

Town of Clarence
Planning Board Minutes
Wednesday April 15, 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

Don Owens
Earth Dimensions, Inc.

Overview of:
-Geology
-Watersheds
-Wetlands
-Soils
In the Town of Clarence.

Item 2

Doodle Bugs/Cobblestone Center
Restricted Business

Requests Development Plan Approval for a Day
Care/Office Park complex at 8580-8590 Sheridan
Drive.

Item 3

John Kausner
Agricultural Rural Residential

Requests Preliminary Concept Plan
Recommendation for an Open Development Area
at 4180 Ransom Road.

Chairman Gerry 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
Timothy Pazda
Richard Bigler

1st Vice Chairman Albert Schultz
George Van Nest
Gregory Todaro

Planning Board Members Absent:

2nd Vice Chairperson Wendy Salvati

Jeffrey Grenzebach

Other Town Officials Present:

Planner Brad Packard
Deputy Town Attorney David Donohue

Councilman Peter DiCostanzo

Other Interested Parties Present:

Jody Celeste
Charlotte Stallone
Laura Pfennig
Robert Blood
Al Hopkins
Tim Harris
Robert Geiger
Dennis Londos
Pete Gorten
Debra Fine
David Capretto
Raymond Li

A. Henning
A. Hopkins
Bill Pfennig
Carol Minnick
John Kausner
M. Huttner
Joel Radden
Gary Wright
Jeanne Kay
Edward Fine
Kerri Bentkowski

In the absence of 2nd Vice Chair Wendy Salvati, Alternate Gregory Todaro will participate in all discussions and vote on all agenda items this evening.

Mr. 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 move to table an agenda item for more information. 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 meeting will be conducted based on Robert's Rules of Orders. Comments, questions and dialogue will become public record. The procedure for agenda items starts with Brad Packard 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

Don Owens
Earth Dimensions, Inc.

Overview of:

- Geology
- Watersheds
- Wetlands
- Soils

In the Town of Clarence.

DISCUSSION:

Brad Packard provides the history on the project. Don Owens has been actively involved in the field of Environmental Science for well over 40 years. Mr. Owens began his career at the University of Wisconsin where he received both a Bachelor's and Master's degree in Soil Science. Mr. Owens has been recognized by local research and educational institutions and has lectured at both the University at Buffalo and Buffalo State College. Locally, Don has worked with Erie County and served as the Soil

Survey Leader from 1966-1977. During that time Don worked in conjunction with the Cornell University Agricultural Experiment Station and developed the Soil Survey of Erie County; a commonly referenced resource and tool utilized by planners, developers, and municipalities. In 1977, Mr. Owens founded Earth Dimensions, a soils and environmental consulting firm that has been investigating soils and assisting with projects and project development throughout New York and the northeastern United States for over thirty years. Mr. Owens has agreed to offer his time and expertise this evening to discuss the geology, watersheds, soils, wetlands, and associated environmental factors that comprise the Town of Clarence. At this time, we would like to join the audience and welcome Mr. Owens to present.

Mr. Owen’s presentation is on file with the office of Planning and Zoning and can be made available by request.

Item 2

Doodle Bugs/Cobblestone Center
Restricted Business

Requests Development Plan Approval for a Day Care/Office Park complex at 8580, 8584, 8590 Sheridan Drive.

DISCUSSION:

Brad Packard provides the history of the project. This project involves the development of an office park featuring a new day care center and 2 office buildings. The project site is located on the North side of Sheridan Drive, east of Harris Hill Road consisting of approximately 7 acres in the Restricted Business zoning district. This project was originally referred to the Planning Board from the Town Board on February 6, 2008. On April 23, 2008, the project received a Negative Declaration under SEQR as per the Town Board. On June 11, 2008 a public hearing was held regarding a Special Exception Use Permit to allow cumulative structures over 30,000 square feet at the project site and the permit was approved. The Engineering Department has reviewed the plans for development and is comfortable with the plans as presented at this time. The applicant is present this evening and is seeking a recommendation for Development Plan approval. There was public participation noted by Mr. Drinkard and some questions by Planning Board members.

ACTION:

Motion by Al Shultz to **recommend** approval of the development plan for Doodle Bugs at 8580 through 8590 Sheridan Drive per the plans dated February 11th, 2009. Al Shultz notes for the record a major change to the concept plan: elimination of the stone wall at the entranceway, which has been approved by the town landscape committee as previously specified. Gregory Todaro moved to second the motion.

ON THE QUESTION:

Chairman Drinkard noted that all of the things the Planning Board asked for were done, with the exception of the stone wall, which is promised to be done within a reasonable time.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Gerald Drinkard	Aye	Al Schultz	Aye

MOTION CARRIED.

Item 3

John Kausner
Agricultural Rural Residential

Requests Preliminary Concept Plan
Recommendation for an Open Development Area
at 4180 Ransom Road.

DISCUSSION:

Brad Packard provides the history on the project. This project involves a proposed 3-lot Open Development area. The project site is located on the west side of Ransom Road, south of Tillman Road consisting of approximately 8 acres in the Agricultural Rural Residential zoning district. This project was originally referred to the Planning Board from the Town Board on January 25, 2006. The project received a Negative Declaration under SEQR July 25, 2007. On August 22, 2007 a motion by the Town Board to recommend Concept Plan Approval to the applicant was defeated. The applicant has altered the original design and the project has been referred again to the Planning Board by the Town Board on March 11, 2009. The Negative Declaration as originally issued by the Town Board on July 25, 2007 still stands. The applicant is present this evening seeking a recommendation for preliminary Concept Plan on the amended design.

Al Hopkins is representing Metzger Civil Engineering on 8560 Main Street in Clarence. Mr. Hopkins stated that the project is just under eight acres in size and that many studies have been done so far. Originally we had proposed a three lot, plus the existing parcel which has been scaled back to two new lots, plus the existing property on site. To date we have looked at the wetlands and determined that it's not in a floodzone. As part of the comments from this board and the TEQR committee, we did a topographic study to determine the drainage patterns. There was a lot of concern about drainage, so we actually prepared drainage calculations at the request of the TEQR committee, which was submitted to the town engineer for review and his acceptance on that. There was reportedly a buried tank onsite. Mr. Kausner hired Leader Environmental Group and determined that there was no tank. We did an archeological study for the site. We did a hydraulic test to determine that we had water pressure for the site, which was performed by the Erie County Water Authority. We had New York State DEC review of the project, and we looked for trapped endangered species also. Most of that was at the request of the TEQR Committee. Mr. Shultz is well aware that the TEQR Committee did recommend approval of the project. He recognized that the town issued a negative declaration to make sure there were no significant environmental issues. The Planning Board recommended approval of the original concept plan to the Town Board. The Town Board had an issue with the driveway that was too close to Mrs. Pfennig's house. We're proposing moving the driveway north and to the west of Mrs. Pfennig's house which is on the south side of the property, and we've added a vegetative buffer to help reduce the affects of headlights coming out of there. Because of the major changes to the plan, the Town Board has kicked it back to the Planning Board to look at the changes and pass it back to the Town Board.

Chairman Drinkard opened the discussion up to the board. Al Shultz stated one of the principal concerns is the lot switch that took place between the original recommendation to the Planning Board and today. The executive committee discussed this earlier, and suggested that Mr. Kausner might just eliminate that previously filed flag lot so as to re-create the single parent parcel as originally existed. Mr. Kausner agreed that this was correct.

Chairman Drinkard stated that the legal 1.37 acre lot makes that flag lot frontage non-conforming. What we have to do is undo what's been done to this extent, so that it makes two legal lots. Then we will look at the details, because you're going to have to move the lines back and do something with the driveway, so for us to talk about landscaping, theoretically we can't see it. It would basically make it a waste of time. If you combed through the records of the last dialogue of the Planning Board discussion about this, and then the Town Board's discussion, they're interested in all the kinds of things that were discussed at that time. At the time the Planning Board had reviewed the project, that little parcel had not been split off as a legal lot, so it's not apt to happen this time so to speak, so you have to undo that so to speak, and give us a plan for preliminary concept review that we can churn over. Look at where you want your driveway, and what kind of landscaping you want to put in as a result of the neighbors who spoke profoundly on this - so profoundly that Supervisor Bylewski actually put in the minutes on March 11th, that he wants all prior conversations by neighbors in front of boards to be current. We got an email today from a Mr. and Mrs. Pfennig who live adjacent to that property to the immediate south, which is in the file. If you could go back and construct a print that reflects what you intend to do, we could then begin to talk about that print. The print we have with lot lines don't mean anything. The thing that is alarming is that you actually broke off that lot for the reasons you shared, and on May 9, 2008, Mr. Packard sent a letter to Michael Krantz, (Mr. Kausner's partner), who went on the record to say that you basically shot yourself in the foot, in the context of not planning to do anything in the back. You have a legal sale, but created a non-conforming lot, and now we want to look at the whole thing as one big parcel, and that's ideally what you want.

Mr. Hopkins stated that in regards to the circumstances, about half the time when we do a project, it involves merging more than one lot, sometimes under different ownership. We don't actually create the new lots and then come in for approval. Mr. Donohue stated he would agree with that, that it would be premature to ask him to be moving lot lines. If we make them re-draw lines we may not like it, we may want to draw new lines. The survey that we have doesn't show lot lines that are helpful to us, but he could do a preliminary concept plan with lines on there with the lots, without actually doing a deed and surveying the land until something is approved.

Mr. Hopkins stated the plan before you now shows the proposed lot lines and the acreages. Al Shultz stated on the acreage, that assuming a concept approval, if one came, would be conditional on making certain changes to the lot lines. Eliminate the yellow line, and put the 2.02 acre line by your calculation; I didn't do the calculation and it's not obvious to me if that takes out the right of way for the road? No. So, technically the private road right of way and driveway right of way needs to be deducted from usable land and you would have to move that first lot line back a little, not a lot.

Mr. Hopkins questioned that that has been done on some projects, not others. Mr. Hopkins stated that this layout seen here was the layout that was approved the last time, with these acreages. Al Shultz clarified that when the Town Board denied the layout, the clock starts over. I don't see why you can say you can eliminate that lot and not move the other lot back 15 feet. I don't want to establish a precedence that says we are not going to deduct the roadway because we've got other issues that have become a deciding factor. What I would like to see is one that is a proposal that would show where that would be so that we can all calculate exactly the same and say look, it's a two acre lot of usable ground, the next lot line would have to move back about a little, about 15 feet. If you want to do it, make it clean. You've already got one thing to deal with, the proximity of the first house to the existing road, which I think we can get around that. You want us to cooperate and take a look at what you've got. We ask you to cooperate and give us something that we don't have to argue about.

Chairman Drinkard asked if anyone in the audience wanted to speak. Laura Pfennig, the next door neighbor, spoke about the 1.2 acre lot that is non-conforming that is still up for sale today. Her continuing concerns are that the water may still be displaced onto their property. Water does not go uphill, it goes downhill, and I'm downhill. Mrs. Pfennig has attended every meeting and is still concerned.

Chairman Drinkard assured her that they have done all they can to make sure that they have looked at all plans and surveys; they are ensuring all testing is done; that the developer is doing everything legally; that the engineers are making sure water handling is taken care of on their property and yours. Tonight we received some new information. Mrs. Pfennig stated, yes, and we're wet and we're only going to get wetter. Chairman Drinkard stated that a berm (a dam) will not work so we've studied this in great detail and have relied on many groups to render a recommendation to the Town Board.

Al Shultz added there are two issues raised by you at every opportunity. One of them is the water, and wetness. The other concern is the proximity and buffer between the driveway and your home. The applicant has moved the driveway and curb, and has added the landscaping. Mr. Shultz asked if that narrows her concerns down to just the drainage.

Mrs. Pfennig stated it's still a concern because she knows the ground there and where he has very old pictures of the trees, and if you look on LiveSearch.com, you'll see a lot of those trees are dead. Where he has the road coming in from Ransom Road, the three rows of trees that are the buffer between my bedroom window and their house will be gone, every tree. There are huge Oak and Pine trees, and those will all be gone because of that road. Where he's putting in new vegetation, it is the wettest part of the properties, and I don't see how it's going to stay alive, let alone buffer my lifetime.

Al Shultz stated that it looks adequately landscaped and a buffer can be put in there... Mrs. Pfennig interrupted to ask if Mr. Shultz has seen it from ground level. Mr. Shultz stated he has walked the grounds in the rain. Mrs. Pfennig stated that at ground level it's all tree trunks and where he's looking, it's all tree tops. If you look at it from ground level, it's all tree trunks. Where you're looking, it looks like a lot of buffer; but when you're walking it, there isn't. Mr. Shultz asked if in terms of the location of the driveway, that isn't such a concern now, it's really how well it gets screened. Mrs. Pfennig stated she doesn't think they moved the driveway that much. They talked about moving it another thirty feet in, but they only moved it five feet.

Chairman Drinkard suggested that anybody that writes this many documents has got a lot of tenacity, but you bring out a lot of great information, which a lot of it we know. It has been said again and again, respectfully. Mr. Drinkard asked what exact one or two points are most important. Mrs. Pfennig stated she doesn't want to see that first house. Why should she have a house in her back yard, and sit enjoying her backyard looking at a house. The whole section of Ransom Road from Tillman Road to the thruway, the houses are all consistent with each other, up at the road. No one has a house in their back yard, why do I have to look at a house in my back yard? This is the #1 issue.

Chairman Drinkard asked if anyone else had any issues. Carol Minnick, 4220 Ransom Road, is concerned with the privacy. Unfortunately, John Lindemann, could not be here because he is working, but he's the next house to the North, and then I'm right after him. We can now sit on our back patio or look out our window, and all we see is trees and wildlife, and that's why we moved there is to see nothing. We don't want the invasion of our private spaces. Also, I wanted to mention that several years ago, Dee Haines, who lives at 4050 Ransom Rd., proposed a similar project with one

house behind your house, and the Town Board turned it down because of it being out of character with the area, which is exactly what this is – it's out of character with the area.

Chairman Drinkard asked if there were any final comments. Mr. Hopkins asked if the board had any other comments other than us coming back with a plan that shows two acres, subtracting out the right of way, if there's any other aspects to the plan. I know you had approved the plan before, and we've made significant improvements, though not as many improvements as Mrs. Pfennig would like.

Chairman Drinkard suggested that screening is everything. I highly recommend that landscape reviews be done. It's on the record at every single session that more trees are better than fewer trees. The problem is going to be the selection of the type of trees, because where there is water-logged soil, some trees just won't make it. The trees that are there, in many cases probably didn't make it because they were broken off in the October storm, they just died.

Mr. Donohue stated that when you are re-drawing open development areas make sure you are looking at the code of section 193-31; and so on; just make sure the numbers are accurate and you're looking at the setback requirements, because it may be hard to do in this situation. It should meet the open development code.

Mr. Van Nest stated that this may not come out as an absolute approval. It's been denied by the Town Board and came back to us, even though this body previously voted in favor, we have to consider all of the issues and make a decision that is consistent with the open development code and town law relative to development. That decision will still have to be rendered by this board.

Chairman Drinkard stated that the Town Board may choose to see it from a different perspective. Mr. Donohue agreed there may have been some occasions in the past where we made the mistake of passing some lots on that had the two acres, but there are legal reasons behind it, that the zoning law says lot coverage must be based upon useable land, and the definition of useable land excludes private driveways for multiple homes and that type of thing. That is the way the code reads; that we may have made mistakes in the past doesn't mean we'll do that in the future.

Al Shultz stated that they have eight acres and three lots, so overall that shouldn't be an issue. Mr. Hopkins stated he is just looking for some consistency. He asked is that if the 20 foot driveway an exclusion of a 36 foot right of way, because the useable land is this driveway. Mr. Shultz clarifies that the right of way is being used for multiple homes. Mr. Donohue stated yes, but its 36 feet of driveway for 20 feet of pavement, so what he wants to know is it the 20 feet of pavement, or the 36 feet of right of way? Mr. Shultz stated it's only going to be the pavement, the private roadway. Mr. Donohue clarified that the single driveway doesn't come into calculation.

Brad Packard clarified the term used in the definition of useable land is the right of way. Mr. Hopkins stated they don't have a right of way here, that's the problem. Mr. Packard stated that was the discussion previously, the term used was private road or public road right of way. Mr. Shultz stated if they wanted a chance at getting an agreement, he would use 36 feet and forget about it. Mr. Van Nest says we need to look at it again and reconsider based on neighbor concerns.

ACTION:

Motion by Al Shultz to **table** the proposal for open development at 4180 Ransom Road, and request that the applicant submit a proposal that delineates three lots, each with a minimum of two

acres on the eight acre parcel taking into account that usable property must exclude private roads / access to the driveways. Mr. Van Nest moved to second the motion.

ON THE QUESTION:

Al Shultz reiterated what Mr. Van Nest said, that this is a proposal that we can now start. It is not one that we can guarantee.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Gerry Drinkard	Aye	Al Schultz	Aye

MOTION CARRIED.

Meeting adjourned at 9:34 p.m.

Cassandra Fish
Part-Time Fill-In Clerk