

Town of Clarence  
Planning Board Minutes  
Wednesday October 1, 2008

**Work Session 7:00 pm**

Roll Call  
Update on Pending Items  
Zoning Reports  
Committee Reports  
Miscellaneous

**Agenda Items 7:30 pm**

Approval of Minutes

**Item 1**

Dan Furmanek  
Traditional Neighborhood

Requests Concept Approval of a proposed Open  
Space Design Subdivision at 8230 County 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  
2<sup>nd</sup> Vice Chairman Timothy Pazda  
George Van Nest  
Albert Schultz

1<sup>st</sup> Vice Chairperson Wendy Salvati  
Jeffrey Grenzebach  
Richard Bigler  
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:

Chris Cardillo  
Terrence Finn

The minutes for the September 17, 2008 meeting will be reviewed and action will be taken at the October 15, 2008 Planning Board meeting.

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**

Dan Furmanek  
Traditional Neighborhood District (TND)

Requests Concept Approval of a proposed Open Space Design Subdivision at 8230 County Road.

### **DISCUSSION:**

Jim Callahan provides the history on the project. It is located on the north side of County Road, east of Stahley Road and consists of 19+ acres in the Swormville Traditional Neighborhood district. The project was initially introduced to the Town Board on December 20, 2006 and was referred to the Planning Board. A density yield of 35 lots was approved on February 17, 2007. A Negative Declaration under SEQRA was issued by the Town Board on May 28, 2008 on the proposed design. The project applicant is present seeking Concept Approval on the amended design.

Chris Cardillo is representing the developer. Mr. Cardillo references the June 2008 meeting where a list of action items was requested by the Planning Board. He believes each item has been met.

Chairman Drinkard refers to the Planning Board minutes of June 18, 2008 and reads: "Mr. Van Nest asked the applicant if there are any drainage easements on the project parcel or his neighbors parcel. Mr. Cardillo does not know this but will look into it." Mr. Cardillo confirms that he has not researched this issue but expects to address it during engineering. There is a possibility of easements.

Chairman Drinkard said the submitted layout meets the law; it meets the TND and the Subdivision Laws. The Landscape Law will be addressed in the future. There were some suggested changes for the developer's consideration. One such consideration is to eliminate lots 22 and 23 by dropping the roadway down and move the lots into the center section. Mr. Cardillo explains that the expectation of the developer is to utilize the common area in front of the island houses for a berm that would minimize vehicle lights shining into homes as vehicles enter into the subdivision. Similarly, it is the hope of the developer that a berm is created in front of lots 22 and 23. Wendy Salvati said if lots 22 and 23 are moved, the shielding of vehicle lights can still be achieved with a berm. There are small pieces of Open Space that, with the shifting of lots, could produce larger pieces of Open Space within the subdivision. This would require increasing the island size slightly.

Chairman Drinkard points out there are no corner lots in the subdivision, if this common area is landscaped and maintained by the Homeowners Association it will make the area more attractive. He asked Mr. Cardillo if this was the intent as the subdivision was being designed. Mr. Cardillo said it was not a topic of discussion; he would not be able to comment on it this evening.

Timothy Pazda would like to see sidewalks around the perimeter of the subdivision so there is connectivity for pedestrians without walking out onto a main road.

Albert Schultz states, for the record, that Open Space is designed to preserve natural and scenic quality of open land. So the little pieces that are called common areas do not fall into the category of Open Space. Mr. Schultz went through the calculations and said the applicant meets the open space requirements; in fact the plan exceeds the 50% that is required. Chairman Drinkard states that the creativity of the developer must be allowed per the Open Space Law and the Traditional Neighborhood Law. It makes sense to landscape in order to shield vehicle lights.

George Van Nest voices his concern saying if the road is dropped down, it starts to push closer to and may have an impact on the water area.

Chairman Drinkard said the berm should be in before the first house receives a certificate of occupancy; it should not be "creeping" landscaping.

Mr. Schultz reiterates the fact that the area to the northwest is not open area but common area which is supposed to be natural.

Gregory Todaro refers to the concern of the road being pushed closer to the pond and asked if the pond can be moved forward or would too much frontage be lost? It is explained that the pond exists now. Mr. Pazda points out that engineering the project could change the location of the pond.

Chairman Drinkard refers to the Landscape Law at this early concept phase. He indicates that it is easier for the Planning Board to recommend one (1) tree per lot; it needs to be on the privately owned side of the sidewalk and 5' from the right-of-way. It was noted that three (3) operative Laws apply to this project, they are: 1.) the Landscape Law, chapter 131 of the Town Code, 2.) the Subdivision Law, chapter 193 of the Town Code, specifically the Traditional Neighborhood District and Open Space sections, 3.) the Zoning Law, chapter 229 of the Town Code.

Terrence Finn, of 8208 County Road, voices his concern regarding water and drainage issues. He said if the land is stripped for the subdivision it will make the ground even lower. The spring fed pond overflows in the Spring time, years ago there was a pipe put in underground by the farmer that lived there so that when the pond overflowed it would not flood the farm field; the water ran behind Mr. Finn's house. He is concerned that whoever owns the property now will not dump the water onto his property. He is also concerned with the 10-12 houses that will abut his property; he does not want his land turned into a garbage dump from the owners of these houses throwing their lawn clippings and garbage onto his land. There is also a liability issue if children start playing on his land, what if someone gets hurt. He thinks a fence would help control these issues. The fence should continue along the west side and turn the corner on the north side of the project. He wonders if the foundation of the houses will be higher than his. Chairman Drinkard explains that if the developer strips the topsoil for the infrastructure, the topsoil has to remain on site. Wendy Salvati explains that the Town Engineer must make sure that any portion of this development does not drain off on to Mr. Finn's property any more than it does now.

Mr. Cardillo clarifies by explaining there is a collapsed pipe on site that comes out towards Mr. Finn's property, it may even be on his property. The most likely drainage from the project would most likely be straight back to the retention pond. Mr. Cardillo refers to the comment made about putting up a fence and said he thinks the Town of Clarence has adequate laws to protect the individual from any violation of illegal dumping and or/any other nuisance related issue.

**ACTION:**

Motion by Richard Bigler, seconded by Jeffrey Grenzebach, to **recommend** Concept Approval for 8230 County Road as written.

### **ON THE QUESTION:**

The following conditions are added to the motion:

- Landscape Committee Approval.
- Payment of applicable fees.
- Installation of sidewalks on one side of the street going north and south around the entire perimeter.
- Confirmation that the final Home Owners Agreement will specify and define locations and maintenance by the Home Owners Association of common areas. The Home Owners Agreement must be reviewed and approved by the Town Attorney's Office.
- One (1) tree per lot.

Based on observations by several Planning Board members considerations should be given to:

- Shift lots 24 through 35, in the center area, north. Enlarge this area to include lots 22 and 23. This will maximize frontal green space.
- Shift lots on the north, numbers 11, 12 and 13 to the east, eliminate the common area in order to expand the common area on the west.

It is confirmed that the list of considerations is part of the motion. Mr. Schultz does not agree with the considerations and thinks the request should be recommended as is. Chairman Drinkard reiterates that the current plan meets the law; the Planning Board would like the developer to look at the list of considerations as they move on to the next step. It is clarified that the considerations are not conditions of the motion.

George Van Nest also clarifies that the considerations are not conditions of the motion and goes on to say that he is not sure it is possible to accommodate the suggested changes on the site.

Wendy Salvati would like the developer to look at the 20' of common space to the north, this can be utilized into a lot and add it to what is already in the front and reconsider the width of some lots. She thinks the developer can have lots without having to make significant changes to the roadway. The idea of the suggested considerations is to make the most logical provision of Open Space.

Timothy Pazda asked for clarification on the conditions of the motion. They are stated above.

Wendy Salvati refers to the second consideration which references a 20' piece of open space be moved to the other side of lots 11, 12 and 13 to make this open space as large as possible. She wants this added to the motion as a condition not a consideration. Deputy Town Attorney David Donohue said this changes the motion and may change the vote; formally, Ms. Salvati must ask the person who made the motion if he will change his motion. Richard Bigler made the motion and said, "No" when asked if he would change his motion.

Chairman Drinkard reads the considerations again, they are listed above.

Albert Schultz asked for clarification on the considerations with regards to who they pertain to: is the motion for the Town Board to consider putting those restrictions on the builder? Wendy Salvati said the Planning Board is asking the applicant to consider making these changes to the design. The Planning Board is making a recommendation to the Town Board and putting considerations in it, Mr. Schultz does not agree with the considerations. Timothy Pazda said the considerations should not be aimed at the Town Board because the Town Board should not be developing the project, the considerations should be aimed directly at the developer. Mr. Schultz said the motion is aimed at the Town Board; this is where the confusion comes in. Deputy Town Attorney clarifies, again, that the considerations are directed at the developer not the Town Board.

George Van Nest voices his concern with preserving the private property next to the project site. He does not recall another project where the installation of a fence was a requirement. He suggests through the Home Owners Association Agreement that the property boundaries be appropriately called out, along with restrictions on use, monumenting and maybe even postings. Chairman Drinkard said this is something that can be proposed at Development Plan Review. Richard Bigler thinks a fence is a poor choice because people are more apt to through grass clippings over the fence where they don't have to look at it from their backyard.

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

MOTION CARRIED.

Meeting adjourned at 8:20 p.m.

Carolyn Delgato  
Senior Clerk Typist