

Town of Clarence
Joint Town Board/Planning Board Minutes
Wednesday June 30, 2010

Agenda Items 7:00 pm

Review and discussion of the Town of Clarence planning process.

Supervisor Scott Bylewski called the meeting to order at 7:00 p.m.

Carolyn Delgato led the pledge to the flag.

Town Board Members present:

Supervisor Scott Bylewski
Councilman Patrick Casilio

Councilman Joe Weiss
Councilman Peter DiCostanzo

Town Board Members absent:

Councilman Bernard Kolber

Planning Board Members present:

Chairman Al Schultz
Timothy Pazda
Richard Bigler

Vice-Chairperson Wendy Salvati
George Van Nest

Planning Board Members absent:

Gregory Todaro

Town Officials Present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart
Deputy Town Attorney David Donohue

Other Interested Parties Present:

Robert Sackett
Angelyn Delgato

Robert Geiger

DISCUSSION:

Supervisor Bylewski thanked all those in attendance and explained that a joint meeting is meant as a work session for all Boards to talk with one another.

Al Schultz reviewed the history of 2009 where there was much interest in efficiency and size of government. Jim Callahan, who is part of a Lean Six Sigma study, took a look at Concept Plan Approval within Clarence. He created a presentation which included charts that reflect his studies of the Concept Plan Approval process. His presentation seemed to indicate opportunity to improve efficiency and effectiveness. On January 6, 2010 the Town Board decided to experiment with a smaller Planning Board, appointing five (5) members plus one (1) alternative member. On February 24, 2010 the Town Board asked the Planning Board to look at the general effectiveness of the Town's planning process with specific emphasis on SEQRA reviews; in particular the role of the TEQR Committee versus other ways to do the SEQRA review. On April 21, 2010 the Planning Board held a brainstorming work session in which two (2) big changes and over twelve (12) potential procedural improvements were discussed. The big changes would bring the Town of Clarence in line with other many communities; the two (2) changes discussed were (1) giving the Planning Board final authority and approval on Concept or (2) eliminate TEQR and have the Planning Board responsible for SEQRA reviews. The Planning Board came up with 12-15 different changes or modifications of the process that could significantly improve it without changing anything in the Town's Codes or Laws. Since the work session these ideas have been sorted, analyzed and combined. On May 4, 2010 Mr. Schultz and Mr. Callahan met with the Amherst Planning Department to discuss their Concept Approval process and how it differs from the Town of Clarence's. The idea is to take the best practices from the Town of Amherst's procedure and incorporate it into the Town of Clarence's procedure. This meeting is for input, comments and direction. The Town of Clarence planning process will be reviewed by looking at a commercial type project that requires a coordinated review under SEQRA. The Town of Amherst process will be reviewed as well; comparisons and contrasts will be made. Chairman Schultz will explain how the Town of Clarence process can be tweaked using the best practices from the Town of Amherst.

The TEQR committee and the decision making authority will be discussed at this meeting as well.

Chairman Schultz refers to the Process Flow Diagram that came from Mr. Callahan's Six Sigma Study. According to the chart it takes 5-6+ months for a Concept to be approved if a coordinated review is required.

The Amherst process starts with a pre-submittal conference; this takes place before the project is submitted. The important Town agencies are present at this conference, including the Engineer, Highway Department and Sewage Management Department. These groups look at the proposal along with the Planning and Zoning Department to decide what is needed. The time between this first conference and the official submittal date may be 2 days or 6 months. The only two entities involved in the process are the Planning and Zoning Office and the Planning Board. The key to Amherst's process is the pre-submittal. Their Town Board does not look at a land use project. During the pre-submittal step, the issues are identified, an EAF is drafted and it is established whether the project is a Type I Action, a Type II Action or Unlisted, it is also established whether the project needs full or part coordinated review. As soon as the project is submitted it goes out for coordinated review; the 30 day time clock starts.

Approximately 40% of the projects submitted are sent back to obtain further information; 60% are accepted and moved on. Applicants bring various documents to the pre-submittal conference. Mr. Callahan said the Town of Amherst requires full information up-front; this includes engineering and highway detail. The pre-submittal conference is set up when the Planning Department feels it has a complete submission. Once the project is submitted and accepted it goes out for coordinated review, plans immediately go to Town agencies. Within a couple weeks the agencies have an internal review meeting which is called the Conflict Resolution meeting. The Town of Amherst's submission for coordinated review is 6-12 weeks faster than Clarence's. While the information is coming back from the involved agencies, the Town of Amherst is further refining the project to try and resolve any conflicts. At the end of the process the Planning and Zoning Department prepares a detailed information packet on every project that has been through the process. The packet includes SEQRA review information, project review information, input from all departments; it has all the detailed information that is needed to make a decision. The packet then goes to the Planning Board and they have eight (8) days to make a decision. The Town of Amherst's process takes approximately six (6) weeks. There is no involvement of elected officials, no independent SEQRA review and one (1) public meeting.

The Town of Clarence process includes all four (4) agencies: the Planning Office, the Planning Board, the TEQR Committee and the Town Board.

Councilman Peter DiCostanzo noted that the first time the public would see a project under the Town of Amherst's process would be at the Planning Board meeting; at this point, the project is pretty much approved. The public does not like this. Mr. Pazda pointed out that the Amherst Planning Department is six (6) times the size of Clarence's Planning Office.

Wendy Salvati said one of her concerns with the Amherst procedure is that there is a lot of thinking and decision making before the project gets to the Planning Board. In essence they are using the Planning Department and the Town Agencies in the same manner that Clarence uses the Planning Board. She thinks whoever is doing the decision making should be more involved in the decision making, and not let others do that for them.

Chairman Schultz would like to know what percentage of the time are the detailed summaries accepted by the Planning Board. Amherst has the luxury of being able to assign one member of the Planning Department to each project in order to shepherd it through the process.

If the Clarence process is changed it would start with a pre-submittal conference to discuss and gather information on the project before it goes to the Town Board. Many of the "bugs" would be worked out prior to the proposal being placed on a Town Board agenda. This type of activity has already been increased in the last 6-8 months. The EAF can be completed prior to the Town Board meeting. The public meeting will be scheduled 21 days after the Town Board referral; it will be held at the Planning Board meeting. The public input becomes part of the TEQR review. Part III of the SEQRA review becomes part of the project. All is referred to the Town Board which takes 21 days because the project must be on a work session prior to being a formal agenda item. This process takes approximately 9-12 weeks; it is faster than the previous procedure which took at least 6 months.

The highlights of the streamlined process are:

- Comprehensive "pre-submittal conference". A face-to-face meeting with knowledgeable people.

- Planning and Zoning initiates coordinated review immediately on project referral.
- Significantly reduced TEQR involvement.
- There are still at least four (4) public meetings.
- Do not need to change any laws.

It is clarified that the proposed procedural change is for Concept Plan Approval. Chairman Schultz would like to implement the changes over the next few months.

If the TEQR Committee was eliminated it would cut the time in reviewing a project by a couple weeks. As SEQRA information comes in, the Planning Board integrates the information into the Concept Plan. If the TEQR role was eliminated the SEQRA inputs would be more “tightly integrated” into project plans, it would be less confusing to the applicants and the public. The overall process could be faster and less costly.

If the TEQR Committee was eliminated there would be seven (7) fewer citizens involved in the process, fourteen (14) fewer eyes would be looking at the project, reduced public meetings, more work for the Planning Board, and lost training opportunity (previous Planning Board members were on the TEQR Committee).

If the Planning Board has approval authority the Town Board role is eliminated. The Planning Board would be the group that accepts the project; they would be the lead “gatekeeper”.

Mr. Van Nest reviewed the current procedure and noted there is a lot of down time between meetings. The current process has the project bouncing from board to board. He looked at eliminating the Town Board as the land use decision maker with the understanding that the Planning Board would serve that function and assume responsibility as decision maker on land use projects. This would save time as it would take out 2-3 meetings. It would eliminate multiple referrals and multiple meetings. Land use recommendations from the Planning Board are routinely adopted by the Town Board. If the Planning Board had approval authority it would free up the Town Board’s legislative and policy-making agendas. It would also simplify the process for applicants and the public. The change in procedure would bring the Town of Clarence in line with land use decision making in other communities.

If the Planning Board has approval authority there is the potential for a loss of legislative/elected input on land use matters. The opportunity for public input will be reduced, however, comments from the public do not change much from the first or second public meeting to the last public meeting; many times there are multiple comments along the same line. This input can be appropriately combined as part of the project in the review process.

Wendy Salvati noted that the Town Board is not completely cut out of the land use process; they still have legislative decision making power in terms of zoning land, special use permits and Master Plan amendments.

Chairman Schultz explained the process tweaks within the existing code and said the Planning Board should continue to expand conference discussions after Town Board referral. The Planning Board should experiment with conference discussions before Town Board referral. The Planning Board should also experiment with initiating SEQRA review when the Town Board refers the proposal. This is a low risk proposal with high potential; easy to backtrack if necessary. The Planning Board can start by involving TEQR in coordinated reviews and direct referrals but they can make more of the simple

SEQRA decisions with the Town Board. It would also need to be determined what codes or laws would need to be changed if TEQR was eliminated.

If the Planning Board were to be established as a decision making body it would need to be determined what codes or laws would need to change and how procedures would be affected.

Mr. Pazda's concern is the more "front-end loading" that is done the more limited role of expectations the Board has. Ms. Salvati said much of the "front-end loading" is being done already during the Executive Planning Board meetings. The benefit of having work sessions is the opportunity to discuss thoughts, ideas and concerns of the project.

Supervisor Bylewski said it is important, given the Town Board's elected responsibility, to have a large say in the process. He is in favor of the Town Board retaining Concept Approval and the Planning Board having Development Plan Approval. The Town would have to look closely at § 229-156 (D) of the Town Code which specifically talks about Town Board and Architectural Approval. The architecture must somehow be incorporated into the Concept stage. Supervisor Bylewski is in favor of the "pre-submittal" stage but said it is important to keep communication open. Regarding the TEQR Committee issue it is important to keep the TEQR provisions as it relates to what constitutes a Type I Action. As to eliminating the TEQR body he is open to suggestions.

Chairman Schultz noted that the proposed changes in the procedure started with the Lean Six Sigma study that Jim Callahan did on Concept Plan. Brad Packard is now in the process of the Lean Six Sigma study for the Development Plan.

Councilman Weiss asked how many Town Board members come into the Planning office and familiarize themselves with the projects prior to a Town Board meeting. The Town Board members receive the Agenda Review Memo from Jim Callahan and that is what they base their decision on. Councilman Weiss thinks the land use projects should be in the hands of the Planning Board as they have worked with the project and the project sponsor. The Planning Board should have more control because the Town Board's knowledge of the project is a thumbnail's sketch.

Regarding control over land use decisions, Mr. Van Nest asked if it is power perceived or power realized. He asked if the Town Board makes the decisions because that is what the community expects from them. The educational process on how land use works and the Planning Board process may help alleviate some of those concerns. The Town Board ultimately has authority to appoint Planning Board members anyway, the Town Board can be sure they are trained and educated. Supervisor Bylewski points out the Planning Board members have staggered terms. Supervisor Bylewski meets with Jim Callahan prior to every Town Board meeting and has been involved in Master Plan Amendments, input of the original drafting of the Master Plan, input in the language of the Zoning Code, the Subdivision Law, etc.

Wendy Salvati said the Town Board members can always offer their input even if they don't have approval authority anymore. She agrees with the Planning Board having decision making authority.

Town Attorney Bengart said Town Board members have to be careful that they don't influence other Boards because of who they hired, it creates perceptions and can be a problem.

Councilman DiCostanzo attends all Planning Board meetings and most Executive Planning Board meetings; this is where he obtains much of his information on projects.

Councilman Weiss asked if the Town Board does not have the level of expertise why are they making the ultimate decision.

Richard Bigler said if the Planning Board is a recommending body and 60% of the Town Board's work is on this issue, if the Planning Board does their job properly, it alleviates much of the burden and work for the Town Board and they can concentrate on other issues.

It is questioned whether the work that the Town Board does on land use projects has added value or not. Chairman Schultz said the perception of the people in town that their elected officials are handling land use decisions will be lost. Councilman Weiss noted that not many residents come to the Town meetings anymore. Ms. Salvati wondered if people want to see the Town Board involved in these decisions because it gives them political clout. The Planning Board adds objectivity to the review of projects. Mr. Bigler points out that all members of all Boards are bound by laws.

Timothy Pazda voices his concern regarding split decision making and asked if it is legal. Supervisor Bylewski said this is done on cell tower approvals.

Jim Callahan stated that most of the emphasis is put on the Concept Approval, then the Development Plan would be more or less "rubber stamped" by the Town Board; all the work goes into the Concept Approval.

Mr. Pazda thinks the courts have inferred that the decision making process should be done by the body that is actually doing the research. How does this affect the current process? Town Attorney Bengart said that issue will not be discussed at this meeting.

Town Attorney Bengart said if the decision is to start the "tweaking" process immediately, it is important to be consistent with all projects going forward.

Councilman Casilio suggested including the Zoning Board of Appeals in the flow chart. He agreed that projects are referred back to the Town Board too many times. He points out that there are differences in staff structure between the Towns of Clarence and Amherst.

Chairman Schultz explained that, in the Town of Amherst, if a project needs a variance, it goes to the Zoning Board of Appeals first and that decision becomes part of the "package" that is drawn up.

Ms. Salvati asked if a list of Type I Actions that goes above and beyond what is in the SEQRA Law has been established. The answer is yes.

Boards can be merged but there cannot be two (2) chairmen on one Board.

Mr. Pazda referred to the comment of sending an applicant to the Zoning Board of Appeals first and voices his concern saying what if it is a mistake and they should just be following the law. The applicant has the right to apply for a variance but Mr. Pazda wondered if the Board should be steering them in that direction. Mr. Callahan said most applicants will know the law and come in with plans that meet the requirements.

Robert Sackett points out that one decision that the TEQR Committee makes is to do a coordinated review. At a recent TEQR meeting he proposed a coordinated review for a Type II project based on the public outcry at the Planning Board meeting. The public is good at being part of the process at

identifying the problems of a project; most of their concerns are environmental. Live data needs to be entered into the TEQR process; Mr. Sackett thinks the TEQR process should be part of the Planning Board. He thinks merging the two (2) Boards would be effective.

The next Joint meeting will be scheduled in June 2011.

Meeting adjourned at 8:30 p.m.

Carolyn Delgato
Senior Clerk Typist