

Town of Clarence  
Planning Board Minutes  
Wednesday June 3, 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**

Verizon Wireless  
Agricultural Flood Zone

Requests Preliminary Concept Approval for a proposed telecommunications tower at 8095 Tonawanda Creek Road.

**Item 2**

Millherst Construction  
Industrial Business Park

Requests Development Plan Approval on a proposed new industrial use at 10025 County Road.

Chairman Gerald Drinkard called the meeting to order at 7:30 p.m. Timothy Pazda led the pledge to the flag.

Planning Board Members Present:

Chairman Gerald Drinkard  
Timothy Pazda  
Richard Bigler

1<sup>st</sup> Vice Chairman Al Schultz  
George Van Nest  
Gregory Todaro

Planning Board Members Absent:

2<sup>nd</sup> Vice-Chairperson Wendy Salvati

Jeffrey Grenzebach

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:

Bob Pazik  
 Dan Spears  
 Jim Collins  
 Laretta Lascu  
 Sandra Reinecke  
 Linda Critelli  
 David Lechner

Mary Pazik  
 Rob Pidanick  
 Ron Maurer  
 David Reinecke  
 William Hoffmeister  
 Tom Critelli

In the absence of Wendy Salvati and Jeffrey Grenzebach, alternate Planning Board member Gregory Todaro will be participating in all discussions and voting on all agenda items.

The page numbers for meeting minutes of April 15 and 29, 2009 and May 6, 2009 have been corrected. The following corrections reflect those page numbers.

Motion by Al Schultz, seconded by Gregory Todaro, to **approve** the minutes of the meeting held on April 1, 2009, as written.

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

MOTION CARRIED.

Motion by Al Schultz, seconded by Richard Bigler, to **approve** the minutes of the meeting held on April 15, 2009, as written.

**ON THE QUESTION:**

The following corrections shall be made to the April 15, 2009 minutes:

- Page 2009-42, last sentence in paragraph under "Action" should read, "Gregory Todaro moved to second the motion."
- Page 2009-43, second paragraph, about midpoint, should read, "Mr. Kausner hired Leader Environmental Group and determined that there was no tank."
- Page 2009-44, second paragraph, third sentence shall read, "Mr. Donohue stated he would agree with that, that it would be premature to ask him to be moving lot lines."
- Page 2009-46, paragraph under "Action" first sentence after second comma should read, "...each with a minimum of two (2) acres on the eight (8) parcel taking into account that usable property must exclude private roads/access to driveways."

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

MOTION CARRIED.

Motion by George Van Nest, seconded by Gregory Todaro, to **approve** the minutes of the meeting held on April 29, 2009, as written.

**ON THE QUESTION:**

The following corrections shall be made to the April 29, 2009 minutes:

- Page 2009-53, first paragraph under Item 5 Discussion: replace the first two sentences with: “Al Schultz stated that we are working closely with the County on the sewer situation in Clarence and Amherst. Some specifics regarding treatment and conveyance capacities were reviewed, and the procedure to connect to, or extend, existing sewer districts was detailed.”
- Page 2009-56, first paragraph, second sentence is corrected to read, “...studied last year and there **are** a few reasons...”
- Page 2009-56, second paragraph, third sentence, the word “city” is replaced with “County”.

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

MOTION CARRIED.

Motion by Richard Bigler, seconded by Gregory Todaro, to **approve** the minutes of the meeting held on May 6, 2009, as written.

**ON THE QUESTION:**

The following corrections shall be made to the May 6, 2009 minutes:

- Page 2009-61, third bullet point, replace the word “ancient” with “old”.
- Page 2009-64, second full paragraph insert “this request” between “reviewed” and “they”.
- Page 2009-67, first sentence under first “Action”, the words “recommend the Town Board” are to be inserted in the sentence just before the word “deny”.
- Page 2009-67, second “Action”, first sentence, the words “Greiner and Roll Roads” are to be replaced with “Roll and Clarence Center Roads.”
- Page 2009-67, second paragraph under “On the Question” shall read, “George Van Nest commented about needing to have some room for large retail stores, but this is a matter of reconciling the Master Plan and sound planning by the Planning Board.
- Page 2009-69, delete the entire paragraph under “Action” and replace it with “Motion by Al Schultz, seconded by George Van Nest, to recommend extension of the commercial zone at 8035 and 8041 Clarence Center Road by 48 feet to the East.”

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

**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**

Verizon Wireless  
Agricultural Flood Zone

Requests Preliminary Concept Approval for a  
proposed telecommunications tower at 8095  
Tonawanda Creek Road.

**DISCUSSION:**

Jim Callahan explains that Verizon Wireless is seeking approval to construct a telecommunications tower on the south side of Tonawanda Creek Road, east of Transit Road. The property consists of 36+ acres.

Jennifer Wright, of Nixon Peabody, is representing the applicant. Brett Morgan of Verizon Wireless is present as well. Ms. Wright explains that Verizon is looking to remedy a coverage gap that exists along Transit Road, from Barts Road to Wolcott Road and west on Transit Road to Northfield Road. The site that was chosen is within the search area which is located in the vicinity of intersection at Transit Road and Tonawanda Creek Road. The tower will be 122' high and will be located on the property at 8095 Tonawanda Creek Road.

Chairman Drinkard compliments the applicant on the completeness of the submission. He goes on to explain the maximum height for the tower in the Agricultural Flood Zone per Town Code is 100'. Ms. Wright said they do not ask for more than they need to provide the appropriate coverage; they are aware the height restriction is 100'. If they could provide the appropriate coverage with a 100' tower, they would. However, it has been determined that 120' is necessary to obtain the coverage that is missing in the area. If shorter towers are put up, more towers will be needed in the area to provide the appropriate coverage. Mr. Morgan explains the tower will probably be designed for 3-4 co-locators; however this may not be feasible due to the tree line in the area. There is typically about a 10' separation between co-locators for different carriers. Each level on the tower will be for one (1) carrier. Ms. Wright said there will be an equipment shelter at the base of the tower, the size of the shelter is approximately 11' 7" by 30' and will be on the west side of the tower. The tower will be located all the way to the east.

Mr. Bigler asked about the impact to the existing trees with regards to the driveway and the tower. Mr. Morgan said they plan to use the existing lane; there used to be a business that was run out of an equipment shed that is there. The existing road would not suffice but they will upgrade it. On either side of the road will be silt fencing in order to minimize disturbance to the wetlands.

Chairman Drinkard asked if the applicant delineated the Wetlands at the site. Mr. Morgan notes that tab "N" of the submission refers to the Wetland Delineation. The application has been submitted to the Army Corp of Engineers and the NYS DEC for a small amount of wetland disturbance; anything over a tenth of an acre requires a permit. The applicant will use the existing upland as much as possible, limiting the disturbance to the wetland area.

Mr. Schultz refers to the empty spot in the middle of the plan and said he does not see much difference in the proposal at 118' and at 96'. Ms. Wright said a significant amount of coverage would be lost around the perimeter if the height of the tower was at 96'. Mr. Schultz asked what the applicant would do if the Zoning Board of appeals denied the 120' height request. Ms. Wright said Verizon would still want to construct the tower, but their preferred height is 120'. She explains that trees can interfere with the signals.

Chairman Drinkard refers to Section 173 of the Town Code which states that if in a Commercial Zone the maximum height of a cell tower is 150'. In an Agricultural Floodzone the maximum height is 100'. One reason for the difference in the height requirement is that most uses in this zone are single family residences with some small businesses; the focus of dropping the height requirement 50' is to protect those residents. Chairman Drinkard asked what the economic loss would be to Verizon if the tower was restricted to 100' in height. Ms. Wright said she can take this issue to the project engineers and discuss it.

Mr. Pazda asked at what point a blinking light is required on the tower. Ms. Wright said it is required when the tower is over 200' high. This tower would not have a blinking light.

Mr. Bigler asked if any trees would be "topped" if a co-locator was placed on the tower down 30'-40' from the top. Mr. Morgan has been doing this for 13 years and he has never encountered a situation where he had to "top" the trees for the co-locators; he does not foresee it happening at this location.

Mr. Pazda asked for an explanation as to why it is OK for the co-locators to be at a lesser height on the tower; how can they operate properly at a lower height. Ms. Wright said the co-locators are operating on different systems. Mr. Pazda asked if a cosmetic cover has been considered to make the tower blend in with the trees. Ms. Wright said this can be done but typically it does not blend in with the surrounding trees. Mr. Pazda said he has seen towers that blended nicely with its surroundings. Mr. Morgan said for the cosmetic technology to work the tower has to be in a grove of existing pines; it will blend in better than if it were in a group of deciduous trees.

Chairman Drinkard asked what the plan is for landscaping the area. Mr. Morgan said it depends on the site. This site has deciduous trees that will screen the tower. From Tonawanda Creek Road 75% of the tower will not be seen; it will disappear in the trees. There will be a gate at the road with a combination lock on it. The technician will visit the site two (2) or three (3) times a month once construction is complete. There will be no signage at the road. Chairman Drinkard said Landscape Approval will be a condition.

Lauretta Lascu, of 8172 Tonawanda Creek Road, built her home three (3) years ago; she chose this area for its natural beauty. Her concern is that, per the photos shown previously, the tower can be seen from her property. She is also concerned with the obstruction to the natural beauty in the area and how that might negatively impact the property values. This is a residential area and she questions the service road. Chairman Drinkard notes that the Tonawanda Creek Road is built to commercial standards.

David Reinecke, of 8075 Tonawanda Creek Road, asked how far from the road the tower will be located. Are there any other proposed sites? What will happen to the property values? What will be the width of the driveway? Will the trees be cleared? What is the date of installation? Is there any noise associated with the tower? What will the traffic be like, will there be work trucks accessing the site? Chairman Drinkard said the TEQR Committee will review these issues. All the information on the project is on file in the Planning and Zoning and is available for public viewing.

Bob Pazik, of 8207 Tonawanda Creek Road, notes there is a communications tower a quarter of a mile north on Transit Road and another tower two (2) miles south on Transit Road. He then asked why we need another tower in the area. Mr. Pazik said there was discussion on a chain fence area; many deer access that area to get to the creek, where will the deer go if a fence is installed? He is also concerned with the decrease in property value and the perception of potential buyers.

The tower is 640' back from Tonawanda Creek Road. Ms. Wright said the tower does not make noise. The service road would be a 12' wide gravel road; they would grade and gravel what is already there. The only reason the road needs to be upgraded is to allow the vehicles for construction to access the site.

Mr. Schultz asked if the applicant considered co-locating on the other towers in the area. Mr. Morgan said yes, that is always the first option they look at.

Mr. Morgan explains the chain link fence will only surround the tower. The gate up and down the access road would not stop deer from traversing; it is to keep intruders out so there is no damage to the facility. The gate is typically 6' tall with 2' of barbed wire on the top. Mr. Morgan states there is not anything at the site to interest a child; anyone interested in climbing the tower would have to bring a ladder to the facility to access it. There are anti-climbing pegs on the bottom of the tower.

Mr. Schultz notes there are wetlands around the site, which is another reason the proposal would be referred to the TEQR Committee. He said it would be great if the applicant could consider decreasing the height.

Ms. Wright said it has been found, in the past, that cell towers do not have a negative impact on property values. The construction period will last approximately three (3) months.

Mr. Van Nest suggests tabling the project to allow the applicant time to review the height requirement with their engineers. The applicant will come back to the Planning Board with the information and will then be able to refer the project to TEQR with a specific height. Mr. Pazda asked if TEQR could look at the project at the same time. Mr. Callahan explains that TEQR will analyze the maximum impact, which is 122'. If the height is less than 122', it would not change TEQR's analysis. The applicant will need to go before the Zoning Board of appeals if they wish to request approval for a tower higher than 100'.

Mr. Van Nest said a definitive project should be sent to TEQR, especially with regards to the height and visual of the tower.

**ACTION:**

Motion by George Van Nest, seconded by Gregory Todaro, to **table** the project to allow the applicant the opportunity to evaluate with its engineers the feasibility of proposing a tower with a height that is consistent with the Agricultural Floodzone requirements of the Town Code. The applicant is to come back to the Planning Board with a determination on the project which they feel is necessary to meet the requirements of their particular business functions.

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

MOTION CARRIED.

**Item 2**

Millherst Construction  
Industrial Business Park

Requests Development Plan Approval on a proposed new industrial use at 10025 County Road.

**DISCUSSION:**

Jim Callahan explains the property is located on the south side of County Road, west of Strickler Road and consists of 15+/- acres. The applicant is proposing to develop an office/shop/warehouse yard for company relocation. The project has received a recommendation by the Planning Board for Concept Approval on February 4, 2009. A Negative Declaration under the SEQRA was issued on February 11, 2009. The project received a Special Exception Use Permit for outdoor storage on March 25, 2009.

Rob Pidanick, the consulting engineer from Greenman Pedersen, is present. Roland Georger, of Damon & Morey, is council for the applicant and is also present. Jim Collins Sr. and Ron Maurer, of Milherst Construction, are present as well. Mr. Pidanick explains the size of the proposed building is 12,690 square feet. The plan remains the same except the location of the detention basins; they had to be moved into the buffer area adjacent to the wetland. Mr. Pidanick has submitted a letter dated May 18, 2009 from the DEC indicating they are currently reviewing the permit application for the proposal. The letter is on file in the Planning and Zoning office. Mr. Pidanick spoke to Lynne Judd of the DEC and she indicated that the permit is expected to be approved. The permit will be provided to the Town of Clarence once obtained. The storm retention basins are in accordance with the Town's and the DEC's drainage policies. Approval with conditions has been received from the Town of Clarence Engineering Department; the letter is dated June 2, 2009 and is on file. Verbal approval has been brought forth by the Erie County Health Department, a letter is pending. Mr. Pidanick believes that the proposed ponds add additional protection to the wetlands. The parking plan is fully consistent with the Town Code. The Landscape Plan has been reviewed and approved.

Chairman Drinkard asked how the wetland will be monumented. Mr. Pidanick said the wetland will be monumented with a disc on a concrete post that is put into the ground. Milherst is proposing to put up orange fencing along the buffer during construction. They will put permanent signage along the

buffer to indicate the wetlands; vehicles will not be allowed past that point. Chairman Drinkard asked if Mr. Pidanick had an idea of what the special conditions might be that the DEC spoke of in the letter dated May 18, 2009. Mr. Pidanick did not know. Mr. Maurer shows an example of a sign that would be erected every hundred feet along the buffer. The sign said, "Federal Wetlands, absolutely no activity beyond this point." Mr. Bigler suggests the signs be more frequent in the narrower area. Mr. Maurer agrees.

Mr. Schultz said there was discussion regarding a permanent fence to prevent leaking into the wetland buffer. Mr. Pidanick said there is a swale adjacent to the buffer that will conduct drainage and the physical presence of the basin will be a deterrent to anyone going there.

Mr. Van Nest suggests taping off the areas that are not to be touched during construction. He thinks it is out of character to ask the applicant to install a chain link fence along the wetland. He is comfortable with appropriate signage on the buffer as well as monumenting the wetlands. Mr. Schultz said the delineation and marking of the buffer area is a condition of the Special Exception Use Permit. Mr. Pazda is ok with no fence as well. Mr. Bigler thinks the signage is adequate; there is no need for a fence.

David Lechner, of 10305 County Road, asked how far the project is from Strickler Road. Mr. Packard advised him the project is approximately 1500 feet from Strickler Road.

Mr. Pidanick thanks the Board for their cooperation in connection with this project.

Bill Hoffmeister, of 6606 Strickler Road, explains that he does not have a problem with the business but wonders what will happen to the displaced water. Will the water back up to Strickler Road?

Mr. Pidanick explains that, in accordance with the Town of Clarence drainage policy, the applicant has to evaluate the run-off from the site in its present condition, then evaluate that run-off post development. They are not allowed to discharge any more water from the site in the post development condition than they are in the present condition. Stormwater guidelines must be met.

#### **ACTION:**

Motion by Al Schultz, seconded by Timothy Pazda, to **recommend** approval of the Milherst Development Plan as presented in their drawings dated May 20, 2009. This recommendation is based on the following conditions:

1. The seven (7) conditions imposed by the Town Board with their granting of the Special Exception Use Permit in March 2009.
2. All engineering conditions spelled out in the letter of June 2, 2009 from Mr. Lavocat to Mr. Pidanick.
3. Formal DEC approval of the proposed location of the Stormwater Management Ponds in the wetlands buffer zone and compliance with any special conditions contained therein.
4. Formal Department of Public Health approval of on-site sanitary waste management facility.

**ON THE QUESTION:**

George Van Nest refers to condition number three (3) above and adds that the applicant must comply with any special conditions issued by the NYS DEC with regards to the NYS Freshwater Wetland program.

Gregory Todaro	Aye
George Van Nest	Aye
Al Schultz	Aye

Richard Bigler	Aye
Timothy Pazda	Aye
Gerald Drinkard	Aye

MOTION CARRIED.

Meeting adjourned at 8:45 p.m.

Carolyn Delgato  
Senior Clerk Typist