

Town of Clarence
Planning Board Minutes
Wednesday November 10, 2010

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

Angelo Natale/Rivera Greens
Traditional Neighborhood District

Requests Development Plan Approval on a 35-Lot
Open Space Design Subdivision east of 8230
County Road.

Item 2

Kiesel/Norm Castine
Residential Single Family

Requests Approval for a 1-Lot Open
Development Area at 5145-5175 Harris Hill
Road.

Item 3

Stephen Development/Rock Garden Properties
Commercial

Requests Preliminary Concept Review of a Mixed
Use project at 9470 Main Street.

Item 4

Dynabrade
Residential Single Family

Requests Preliminary Concept Review of a
proposed Major Subdivision for two (2) Open
Development Areas.

Chairman Al Schultz called the meeting to order at 7:31 p.m.

Deputy Town Attorney David Donohue led the pledge to the flag.

Chairman Al Schultz called for a moment of silence, in remembrance of Veterans Day, for the men and women who have made it possible for these meetings to take place.

Planning Board Members present:

Chairman Al Schultz
Timothy Pazda
Richard Bigler

Vice-Chairperson Wendy Salvati
George Van Nest
Gregory Todaro

Planning Board Members absent: None

Town Officials Present:

Director of Community Development James Callahan
Planner Brad Packard
Councilman Peter DiCostanzo
Deputy Town Attorney David Donohue

Other Interested Parties Present:

Norm Castine
Jeff Palumbo
Geoffrey Goodwin
Terrence Finn
Douglas Klotzbach
Bill Slomba
Lisa Norman
Mary Beth Kiesel
Arthur Fuerst
Noel Dill
Michael Metzger

Chairman Schultz explained that the Planning Board is technically a seven (7) member board; presently there are five (5) appointed members, two (2) are absent, and one (1) alternate member. The alternate member, Gregory Todaro, will participate in all discussions and vote on all agenda items this evening.

Motion by Gregory Todaro, seconded by Al Schultz, to **approve** the minutes of the meeting held on October 6, 2010, as written.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Abstain	Timothy Pazda	Abstain
Wendy Salvati	Aye	Al Schultz	Aye

MOTION CARRIED.

Chairman Schultz explained 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. A project may be tabled pending further information. The Planning Board may vote to recommend an action to the Town Board with conditions. The Planning Board may also deny the project. 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. 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

Angelo Natale/Rivera Greens
Traditional Neighborhood District

Requests Development Plan Approval on a 35-Lot
Open Space Design Subdivision east of 8230
County Road.

DISCUSSION:

Jim Callahan provided the history on the project. It is located on the north side of County Road, east of Stahley Road. It is existing vacant land located in the Swormville Traditional Neighborhood District. A Negative Declaration under the State Environmental Quality Review Act (SEQRA) was issued by the Town Board on this project on May 28, 2008. Concept Approval was granted by the Town Board on November 19, 2008. The applicant is present seeking a recommendation on Development Plan Approval on the project as designed.

Jeff Palumbo, of Damon Morey LLC, is representing the applicant. Lisa Norman, of Natale Builders, is present as well. Mr. Palumbo said the applicant is in compliance with the Concept Plan and points out that Mr. Natale was not the developer at the time of Concept Plan Approval but has since purchased the property. Mr. Palumbo spoke to the issue of NYSEG requiring a 27' setback on the front lots; this was discussed at the work session. The discussion was to move the front setback from 25' to 35' and decrease the rear setback from 25' to 20'. The problem with this is that the lots are 111' deep, so if the setback is at 30', a 2200 square foot house is 48' deep and a rear setback of 20', this only leaves a backyard of 11'. The houses were all designed with the 25' setback in mind. He understands that NYSEG may be interested in the 27' rather than the 25' and the applicant would comply. Mr. Palumbo asked the Board if they could approve the project with the 27' setback, with the condition that in the event NYSEG agreed to a 25' setback, the applicant would like that opportunity. The other issue addressed by Mr. Palumbo is with regards to the 2500 square foot maximum size for a house. There are two or three interests to build a home in excess 2500 square feet at the project site. The majority of the houses in the subdivision will not be this size. He asked the Board to consider raising the maximum to 2700 square feet. Mr. Palumbo then spoke to the Recreation Fees. He thinks the area that they set aside, the land donation, combined with the Recreation Fees is too much to ask for out of this subdivision. He asked that the Board not impose the Recreation Fee and to consider the open space as the land donation.

Wendy Salvati clarified that the rear yard setback that the Board is imposing is 15'. Ms. Salvati said the Executive Planning Board measured a standard lot and determined there was more than enough building envelope to fit a house of 2500 square feet. Mr. Palumbo points out that the back yard would be really small.

George Van Nest is curious regarding the restriction on size of the homes. It sounds like a house of this size would be eliminated from today's market place. Ms. Salvati said it was discussed that this project is in the Traditional Neighborhood District and the homes should be built in keeping with the character of the neighborhood. The lots are small and the Planning Board does not want to see the homes overtake the lots and become too big for the area.

Chairman Schultz said the size of the homes was a discussion from the beginning of this project. It was clarified with Mr. Furmanek, the prior applicant, that these homes would be small with a traditional neighborhood design; it would be a walkable community. This comes from the Concept Plan Approval.

Terrence Finn, property owner to the west of the project, is concerned with the drainage from the run-off of the spring fed pond that is in front of the site and the pipe that runs through the ground, it dumps on to his property every Spring. Keepsake Homes is doing work on the other side of his property and they have cut off the path of the stream. He is concerned with where the water from the pond will go now. Water will be trapped behind his house. Mr. Finn's father spoke with Tim Lavocat in

Engineering who assured him that something would be put in to divert the water to the Town's sewer system or to a retention pond. Jim Callahan noted that the Development Plans have been reviewed and approved by the Town Engineer; they re-engineered the site and created a second pond up front to meet the Storm Water Requirements and an outlet to the storm sewer. The new design will no longer allow water to be diverted on to the neighbor's property. The pipe is still there. Mr. Finn wants to know when this will happen. Chairman Schultz said it will happen when they start building out the lot. If Mr. Finn has an issue with what is happening on the other side of his property, that is a separate subject and needs to be worked out with the code enforcement people.

Mr. Finn's other concern is that all the yards for the new subdivision will back up along his property, which is 1,000 feet deep. Their backyards are small and his woods are right there. He will not have grass clippings dumped on his property; he is also concerned with kids playing back there.

The Planning Board likes the idea that the storm water retention pond was moved from the back to the front of the project.

Lisa Norman noted that the 2200 square foot home is a two-story home so it is not a big footprint. Most of the other homes will be smaller ranches of approximately 1950 square feet.

Mr. Palumbo said the applicant would be amenable to the Planning Board considering a condition that would place a maximum number of 2700 square foot homes be built in the subdivision.

Chairman Schultz pointed out that the Recreation Fee is in the Subdivision Law. Mr. Callahan explained it is a function of the value of the land, to vary this is a function of the Town Board. Ms. Salvati pointed out that the open space designated at the site is to be kept natural not made into a recreation space. The applicant is not giving the Town this space for a recreation area; it is part of the approved design for the subdivision. Mr. Palumbo said the regulations speak of active and passive recreation areas, this would qualify as a passive area.

Mr. Van Nest asked if the applicant can disconnect or alter the pipe as part of the preliminary site work so the neighbor won't suffer anymore drainage problems in the interim. Mr. Palumbo said he can take care of that.

ACTION:

Motion by Wendy Salvati, seconded by Timothy Pazda, to **recommend** Development Plan Approval for the Rivera Greens Open Space Design Subdivision, subject to the following conditions:

- 1.) As per the final Development Plan drawings as approved by the Town Engineer (drawings dated April 7, 2009 with revisions up to 7/10/10), which identify public roads with approximately 1080 lineal feet of Rivera Way and 1040 lineal feet of Ava Lane to accommodate 35 sublots along with required stormwater facilities and common areas.
- 2.) Setbacks be established for the lots with a 27' front yard setback to accommodate the required utilities, this front yard setback could be reduced to 25' if it is agreed to by the utility company. A minimum rear yard setback of 15' and minimum side yard setbacks at 10'.
- 3.) Per the Concept Approval, 2500 square foot maximum size for proposed units, with up to 25% or eight (8) units allowed to be constructed no greater than 2700 square feet.
- 4.) Per Concept Approval, installation of sidewalks on one side of the streets.
- 5.) Landscape Committee approval of tree replanting to include minimum of one new tree per lot.

- 6.) Open Space and Recreation fees. Recreation fee established at \$1,000.00 per lot based upon 12% of the predevelopment assessed value of the land.
- 7.) The pipe will be removed, sealed or otherwise addressed as soon as possible to prevent drainage issues.

ON THE QUESTION:

Deputy Town Attorney David Donohue noted that the eight (8) lots is not to seem arbitrary on the Planning Board's part, it was requested by the applicant.

The applicant understands all the conditions.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Al Schultz	Aye

MOTION CARRIED.

Item 2

Kiesel/Norm Castine
Residential Single Family

Requests Approval for a 1-Lot Open
Development Area at 5145-5175 Harris Hill
Road.

DISCUSSION:

Jim Callahan provides the background on the project; it is located on the east side of Harris Hill Road, south of Greiner Road. It is an existing residential property; the applicant is seeking approval for a one-lot Open Development Area to add one (1) new home to the property.

Norm Castine is present, he developed the property 15 years ago and had it laid out for four (4) houses. There are currently three (3) houses on the property and they would like to build the fourth one.

Chairman Schultz asked if this plan represents the full build-out of the property. Mr. Castine said yes the plan is for four (4) houses. The lots are a minimum of 2 acres each; the fourth lot will be the same.

Chairman Shultz explained that a Town Board variance is required to allow a driveway to service the four (4) lots. The Planning Board will ask the Town Board to waive the requirement for a standard road to service the lots; the existing driveway will not have to be re-designed.

ACTION:

Motion by George Van Nest, seconded by Timothy Pazda, to **recommend** the Town Board grant approval of an Open Development Area to include one existing home and one new home utilizing the existing common driveway located at 5145 Harris Hill Road.

ON THE QUESTION:

Approval identifies that the common driveway does not meet minimum standards as identified in the Town Subdivision Law and must be approved by a supermajority vote of the Town Board.

The proposed lots will meet the minimum requirements of the Subdivision Law for Open Area Development lots.

The applicant may proceed to the building permit stage to meet grading and drainage requirements on the new construction. The additional step of Development Plan approval will not be required as the applicant will be utilizing existing driveway/infrastructure.

The development is subject to Open Space and Recreation Fees as well as a Homeowners Agreement, as reviewed and approved by the Town Attorney, to ensure maintenance of the common driveway.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Al Schultz	Aye

MOTION CARRIED.

Item 3

Stephen Development/Rock Garden Properties
Commercial

Requests Preliminary Concept Review of a Mixed
Use project at 9470 Main Street.

DISCUSSION:

Jim Callahan provides the background on the project. It is located on the north side of Main Street, east of Goodrich Road. It is existing residential units and vacant land located in the Commercial Zone classification. The applicant is proposing a mixed use development.

Noel Dill, of Stephen Development, is present along with Douglas Klotzbach of K2 Architecture and Michael Metzger of Metzger Civil Engineering. Mr. Dill explained that they recently acquired property adjacent to the Rock Oak Garden Court; this will allow a comprehensive development to incorporate buildings on the west side of the property. The proposal is for residential and commercial use. The commercial would have a second floor residential component consisting of 1100 square feet and two (2) bedrooms, sixteen (16) of these apartments are planned. There are also fourteen (14) townhomes planned for the north side of the property, together providing 30 total apartments.

Gregory Todaro asked how open the applicant is to re-arranging the Concept Plan based on the Planning Board's input. Mr. Dill said he is flexible and responsive to any comments. He wants to create a maximum balance in order to keep the existing trees and to make the other components of the proposal work.

Ms. Salvati would like to see more setbacks along the road.

Mr. Klotzbach said a mix-use development has its own character, he feels it is a perfect blend. The idea of having residential with 60 parking spaces and 50 of those cars go to work, that leaves parking available during the day for the office use on the sight. This will reduce costs and the need for retention.

Ms. Salvati asked if the applicant is amenable to removing the existing building on the corner and providing greenspace there. Mr. Dill said he would like to incorporate that building in the proposal. Deputy Town Attorney David Donohue referred to § 229-162 (B): A nonconforming structure or use

may not be altered, rebuilt or resumed except in conformity with the regulations for the district in which it is located.

Mr. Pazda asked about the sewers for the project. Mr. Dill set up a meeting with the NYSDEC, Erie County, the Town of Clarence and the engineer on the project for tomorrow. The applicant plans on utilizing the existing septic system.

Mr. Metzger explained that smaller projects are usually handled by the Health Department and larger projects are handled exclusively by the DEC. A decision needs to be made on projects that fall in between, this may take some time. The decision has already been made on this project and the DEC will be handling it. Erie County will waive any rites for this proposal.

Mr. Van Nest said he would be amenable to seeing the setbacks be somewhat in line with the adjoining property to the east to present a more uniform appearance along that corner. Chairman Schultz said setbacks are going to be an issue on three (3) of the four (4) sides of the project. Flexibility is important.

Arthur Fuerst, from Arthur's Executive Dry Cleaners, is happy to see that there is interest in changing what is there now. He is all for the proposal.

Chairman Schultz said this is the kind of use/development the Town needs in this area. He asked the applicant if he is willing to work with the Town on proposing a smaller envelope, move buildings around, perhaps remove one (1) building, re-think the parking. Mr. Van Nest would like to see a plan with the minimum number of parking spaces the applicant can reasonably propose for full build-out to serve the development. A tree survey will be important to see what can be incorporated from a green space perspective.

Mr. Pazda said the applicant can bring their creative ideas to the Executive Planning Board Committee for comment.

Chairman Schultz suggested providing the applicant with a building envelope. He is ok with a 25' setback on the north side. If the Planning Board supports this, they need to present the logic to the Town Board; he is prepared to do that.

Mr. Van Nest suggested the applicant come back to the Board with a few different Concept Plans to show different ideas.

Chairman Schultz said there should be at least a 45' setback on Goodrich Road. Mr. Klotzbach asked what the Planning Board suggested they do about the calculation for parking spaces since the project is for mixed use. Chairman Schultz advised the applicant to use his own standards.

The wall shown on the plan is a screen-wall to hide the vehicles in the parking lot.

ACTION:

Motion by Timothy Pazda, seconded by Wendy Salvati, to **table** agenda item #3 to allow the applicant time to address all that has been discussed and re-submit a proposal.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Al Schultz	Aye

MOTION CARRIED.

Item 4

Dynabrade
Residential Single Family

Requests Preliminary Concept Review of a proposed Major Subdivision for two (2) Open Development Areas.

DISCUSSION:

Jim Callahan provides the background on the project. It is located on the northwest corner of Shimerville Road and Roll Road. It is existing vacant land and the applicant is proposing to subdivide 14 lots via the Open Area Development and is present to introduce the revised Concept after referral from the Town Board.

Michael Metzger, with Metzger Civil Engineering, is representing the applicant. Bill Slomba, of Dynabrade, is present as well. The plan before the Board incorporates the changes/concerns discussed at previous meetings. One change is the elimination of five (5) frontage lots. Currently, the plan shows two (2) driveway entrances as opposed to those two (2) driveway entrances and additional driveways for the frontage lots. The Town Engineer expressed his concern over the site lines on Roll Road because of the undulating nature of the layout of the land; this plan takes this issue away. There are pockets of trees that the applicant intends on keeping. The original plan had seventeen (17) lots, the current plan is for fourteen (14). There is a need for a waiver from the Open Development requirements in that four (4) lots are allowed by code. The more northerly Open Development has a total of eight (8) lots, two (2) of which are fully compliant with the road requirements, two (2) would require a waiver. The proposal is for 14 lots on 31 acres of land. The frontage would allow fourteen (14) lots.

Ms. Salvati voices her concern that the applicant identifies some way to guarantee that the features remains preserved on the land. Mr. Metzger said that it has been his experience that, with the lots each being over two (2) acres in size and the existing trees on the property, anyone who will build on the lots will look to site the home in an area where it is more open to preserve those trees. Mr. Metzger distributes a plan to the Board members showing the placement of the homes where the trees are not. The plan is on file. Lot 5B is partially a wetland. Mr. Todaro asked if Lot 3A is a wetland area as well, Mr. Metzger said he is not aware of that.

Chairman Schultz asked if this proposal is for one (1) or two (2) Open Developments. Mr. Metzger said the full intent is to do one (1) of the Open Developments, if things go well they would do the second one. They showed both due to the SERQA review. Chairman Schultz asked if there is precedent for taking a large parcel of land under one (1) owner and splitting it to put in two (2) Open Developments. It is confirmed that there is a similar situation at County and Heise Roads and at Stoneridge.

Mr. Pazda said selling the development rights is something to think about. Mr. Metzger said this issue was discussed but the applicant is not interested.

Mr. Callahan clarified that this proposal would be subject to the NYS Realty Subdivision Law; four (4) lots in a three (3) year period. Mr. Metzger explained Phase I would be in the back of the property.

Chairman Schultz said if this project is referred to the TEQR Committee they should note that underneath this site there is a significantly mined area by National Gypsum, 700 yards to the west of the project site. This needs to be looked at as part of the SEQRA review. Mr. Metzger understands the need to address this issue.

Greg Ribbeck, of 5750 Shimerville Road, said an Open Development is four (4) lots with two (2) frontage lots, the applicant is asking for eight (8) on one half of the site, this is more than an Open Development, it doesn't fit the code. This is a major concern. His other concern is that there is major drainage that runs from Roll Road diagonally through both the streets. If it is not wetlands he does not know what all those cattails are this side of the second road. His question is: are Open Developments now going to be changed to eight (8) lots?

Gary Scaratine, owner of the land adjacent to the upper right hand corner of the project, said the upper two (2) lots at the left hand corner of the site are wetlands. This is at the base of a hill, where will all the drainage go. He asked if the applicant is allowed to build in the wetlands. Ms. Salvati said the applicant will have to delineate where the wetlands are as it may have an effect on how the lot is laid out. Mr. Scaratine questions the traffic situation on Shimerville Road, today during rush hour there is a 2,000 foot back-up. Chairman Schultz said a traffic study is also part of the SEQRA review.

It is confirmed that, with the amount of frontage, the number of lots works.

Mr. Metzger said half the land drains to Gott Creek, the other half drains to a man-made drainage ditch towards the lower half of the site. There is a possibility that a storm water retention pond may have to be installed. Mr. Pazda said the Planning Board needs to use caution when reviewing this proposal.

ACTION:

Motion by Gregory Todaro, seconded by Richard Bigler, to **refer** the proposed Dynabrade multiple Open Development Area Concept Plan located at the northwest corner of Shimerville Road and Roll Road for SEQRA review via the TEQR Committee. The proposal is also referred to the Traffic Safety Board and the Fire Advisory Board for further review.

ON THE QUESTION:

The Planning Board has raised specific issues regarding flooding, wetlands, archeological issues and potential problems related to the Gypsum Mines.

Gregory Todaro	Aye	Richard Bigler	Aye
George Van Nest	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Al Schultz	Aye

MOTION CARRIED.

Meeting adjourned at 9:19 p.m.

Carolyn Delgato
Senior Clerk Typist