depth.

Ms. Salvati voices her concern with the entire property being in a floodplain; a good portion of the site is hydric soils. She is also concerned with the property behind the site as it is wetland. Mr. Metzger said there is no designated State Wetland near the site. The home sites would be elevated approximately 3'.

Mr. Pazda asked Mr. Metzger what type of documentation he would be receiving from Erie County Sewer indicating this project can not hook into the County's sewer system. Ms. Salvati asked that the applicant make sure they won't need a sign-off from the Department of Health. Mr. Metzger will obtain this requested information from Erie County.

Mr. Pazda asked for clarification as to the number of lots being considered. Ms. Salvati said this is an eight (8) lot Open Subdivision.

Chairman Drinkard refers to Town Code Section 193-24. Utilities (2) (b) which states individual sewage disposal systems are on-lot systems, this means that the sewage is disposed of on the lot. Individual sewage disposal systems shall not be used in any development that has more than four lots of less than five acres in size. Chairman Drinkard then refers to the Zoning Code Section 229-26.

Intent which states the lot size and density is primarily determined by soil quality and the location of the Black Creek Density Floodway (BCDF).

Ms. Salvati voices her concern with the three lots previous approved; they did not go through this process. The applicant has 27 acres and should have a total of five (5) lots. Mr. Schultz points out that originally the applicant asked for four (4) lots, not three (3), the fifth being the remainder. This would have made the project a major subdivision, so the applicant withdrew one of the lots from the proposal to keep it a minor subdivision. Mr. Schultz asked why the applicant didn't pursue the major subdivision back then. Mr. Metzger said the intent was to have the three (3) lots approved and ready for construction quicker than it would take for approval of a major subdivision.

Thelma Lavelle, of 8040 Lapp Road, voices her concern regarding the amount of water; there is a lot in this area. If the houses will be built up higher than the existing houses, will the water run on to her land? She is also concerned for the children in the neighborhood running around the open ditches in the area. Ms. Lavelle said the traffic is also bad; the area does not need more traffic.

Tom Meyers, of 8060 Lapp Road, explains that the sewer stops on his lot. The flood zone is a major factor and ends at his house. There is a major drainage ditch that was put in years ago, it runs north to the creek; the Town maintains this ditch. Since the Town has maintained the ditch he has not had any water problems except for the fact that the area becomes a lake because of the other drainage ditch at the east end of the property that overflows and goes into the creek and eventually works its way across heading west; parallel with Lapp Road. Building up on the land will beat up on the neighbors. He would like to see the ditch maintained; it runs south to north. He is also concerned with traffic as it is a narrow intersection. Perhaps the road can be widened or a traffic control device installed. He has seen properties underwater and if homes are built as proposed those properties will be underwater as well. The water from the easterly ditch, heading north overflows and intercedes the westerly ditch and heads back north again.

Sue Baird, of 8255 Lapp Road, said her house was built 9 years ago, it was built up but there is still a lot of water in the area. Several times in the past year the water comes over Lapp Road; her driveway has been covered with water. Her house does not get water but the outlying areas of her land where the ground was not built up does. The water comes over from Lapp Road into the cornfield.

Mr. Metzger said he will work closely with the Town Engineer who will have to make sure that the situation will not be made worse in that area. He has no plans on piping or filling in the drainage ditch. With regards to the floodplain, the assumption is made by FEMA, when they are establishing the limits and the depths of the water within that floodplain, that the relief which is offered through the allowance of certain types of development, will allow every piece of property to take advantage of the relief that is offered. The limits that a floodplain map shows assumes that every property is filled to the max, the northern portion of Clarence is not close to being full.

Ms. Salvati said the Planning Board could recommend 5 acre lots per the Code, but anything beyond that is not per Code. She asked if there is a rationale to support a variance.

Chairman Drinkard said there are two (2) options: 1.) deny the project and provide the reasons such as sewage and major subdivision requirements or 2.) deny the project as proposed and craft another motion to give a recommendation for consideration of variances because it may or may not be an appropriate use of the land, etc.

Mr. Van Nest explains a third option: table the project and gather more facts about it. He questions the septic system and what Erie County will permit. There are also flood density issues. Mr. Van Nest would like more input from the Town Engineer with regards to the two (2) drainage locations and the density requirements and how this effects the variance questions. This will better develop the record for when decisions are made.

Mr. Schultz refers to the issue of septic vs. sewers and states that the proposal is for an eight (8) lot subdivision on septic with eight (8) individual curb cuts. It is not the Planning Board's purview to tell the applicant to tell the builder what to look at for when building a septic system. The floodzone may be an issue where more information is needed. In looking at the Growth Corridor maps a decision might be made that this project is not an appropriate use of this land.

Mr. Van Nest said the Town needs something definitive from the County in writing explaining exactly what they will require for a septic system.

Deputy Town Attorney David Donohue explains the three (3) previously approved lots are lots of record. When it comes to septic the County will look at the three (3) lots as playing a part in the four (4) lots to be developed in a three (3) year period rule. The three (3) lots can not be brought back to the Planning Board's purview to say they want those lots to be different sizes.

Ms. Salvati said the Planning Board needs to decide if there are extraordinary hardships to justify recommending the Town Board allow variances.

Deputy Town Attorney David Donohue refers to the Town Code which states individual sewage disposal systems can not be used in any development that has more than four (4) lots of less than five (5) acres in size.

Mr. Metzger does not have a problem with the project being referred to the TEQR Committee. Chairman Drinkard explains there is not enough information on the project for it to be referred to TEQR at this point. He asked Mr. Metzger if he is willing to submit a revised plan with less lot yield. Mr. Metzger will discuss this with his client but he doubts he will agree to it.

Ms. Salvati asked how far water would have to be brought in from the east. Mr. Metzger said the water is at the property line.

Mr. Schultz points out the potable water is from the Subdivision Code not the Zoning Code. In order to obtain a letter from the County, as Mr. Van Nest suggested, the item needs to be tabled.

Deputy Town Attorney David Donohue said the applicant has an as-of-right use for seven (7) lots. Mr. Schultz disagrees that it is an as-of-right use. After further discussion Deputy Town Attorney David Donohue withdraws the phrase "as-of-right".

Chairman Drinkard reads from the Subdivision Law Section 193.24 (A) (1) (a) Water distribution: a system of transmitting potable water...(b) The public water supply system in the Town of Clarence is owned and operated by the Erie County Water Authority.

Timothy Pazda voices his concern with where the water will go if fill is brought in to the area.

ACTION:

Motion by George Van Nest, seconded by Wendy Salvati, to **table** the request for a Preliminary Concept Review of a proposed Major Subdivision on Lapp Road, east of Transit Road to allow the applicant the opportunity to obtain a letter from the Erie County Department of Environmental Planning. The letter is to confirm the regulations and guidelines such that they will not provide an opportunity to connect to a pump station for subdivisions for less than 50 or 70 houses. The Town Engineering Department is to assist the Planning Department with providing more information as to the density subdivision restrictions for this project, in particular the issues of exactly what the flow rates are, the flooding experience and the history of the two (2) drainage ditches as it relates to this property.

ON THE QUESTION:

Timothy Pazda agrees with tabling the project as there are many pieces of information needed prior to moving forward.

Richard Bigler	Aye	George Van Nest	Aye
Timothy Pazda	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Al Schultz	Aye
Gerald Drinkard	Aye		

MOTION CARRIED.

Meeting adjourned at 8:55 p.m.

Carolyn Delgato
Senior Clerk Typist