

Town of Clarence
Planning Board Minutes
Wednesday September 2, 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

8095 Tonawanda Creek Road; Requests site plan approval for telecommunications tower.

Item 2

Epiphany United Church of Christ

9520 Wehrle Drive; Requests concept plan approval for new church.

Item 3

Master Plan 2015 Amendment

Transit Road Corridor, north of Roll Road, Discussion.

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 Chairperson Wendy Salvati
Timothy Pazda
Richard Bigler

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

Planning Board Members Absent:

None

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:

James Sendker	Bob Bigos
Mark Crawford	Scott Parks
Dennis Londos	Jared Lusk
Brett Moegar	Lynn Collis
Rob Myers	Khalid Mahran
Doug Olson	Sean Hopkins
Paul Wheeler	Joe Kleinmann

Motion by Al Schultz, seconded by Timothy Pazda, to **approve** the minutes of the meeting held on August 5, 2009, as written.

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

MOTION CARRIED.

Motion by Jeffrey Grenzebach, seconded by George Van Nest, to **approve** the minutes of the work session held on August 19, 2009, as written.

Richard Bigler	Aye	George Van Nest	Aye
Timothy Pazda	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	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 each project. 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

8095 Tonawanda Creek Road; Requests site plan approval for telecommunications tower.

DISCUSSION:

Jim Callahan provides a brief history on the project. It is located on the south side of Tonawanda Creek Road east of Transit Road. It is existing vacant land consisting of approximately 36

acres in the Agricultural Floodzone. The applicant is proposing to construct a 99' telecommunications tower. The project received a Negative Declaration under the State Environmental Quality Review Act as issued by the Town Board on August 26, 2009.

Jared Lusk from the law firm of Nixon Peabody is present and representing Verizon Wireless. Mr. Lusk notes that nothing has changed since the adjustment of the height of the tower.

Chairman Drinkard refers to the Part II EIS in which 85 trees are to be planted as required by the DEC. Mr. Lusk is aware of this and will comply. In response to Chairman Drinkard's question asking what type of trees were required, Mr. Lusk said 21 Red Maples, 21 Silver Maples, 22 Swamp White Oaks and 21 Pin Oaks need to be planted. Mr. Lusk has the letter from the DEC in which their recommendations are listed; he will provide a copy for the file.

Resident David Albert said there is a cell tower behind him on Transit Road and asked why another one is needed in this area. Chairman Drinkard said the technical specifications as to why and where the proposed tower is to be located has been addressed at previous meetings; this information is in the minutes and available in the Planning and Zoning Office. Mr. Albert does not want to look at the tower in the winter time.

Mr. Lusk said there is a photo simulation on file; the height of the trees will help to screen the tower.

ACTION:

Motion by Jeffrey Grenzebach, seconded by George Van Nest, to **recommend** site plan approval for the Verizon telecommunication tower to be located at 8095 Tonawanda Creek Road and to **recommend** issuance by the Town Board the necessary Special Exception Use Permit.

ON THE QUESTION:

- The applicant is required to plant 85 trees in accordance with the DEC letter.
- The project is subject to the Landscape Committee approval.
- Payment of all applicable fees is required.
- Construction is to be done during reasonable daylight hours, as stated in the Town Code.

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

MOTION CARRIED.

Item 2

Epiphany United Church of Christ

9520 Wehrle Drive; Requests concept plan approval for new church.

DISCUSSION:

Jim Callahan provides the background on the project. It is located on the north side of Wehrle Road, west of Gunnville Road. It is existing vacant land consisting of approximately 14 acres in the Agricultural Rural Residential Zone and the Industrial Business Park Zone. The applicant is proposing to develop a new church on the property. A Negative Declaration under the State Environmental Quality Review Act was issued by the Town Board on August 26, 2009.

At this time, there is no representative in attendance for the project. The item is moved to the end of the agenda.

Item 3

Master Plan 2015 Amendment

Transit Road Corridor, north of Roll Road,
Discussion.

DISCUSSION:

Jim Callahan explains the Town has been undertaking review of Master Plan 2015 as directed by Town Board and initiated through the Master Plan Review Process. A proposal to amend the Master Plan was introduced to the Town Board at the annual Public Hearing held on February 25, 2009. After referral to the Planning Board, the Planning Board had forwarded a recommendation to not amend the Master Plan and to consider downzoning to Commercial from Major Arterial back to the Town Board based upon the previous year's analyses including a review under SEQRA with a Negative Declaration being issued by the Town Board. The Town Board has sent the proposal back to the Planning Board to consider a compromise and to forward the proposal on to TEQR. The Planning Board Executive Committee met with the applicant to discuss the options. The Planning Board held a work session on August 19, 2009 to analyze all Major Arterial uses and existing transitional land uses in the Town.

Chairman Drinkard reads the following into the record: The major arterial areas in front of the subject properties in what is referred to as segment B on Transit Road were studied years ago and made as deep as they are. Transitional land use in the rear was planned.

What remained and is now zoned RSF was intended to be a land use that would be transitional to the residential areas in the rear. This was not only the explicit intent but was based on precedent.

What is a fact is that the Master Plan (MP) spells out that any extension to the MA land use must not do so at the expense of residential use. The paragraphs were read into the record at the past meetings.

What is also fact and the basis for discussion at the work session held on August 19, 2009, is that with consideration of a MP change request – a transitional land use is required. The question is how much?

The Town Board (TB) did specify on the record in minutes of the July 8, 2009 meeting where they sent a prior recommendation back to the Planning Board (PB) – several things:

1. Wanted reconsideration of our previous recommendation with now new information,
2. Were very accepting of the prospective project namely Wegmans (W),

3. Were not satisfied with the W proposal under consideration and that it needed to be negotiated to increase the buffer area in the rear,
4. Expected a resubmission from W,
5. Wanted something sent to TEQR.

We left the last PB meeting on August 5, 2009 with several things to consider:

1. A new submittal by W – the developer which increased the buffer area approximately 10-20 feet. This is considered a non-meaningful resubmission and not provided in good faith. It only removed some parking area but did not reduce the store size.
2. Developing need for more information/data on what had been done in the past – what was the precedent along the Transit Rd. corridor?
3. Need for a work-session meeting which was held on August 19, 2009 to go over the Planning Dept. findings.
4. Determine if there is a need for more information?

The PB held a work-session on August 19, 2009. At this session we looked at precedents along the Transit corridor from Wehrle Drive to County Rd. The conclusion one could draw from the data reviewed was that all cases similar to the MP request under consideration – had a transitional land use provided and it was well over 300 feet and in some cases was over 1000 feet.

By deduction it seemed obvious that a three hundred (300) foot “straw-man” determination of a transitional land use would be a fair distance (not unreasonable) that when provided at a specific project level could be a distance in feet that could be supplemented with appropriate landscaping, etc.

Tonight we have three options and I would prefer two options:

1. Send the original proposal that was well researched and well thought out back to the TB that would be even more firm because of the added information we have considered.
2. Send something to TEQR for their review – perhaps here is where the straw-man transitional land use of 300 feet could be applied.
3. Table because of new information needed or wanted based on deliberations.

Summary:

Strong points to consider are:

1. TB did not like our original submission to down-zone.
2. The TB was willing to consider the W project that was presented to them and discussed extensively.
3. Wanted the PB to send something to TEQR.
4. The current zoning does in fact allow for development options in front and rear that complies with the MP.
5. The PB serves as a recommending body to the TB and serves at their pleasure.

Our job is to look at the subject properties and determine a recommendation based on the best land use.

Sean Hopkins, of Hopkins & Sorgi, is present on behalf of the project sponsor. Art Pires, of Wegmans, is also present. Mr. Hopkins explains that the request is to reclassify 6.72 acres of the project site from Residential Single-Family Zone to Major Arterial Zone. In addition, he would

propose 3.86 acres of the project site along the east and northern portions of the boundary that is currently zoned Residential Single-Family be designated as permanent Open Space or the so-called transitional area. On July 24, 2009 Bella Vista submitted a revised Concept Plan in good faith. In addition to increasing the setback along the north and east, they flipped the 10,000 square foot retail space that was shown along the northern portion of the site to the southern portion of the site. Bella Vista is willing to provide a wide assortment of mitigation measures. Mr. Hopkins said that rather than looking at a one dimensional analysis, he thinks a much more quantitative analysis needs to be looked at. Mr. Hopkins is proposing a permanent buffer on the northern portion of the project site that is adjacent to residential of a 119' minimum, the proposed buffer on the eastern portion is 128'. He is also proposing store setbacks. He refers to the Wal-Mart setback of approximately 315' shown in the Planning analysis; he believes this is measured from the back of the store. The proposed setback for Wegmans to the east is approximately 220', the setback to the north is approximately 224' and the setback to the 10,000 square feet of additional retail space to the north is approximately 158'. Several things can occur in the transitional area. Some possibilities are to preserve as much of the vegetation as possible, supplemental vegetation can be provided, a 6' berm with a 6' fence on top of that. The fence will provide two benefits: a noise and visual mitigation. A sound wall on top of the berm is being considered. The entire transitional area would be subject to a declaration of restrictions that would be recorded with the Erie County Clerk's Office to ensure it would never be developed in the future.

Paul Wheeler, of 5647 Kippen Drive, said the precedent that has been set across Western New York includes an Olive Garden restaurant behind the Wegmans on Alberta Drive, the Scajaquada Expressway is behind Wegmans in the City of Buffalo, the Wegmans in West Seneca has railroad tracks behind it and there are more. There is 315' behind the Wal-Mart plaza on Transit Road but the loading docks are on the side of the building.

Khalid Mahran, of 5722 Fieldbrook Drive, voices his concern with the transitional area with regards to the health of the residents; he refers to asthma and cancer. He sees that a mission of the Town of Clarence is to provide high quality of life to the residents by protecting the public health, safety and general welfare. He points out that recently there was an accident on Transit Road and he wonders what the accident rate would be like if a superstore is built at this location. He has received documentation from the Williamsville School District advising they have performed studies on how to keep the children safe while walking and biking to school. He feels this project is not for the good of the community; he expresses his opposition to the project.

Bob Bigos, 5653 Kippen Road, reminds everyone that this is a land use issue. He said the proposed project is impossible; it is too big for the site and is not the right place to put it. He asked the Planning Board members stick to their guns and honor their original planning, which is excellent.

Lynn Collis, 8081 Highland Farms, said the proposed project does not fit in the area. She agrees with Mr. Bigos. She thanks the Planning Board for their time and effort.

Joe Kleinmann, 5623 Kippen Drive, refers to the buffer area that Mr. Hopkins presented and said the area really needs a transitional zoning area.

Chairman Drinkard explains that something could be built in this area with a minor transitional area.

Wendy Salvati said the discussion before the Planning Board is whether or not it is appropriate to change the land use of the area, which has been considered twice before. She wondered why it wasn't decided to change the zoning in this area when the Master Plan 2015 was first created. She thinks it is because the land was considered transitional and shouldn't be used for Commercial development. She feels strongly that the Planning Board should stand by their original recommendation. She thinks there could be a higher and better use of the land than to carve out a small piece of it for commercial use.

George Van Nest said there will be much confusion if the proposal is referred to the TEQR Committee. He points out what the regulations under SEQRA say about what needs to be studied before Lead Agency makes a determination. He reads from the SEQRA Regulations Section 617.2 (2) which states actions include agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions. Section 617.2 (1) states actions include projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure. The TEQR Committee looked at the Planning Board's original recommendation from a policy and planning standpoint only. If the Planning Board refers something to TEQR it will inherently lead to analysis of project specific impacts which are not appropriate at this level of analysis. Ms. Salvati said the TEQR Committee would have to look at full build-out of a project; however she is still not clear on what the Planning Board would send to TEQR at this point.

Chairman Drinkard reminds everyone that the past two recommendations were not rejected by the Town Board, they were sent back to the Planning Board. The Planning Board sent the recommendation to the TEQR Committee who did an environmental assessment on a downzoned corridor. The recommendations were never invoked. There is now information on transitional land use that stands up to scrutiny so it can be sent to TEQR.

George Van Nest said the SEQRA process will be a site specific review of the project; he disagrees that this should take place. To have a meaningful evaluation you would almost have to blow up strategic planning and SEQRA review on the planning level and skip directly to almost a site specific analysis of one project. He submits that is not what is envisioned under SEQRA for this particular step in the process.

Al Schultz said the Planning Board needs to decide, if the corridor in question remains Major Arterial, what would be the transitional zone that would protect the neighbors behind the site. Mr. Schultz walked the site and said 300' might be a reasonable transitional area that could be sent to TEQR to review.

Timothy Pazda clarifies that if the Planning Board sends the project to the TEQR Committee, that committee would do an evaluation based on a full build-out, it will then come back to the Planning Board to take into consideration the information provided by the TEQR evaluation. At that point the Planning Board would make a determination on what to recommend. Mr. Van Nest said the Planning Board is not part of the process at that point, Ms. Salvati agrees.

Chairman Drinkard said a site specific project, which is Wegmans, was brought up and discussed on the record of the Town Board minutes; he does not know how the TEQR Committee can avoid it.

Mr. Pazda asked what the Town Board's options are if the Planning Board refers the original recommendation back to them. Ms. Salvati said the Town Board, as Lead Agency, has to make a decision to accept the recommendation or not. If they choose to not accept the recommendation they are saying they want to amend the Master Plan, they then go to the TEQR Committee to ask for a review to amend the Master Plan. Deputy Town Attorney David Donohue said that is not the opinion of legal council nor does he agree with the said procedure. He goes on to explain that the Master Plan indicates that if this proposal has to go to TEQR it will go through the Planning Board. Mr. Van Nest disagrees.

Ms. Salvati said there are other transitional area uses that could be applied, like apartments.

Mr. Pazda is concerned that if the Planning Board does nothing they will lose control.

Mr. Van Nest voices his concern saying there are internal inconsistencies.

Mr. Pazda asked if the TEQR Committee could discuss other land uses for the site or would they discuss the project that has been identified. Mr. Van Nest said they should look at the full build-out but the record is littered with specifics. Mr. Grenzebach said the TEQR Committee should look at the worse case scenario.

Ms. Salvati said there is no compelling information to make the Planning Board flip their previous recommendation. Chairman Drinkard said the Planning Board should keep the option open to gather as much information as possible prior to making a recommendation to the Town Board. A referral to TEQR can provide further information.

Mr. Bigler said if the project is sent to the TEQR Committee it will benefit the Planning Board by providing additional information. This does not mean the Planning Board has to alter their recommendation; it may stay the same even with the additional information.

Mr. Van Nest voices his concern that the Planning Board would allow themselves to be put in a position to facilitate a Negative Declaration which is inconsistent with their prior decision.

Mr. Schultz said he can justify a 300' transitional zone based on his investigation and research.

ACTION:

Motion by Al Schultz, seconded by Gerald Drinkard, to request the TEQR committee assess the environmental impact, per New York State Environmental Quality Review Act, of increasing the depth of the Major Arterial corridor at 5731 Transit Road and 8040 Roll Road by one-hundred eighty (180) feet to the East. Such an increase would result in a Major Arterial Zone approximately seven-hundred (700) feet deep, allowing for larger commercial facilities while maintaining a buffer of approximately three-hundred (300) feet to the residential developments to the East. Since 8040 Roll Road is an "L-shaped" parcel, this increase in depth would include the entire Southern portion of the parcel in the Major Arterial zone.

ON THE QUESTION:

- This recommendation is in consideration of the Town Board sending back to the Planning Board our recommendations to down-zone this segment of the Transit Road corridor and maintain the current commercial depth. Based on the record, the Town Board does not want to down-zone and has stated that the subject Major Arterial zone should be deepened in order to facilitate larger retail options.
- The increased depth of 180 feet is based on a thorough re-review of our previous study of the Transit Road corridor, and a subsequent study of past practices and precedents for transitioning between Major Arterial facilities and Residential – Single Family developments.
- This recommendation represents an appropriate long-term use of the land under study in that it provides for Major Arterial growth while protecting the residents to the East, consistent with past practices and precedents in Clarence.
- Protecting residents to the North would be accomplished in ultimate site plan review.

Mr. Pazda wants a 480’ transitional area to be reviewed as an option.

Chairman Drinkard said the TEQR Committee is asked to review and consider all comments made by neighbors in the area and all minutes regarding the Master Plan 2015 relative to the change. This is added to the motion.

Mr. Van Nest said the TEQR Committee must evaluate what the 480’ transition area could be and the impact on the surrounding neighbors must be identified.

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

MOTION CARRIED.

Item 2

Epiphany United Church of Christ

9520 Wehrle Drive; Requests concept plan approval for new church.

DISCUSSION:

There is no representative present for the project. Neighbor notifications were mailed.

Fred Kraft owns the land adjoining the project site to the west and he does not oppose the project.

Meeting adjourned at 8:55 p.m.

Carolyn Delgato
Senior Clerk Typist