

Town of Clarence
Planning Board Minutes
Wednesday November 12, 2008

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

North Forest Office Providers
Major Arterial

Requests Concept Plan Approval and
Recommendation on rezoning for a proposed
office park at 6031-6051 Transit Road.

Item 2

Milherst Construction
Industrial Business Park

Requests Preliminary Concept Review of a
proposed office/shop/storage yard on County
Road west of Strickler Road.

Item 3

Master Plan 2015
Transit Road Corridor
Segment B-Roll Road to Clarence Center Road

Discussion.

Item 4

Patrick Development/Metzger Civil Engineering
Residential Single-Family

Requests Preliminary Concept Plan Review of a
proposed 4-lot Open Development Area on Roll
Road west of Shimerville 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
Jeffrey Grenzebach
Albert Schultz

1st Vice Chairperson Wendy Salvati
Richard Bigler
Gregory Todaro

Planning Board Members Absent:

Timothy Pazda

George Van Nest

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:

L. Barney	L. Collis
Robert Bigos	Joy S. Hardy
Rajesh Nakhwa	Lissa Nakhwa
Ron Maurer	Robert Sackett
Doug Olson	Sujata Kishore
Michael Collura	Jason Knight
Jim Collins	Robert Metz
Kevin Curry	R. Heckl
Mosmi	Beuto Opiriri
Christine Quenneville	Paul Wheeler
Joe Kleinmann	Chris Falsone
Jeff Jozwine	Peter Bernies
Paul Gerstner	

In the absence of both Timothy Pazda and George Van Nest, Chairmen Drinkard notes that Gregory Todaro will be participating in all discussions and voting on all agenda items.

Motion by Wendy Salvati, seconded by Jeffrey Grenzebach, to **approve** the minutes of the meeting held on October 29, 2008, as written.

Gregory Todaro	Aye	Albert Schultz	Aye
Richard Bigler	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	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

North Forest Office Providers
Major Arterial

Requests Concept Plan Approval and
Recommendation on rezoning for a proposed
office park at 6031-6051 Transit Road.

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the east side of Transit Road, north of Clarence Center Road and consists of approximately 8 acres in the Major Arterial and Residential Single-Family zoning classifications. A recent amendment to the Master Plan 2015 identifies the property in the Restricted Business classification. A Negative Declaration under SEQRA was issued by the Town Board for this project on July 23, 2008. The project was tabled at the October 15, 2008 Planning Board meeting pending site plan amendments dealing with setback of wetland issues.

Roy Jordan of North Forest Development is present. Mr. Jordan explains that the current plan reflects the changes that were suggested by the Planning Board at the previous meeting. The wetlands issue has not been resolved with the Army Corp of Engineers; however the applicant has a meeting scheduled with the Corp for sometime next week. He hopes to obtain a conditional site plan approval pending the Corp outcome. He realizes that if any changes need to be made to the plan he will need to come back before the Planning Board. If there are no changes to be made after the Corp meeting he hopes to forge ahead with the project.

The Planning Board has reviewed the latest print which is dated October 29, 2008.

Wendy Salvati mentions the possibility of creating wetlands along the southern portion of the property as a means of addressing the storm water quality issues. This will be discussed with the Army Corp of Engineers and Mr. Jordan said he will follow their recommendations. Ms. Salvati asked if Mr. Jordan could rearrange a building or alter the design if the Corp does not let him mitigate the wetland. Mr. Jordan said he looked at this possibility but would lose too much square footage altering the design. The 45' vegetation area on the easterly side of the property also played a part in this decision.

Mr. Schultz points out that the Planning Board usually wants to see these issues worked out before making a recommendation but meetings become sparse at the end of the year and it might put the approval off for some time.

ACTION:

Motion by Jeffrey Grenzebach, seconded by Gregory Todaro, to **recommend** Concept Plan Approval for North Forest Office Providers with reference to the October 29, 2008 site plan pending the following:

- The applicant satisfactorily resolves the issue of wetlands with the Army Corp of Engineers.
- The Town Board rezones the entire parcel as Restricted Business per the most recent Master Plan revised Land Use description.
- The Town Board issue a Special Exception Use Permit allowing the size building specified on the Concept Plan.

Gregory Todaro	Aye	Albert Schultz	Aye
Richard Bigler	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Gerald Drinkard	Aye

MOTION CARRIED.

Item 2

Milherst Construction
Industrial Business Park

Requests Preliminary Concept Review of a
proposed office/shop/storage yard on County
Road west of Strickler Road.

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the south side of County Road, west of Strickler Road and within the Industrial Business Park zone. The applicant is proposing to relocate an existing business to the site. The application was tabled at the October 29, 2008 Planning Board meeting pending receipt of additional information related to material storage areas.

Jason Knight of Greenman Pedersen, Inc. (GPI) is present along with Ron Maurer of Milherst Construction. Mr. Knight explained that Jim Collins, of Milherst Construction, identified that materials such as stone and topsoil were likely to be stored at the rear of the site. The Planning Board asked that this area be stoned; the current site plan reflects this request. The applicant has a verbal from Chuck Rosenberg of the DEC agreeing the applicant's wetland delineation; however they do not have a sign-off yet. The applicant is in the process of having William Schutt's office produce a new wetland delineation and provide it to Mr. Rosenberg. Mr. Rosenberg will then provide a sign-off to the Planning Board, the TEQR Committee and any other board that needs the information. Mr. Knight said, per Mr. Rosenberg, the ditch that runs north and south on the western property line is delineated as wetlands to be removed; this is where the change in the delineation map will come from. Chairman Drinkard reminds Mr. Knight that the wetlands can not be touched, a truck can not drive through it nor can soil or rocks be put in it. Mr. Knight understands. The Planning Board members voiced their concern in an executive session on how to monument the wetland including the buffer. Perhaps a fence or some other mechanism to indicate entrance to the area is restricted. Mr. Maurer said the engineer can stake the area.

Chairman Drinkard asked for clarification on what material(s) will be stored at the site. Mr. Maurer said sometimes his workers will bring soil back from different jobs and use it for future projects. So there may be a pile of fill, stone, topsoil or clay. He may also store whatever soil is below the topsoil at a job site. There may be 3 to 4 different piles on the property. Mr. Maurer said there is no need to completely fill the site with piles, the company would not use that much. Chairman Drinkard said there will be a limitation of height and volume put on the piles once the project reaches Development Plan. There will also be a limitation on what can be stored. Mr. Maurer said he is not in the business to buy and sell fill or topsoil. Mr. Schultz asked if asphalt, concrete or construction materials will be stored at the site. Mr. Maurer said chances are no construction debris or broken concrete will be stored; he has no use for these materials.

Mr. Schultz asked how far back the property has been graded. Mr. Maurer said approximately 350' off County Road. Mr. Schultz thought it looked more like 600'. Mr. Maurer said it is not that far. Mr. Schultz asked how the applicant knows the work being done hasn't infringed on the 100' wetland buffer. Mr. Knight explains GPI staked the property based on the existing 100' buffer.

Ms. Salvati voices her concern with regards to sediment from a pile finding its way into the wetland area. How can the applicant mitigate this issue? The TEQR Committee will be asked to address this issue when the project is before them.

Jeffrey Grenzebach asked the applicant what he would do if one of his projects had contaminated soil which was hauled back to his site. Mr. Knight explains that projects would have to go through an environmental review prior to being approved; if the soil is contaminated it would be hauled to an appropriate site. There will be no construction and demolition materials stored at this site.

Chairman Drinkard points out that a significant berm would be required on the back end of the property. The ratio used for a berm is 1' up and 3'-5' out. The applicant is advised to contemplate what he will propose for the berm in order to protect the Keller Road residents. Mr. Knight explains he submitted a plan today that showed a berm around the entire south and east portion of the site. The height of the proposed berm is 5' tall. The storage piles are about 20'-25' high. It is noted that the berm will mask but never cover the view of the storage piles.

Ms. Salvati questions the possible noise generated from the site. Chairman Drinkard asked what type of equipment will be on the site. Will there be bulldozers? Mr. Maurer said the equipment would start up around 7 a.m., leave the site and return around 5 p.m. Hours of operation will vary according to season. Equipment will not be running steadily in the yard everyday. Diesel trucks will run for 15 minutes to warm up.

ACTION:

Motion by Wendy Salvati, seconded by Albert Schultz, to **refer** the Milherst proposal on County Road to the TEQR Committee for review under the State Environmental Quality Review Act (SEQRA). Specific attention should be paid to wetland delineation with an assessment on work already in progress on the site and potential interference with wetlands.

ON THE QUESTION:

Mr. Schultz said the TEQR Committee will also look at the archeological significance of the site.

Chairman Drinkard notes that the project will also be referred to the Traffic Safety Committee and the Fire Advisory Board

Ms. Salvati said the TEQR Committee should look at noise, visual impacts and sedimentation.

Gregory Todaro	Aye	Albert Schultz	Aye
Richard Bigler	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Gerald Drinkard	Aye

MOTION CARRIED.

Item 3

Master Plan 2015
Transit Road Corridor
Segment B-Roll Road to Clarence Center Road

Discussion.

DISCUSSION:

Jim Callahan provides the history on agenda item 3. The Master Plan 2015 identified a specific process under which amendments to the plan are to be made. The process begins with the annual public hearing on the Master Plan. At the annual public hearing held on February 27, 2008 several recommendations for changes to the Future Land Use map related to the Transit Road Corridor were presented. After referral from the Town Board to the Planning Board, the Planning Board analyzed the Transit Road Corridor and developed a proposal for Master Plan 2015 amendments based upon input presented at the annual public hearing. A Negative Declaration under SEQR was issued by the Town Board on the proposed Master Plan 2015 amendments as developed by the Planning Board. The Town Board adopted the proposed amendments on September 24, 2008 with the exception of Segment B-the area of the Transit Road Corridor between Roll Road and Clarence Center Road. The Town Board referred Segment B back to the Planning Board for review and comment. Under the previously recommended Planning Board proposal Segment B would remain at the same depth in terms of zoning as it currently exists today. This meeting represents the first time the Planning Board has had a chance to review the Town Board referral.

Chairman Drinkard said the Planning Board pays a great deal of attention to the Master Plan when reviewing projects. He refers to the minutes of the September 24, 2008 Town Board meeting: "Councilman Kolber said he did not mention Segment B because it is a new proposal, he will make a separate motion to refer it back to the Planning Board for further review. Motion by Councilman Kolber, seconded by Councilman Weiss to refer the following amendment to Master Plan 2015 to the Planning Board for further review due to the potential new development in that segment: Segment B: The portion of Transit Road referred to as Segment B within the Transit Road Corridor Analysis 2008. Therefore the Town Board amends the existing Major Arterial Zoning to be down zoned to Commercial, maintaining the depth of the current zoning along the portion of Transit Road spanning from Roll Road to Clarence Center Road. On the question, Supervisor Bylewski said all items brought up in the public hearing to be brought to the Planning Board's attention for proper study. Councilman DiCostanzo added that it may also be referred to the TEQR Committee. Supervisor Bylewski said that depends on whether anything being proposed would change the analysis that was done."

Chairman Drinkard explains that this agenda item will not be open to the public; the action will be ministerial. The motion will be to refer the item back to the Town Board because the project that was proposed to them that caused them to send it to back to the Planning Board is not a legitimate project because it was not put forth in February as it should have been.

Mr. Schultz refers to the table of considerations which cites Chapter XI of the Master Plan, Annual Review of the Master Plan: The intent of this chapter is to outline a review process by which the Town of Clarence identifies and assesses relevant issues related to this plan and how potential changes to Master Plan 2015 are to be implemented, if necessary. Mr. Schultz clarifies saying any change in that zoning has to be a change to the Master Plan itself. The Action Plan is the Amendment Review Process according to the Master Plan. A public hearing shall be held once a year, as initiated by the Town Board...Item A. Specific changes: land use change requested by private interests. Any private entity...requesting a change shall submit a signed petition to the Town Board,... the Town Board may refer all specific requests for amendments to the Master Plan, received as part of the annual review process for Master Plan 2015, to the Planning Board for review and comment. The Planning Board shall review the request and formally respond to the petitioner and the Town Board with a recommendation on the requested action...

Mr. Schultz said the Planning Board’s consideration is that the Master Plan 2015 is not intended to be an “evergreen” document, but rather a land use framework subject to annual review and revision. The intent is to have an overall plan, not subject to project-by-project changes throughout the year. Public hearing to review the Plan and hear proposals to modify it is normally set at the first Town Board meeting of the calendar year, and normally takes place at the second Town Board meeting in February. In 2008, there were two requests to change zoning in the Transit Road corridor which were evaluated by the Planning Board, received Negative Declaration recommendation under SEQRA and passed on to the Town Board with recommendations to modify the Plan. The subject parcels were also reviewed, by both Planning Board and TEQR, with recommendations to downzone the front and leave the back as is. There were no requests to change these parcels. The next window for a private entity to propose Plan changes is presumably February 2009. SEQRA review of this proposed change would require Erie County and Town of Amherst reviews as well as the normal SEQRA review agencies. The Planning Board believes the Master Plan is an important document and the process within it must be followed, so anyone who wants to change the Master Plan needs to make the proposal at the public meeting in February. Wendy Salvati agrees. Roy Jordan’s proposal is mentioned to show that he went through the proper procedures; the Planning Board gave great consideration as to what Mr. Jordan was putting in the area and the impact it would have on the neighbors.

ACTION:

Motion by Albert Schultz, seconded by Richard Bigler, to follow the procedures specified in Chapter XI of the Town of Clarence Master Plan and suspend any action on proposed amendments until such proposals have been formally submitted a the Public Annual Master Plan Review Meeting. Following these procedures is critical to maintaining the integrity of our Master Plan. This Public Meeting has historically been held at the second February Town Board meeting.

ON THE QUESTION:

Deputy Town Attorney David Donohue asked if there will be a separate motion to send Segment B back to the Town Board. Chairman Drinkard said there will be a separate motion.

Gregory Todaro	Aye	Albert Schultz	Aye
Richard Bigler	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Gerald Drinkard	Aye

MOTION CARRIED.

ACTION:

Motion by Wendy Salvati, seconded by Richard Bigler, to **refer** Segment B, the section of Transit Road between Roll Road and Clarence Center Road, back to the Town Board. The recommendation being referred back to the Town Board was to rezone that stretch, the length of which is currently zoned Major Arterial, to Commercial with the backlands remaining Single-Family Residential.

Gregory Todaro	Aye	Albert Schultz	Aye
Richard Bigler	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Gerald Drinkard	Aye

MOTION CARRIED.

Item 4

Patrick Development/Metzger Civil Engineering Residential Single-Family	Requests Preliminary Concept Plan Review of a proposed 4-lot Open Development Area on Roll Road west of Shimerville Road.
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Chairman Drinkard recuses himself as this project site adjoins property that his daughter owns. The appropriate paperwork is on file.

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the south side of Roll Road, west of Shimerville Road and consists of approximately 8.37 acres in the Residential Single-Family zone. The applicant is proposing an Open Development Area and was referred at the September 10, 2008 Town Board meeting. The application was tabled at the October 29, 2008 Planning Board meeting pending information on the configuration and the legal interpretation of the Subdivision Law.

Kevin Curry is present. Wendy Salvati explains that at the last Planning Board meeting the Deputy Town Attorney was asked to provide an interpretation as to whether the roadway, that the applicant was considering an easement for, could be used to calculate the lot area requirements. An interpretation has been received. The issue is in determining if a given lot in an open development meets the 2 acre minimum requirement, should the land area occupied by the common driveway be subtracted from the total lot area size because it is deemed unusable land? The response is yes. Pursuant to Town Code section 193-21(A), "lot area shall include only usable lands as defined in...Article Six of this Chapter." In the definition of "Usable Land" in Article Six, it states that usable land shall not include land encumbered by any "access easement." Since the common driveway is clearly an "access easement", it should not be included in the calculation of usable land when determining if a lot satisfies the two acre minimum requirement for an open development. This information was received from Deputy Town Attorney David Donohue in an e-mail to the Board on November 5, 2008. Ms. Salvati summarizes saying the applicant can not use the roadway to calculate the lot size. Mr. Curry understands.

Ms. Salvati said the applicant has two options. The first one is to drop one lot. The second option would be to take the western most lot and incorporate it into the area to allow enough for 4 lots. The gas easement and the drainage line cross the property, so that particular lot becomes constrained in terms of the placement of a house.

Mr. Schultz refers to the Table of Considerations dated November 6, 2008. A copy of the table in on file. The three other articles that have direct impact on this plan review are: Chapter 193 Article IV Required Improvements, Chapter 193 Article VI Definition and word usage and Chapter 229 Residential Single-Family Zoning. If the easements are taken out of the calculations the usable acreage will drop below 8 acres. The applicant needs both fire water and domestic water on the site. The high pressure gas line requires a 15' easement. The drainage area ties into wetland; this will have to be evaluated under TEQR and the DEC. This area may require an easement. The word "plat" is

used numerous times throughout the Table of Considerations document; it should be stricken and replaced with “concept plan”.

Mr. Curry said he would like to add a water feature to the plan. Mr. Curry understands he has the opportunity to attend an Executive Planning Board meeting to discuss the project. He is advised to work with the Planning and Zoning Department to meet the code and to make an appointment with Jim Callahan if he wants to attend an Executive Planning Board meeting.

ACTION:

Motion by Jeffrey Grenzebach, seconded by Gregory Todaro, to **table** the request for preliminary concept approval of a proposed 4-lot Open Development Area on Roll Road, west of Shimerville Road.

Gregory Todaro	Aye	Albert Schultz	Aye
Richard Bigler	Aye	Jeffrey Grenzebach	Aye
Wendy Salvati	Aye	Gerald Drinkard	Recuse

MOTION CARRIED.

Meeting adjourned at 8:30 p.m.

Carolyn Delgato
Senior Clerk Typist