

Town of Clarence  
Planning Board Minutes  
Wednesday November 25, 2009

**Work Session 6:00 pm**

Roll Call  
Update on Pending Items  
Zoning Reports  
Committee Reports  
Miscellaneous

**Agenda Items 6:30 pm**

Approval of Minutes

**Item 1**

Master Plan 2015 Amendment

Transit Road Corridor, north of Roll Road.

Chairman Gerald Drinkard called the meeting to order at 6:30 p.m.  
Brad Packard led the pledge to the flag.

Planning Board Members Present:

Chairman Gerald Drinkard  
2<sup>nd</sup> Vice Chairman Wendy Salvati  
Timothy Pazda  
Richard Bigler

1<sup>st</sup> Vice Chairman Albert Schultz  
Jeffrey Grenzebach  
George Van Nest  
Gregory Todaro

Other Town Officials Present:

Planner Brad Packard  
Deputy Town Attorney David Donohue

Other Interested Parties Present:

Robert J. Bigos  
Joe Clouse  
Khalid Mahran  
Holle Forczek  
Joe Kleinmann

Doug McCallum  
Edie Clouse  
Enas Eldesoski  
Scott Parks  
Dan Palumbo

Motion by Jeffrey Grenzebach, seconded by Timothy Pazda, to **approve** the minutes of the meeting held on October 7, 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 item(s) starts with Brad Packard introducing and providing a brief history of the agenda item(s). The Planning Board members will discuss and deliberate the agenda item. A motion will be called for with a roll call vote.

Clarification is needed on the motion for the Verizon Wireless Tower at 8095 Tonawanda Creek Road. A two-thirds vote of the Planning Board is required. This item does not have to be opened to the public as the physical structure will not change.

**ACTION:**

Motion by Al Schultz, seconded by George Van Nest, to **amend** the previously approved motion from the September 2, 2009 Planning Board meeting regarding the Verizon telecommunications tower to be located at 8095 Tonawanda Creek Road by deleting “recommend site plan approval” and inserting “**grant** site plan approval”.

**ON THE QUESTION:**

Mr. Schultz said the original motion was made to recommend site plan approval for the Verizon telecommunications tower located at 8095 Tonawanda Creek Road and to recommend issuance by the Town Board the necessary Special Exception Use Permit. Per the Satellite, Antennas and Towers Law § 173.5(c)(2)(b)(1) the Planning Board has authority to review and approve site plans concerning commercial, major arterial, neighborhood business and restricted business zoned property. The Town Board has already approved the Special Exception Use Permit, therefore, this motion is intended to clarify the action and, in fact, issue site plan approval.

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

Let the record show that the vote is more than two-thirds; it is a full board vote.

**MOTION CARRIED.**

**Item 1**

Master Plan 2015 Amendment

Transit Road Corridor, north of Roll Road.

**DISCUSSION:**

Brad Packard explains that the Town has been undertaking review of Master Plan 2015 as directed by the 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 down zoning 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 had previously once again forwarded the proposal back to the Planning Board to consider a compromise and to forward that proposal on to TEQR. In response, the Planning Board forwarded a Master Plan amendment proposal to the TEQR Committee that would be inclusive of a minimum 300' Residential Single Family zoning buffer along the eastern border of the proposed amendment site as was determined appropriate after review and analysis of existing land use practices in the community. The Town Board recently forwarded another motion to the Planning Board requesting that they forward the proposed Master Plan amendment, as developed by the private applicant, directly for review by the TEQR Committee. That motion and referral by the Town Board is the purpose for the placement of this item on the Planning Board agenda this evening.

Chairman Drinkard notes that on February 25, 2009 the developer, Bella Vista, asked the Town Board to extend the Commercial Zone in Segment B back further from Transit Road up to 100' from the Residential Single Family Zone that is currently in place. This is a Master Plan request for change. A consideration for a specific project is not and should not be the scope although this happens in some cases. The most recent action by the Planning Board was to refer the request for a Master Plan change to the Town Environmental Quality Review (TEQR) Committee with a transitional buffer area of 300' based on established precedent for other businesses along Transit Road. At a recent Town Board meeting held on October 28, 2009 a motion was made to instruct the Planning Board to change their previous submittal to TEQR to a full build-out of the property in question and thus eliminate the 300' transitional buffer that had been previously determined. This meeting is to determine the appropriate action on that Town Board resolution. The record on this particular request is as absolutely full as it could possibly be with data, details, discussions and the public coming forward with their input. Having extensively studied Segment B, there is no further information to be had that would help in the decision making process.

Mr. Schultz explained there were three (3) requests to amend the Master Plan in 2008. All three (3) requests were to increase commercial zoning in Clarence. The first request was for Transit Road north of Miles Road. The applicant requested increased commercial depth, offering a significant "forever natural" buffer zone (300', 400', 500', 800') to always remain treed. Originally there was strong dissent from the immediate neighbors. The applicant negotiated with the Planning Board and with neighbors and compromised on ways to protect the neighbors. The neighborhood dissent of the immediate residents softened. The Planning Board concluded that the footprint was consistent with Master Plan objectives, and specific Master Plan conditions. The amendment was referred to the TEQR Committee who recommended a Negative Declaration; amendment was recommended to the Town Board, who approved it.

The second request was for Transit Road north of Clarence Center Road in which the applicant requested increased commercial depth; no major buffer to the neighborhood, but very low impact commercial usage proposed. The Planning Board met with the applicant and the neighbors. The neighbors supported the request in that the nature of the businesses would significantly improve the property and quality of life of the local neighbors. The Planning Board included down-zoning to Restricted Business as part of the recommendation so that the applicant could put nothing but offices back there, which is what the neighbors wanted. The amendment was referred to the TEQR Committee who recommended a Negative Declaration. The amendment was recommended to the Town Board, who approved it.

The third request was for Harris Hill Road between Greiner and Roll Roads. The applicant requested a significant increase in commercial property. The Planning Board discussed it with the applicant who had not considered the negative environmental or neighborhood impacts. Neighbors objected strongly, and some residences were directly impacted. The Planning Board recommended denial with no referral to the TEQR Committee; there was no amendment.

In both of the two amendments that were recommended by the Planning Board, the Planning Board also recommended property restriction guidelines/requirements to protect the neighbors in an absolute way. They did not rely on berms or walls or sound buffers.

There were two requests to amend the Master Plan in 2009. One request was for Clarence Center Road near Transit Road. The applicant requested one small parcel, currently half commercial and half residential, be rezoned to all commercial. The neighbors strongly supported the request. It would correct the zoning map and have no impact with regard to Master Plan objectives. The amendment was referred to the TEQR Committee who recommended a Negative Declaration; it was then recommended to the Town Board who approved it.

The second request was for Transit Road north of Roll Road (Segment B). The applicant requested increased commercial depth to within approximately 100' of the residential properties to the east. There was very strong dissent from the immediate neighbors. The Planning Board believed the footprint of the underlying Major Arterial type facility was a violation of Master Plan objectives and inconsistent with Master Plan principles; this was the original conclusion. The Planning Board met with the applicant a number of times, seeking a compromise as directed by the Town Board, none came. The Planning Board then proposed, as their own compromise, that the TEQR Committee review an increase in commercial depth, but maintaining a minimum 300' buffer for the residents behind. The applicant and the Town Board apparently rejected the proposed Planning Board compromise and reverted back to the original proposal that the Planning Board had already rejected twice. So the original proposal is now, again, before the Planning Board as a result of a Town Board motion.

Wendy Salvati notes that Chapter XI of the Town of Clarence Master Plan 2015 provides that the Clarence Master Plan shall be reviewed annually by the Planning Board and recommendations on Master Plan amendments be provided to the Town Board for review and approval. On February 27, 2008 the Town Board referred comments made during the annual Master Plan Amendment public hearing to the Planning Board for review and further recommendation, including a request for rezoning at two locations along Transit Road. The Planning Board conducted an extensive review of the Transit Road commercial corridor, from Greiner Road to County Road, dividing the area up into four distinct sub-areas for review and recommendations.

On April 16, 2008 the Planning Board referred to the Town of Clarence TEQR Committee recommendation for certain zoning changes for the four segments of Transit Road, including a proposal to downzone from major arterial to commercial the current major arterial zone along Transit Road, between Roll Road and Clarence Center Road, maintaining the same commercial zoning depth (Segment B).

On July 21, 2008 the TEQR Committee recommended that the Town Board issue a Negative Declaration under the State Environmental Quality Review Act (SEQRA) for all four (4) segments of the Transit Road commercial corridor.

On July 23, 2008 the Town Board issued a Negative Declaration under SEQRA on the proposed amendments to the Town of Clarence Master Plan 2015 related to the Transit Road Corridor, including Segments A, B, C and D, as originally identified by the Planning Board.

On September 24, 2008 the Town Board issued a resolution approving the Master Plan amendments recommended by the Planning Board for Segments A, C and D, but excluded Segment B. The Town Board requested the Planning Board to review the proposed Master Plan amendments for Segment B again, relative to a proposed commercial development to be located in that segment.

In accordance with Chapter XI of the Town of Clarence Master Plan 2015, the Planning Board deferred the review of the Master Plan for Segment B until the annual Master Plan amendment public hearing in 2009, and the Planning Board referred Segment B back to the Town Board along with the original down zoning recommendation for this Segment of the Transit Road Corridor. On February 25, 2009 the Town Board referred all comments and petitions from the annual public hearing for Master Plan 2015 amendments to the Planning Board for further review.

On May 6, 2009, after further study and analysis of Segment B and, after taking into account a request for re-zoning submitted by the Bella Vista Group, the Planning Board determined that their recommendation to downzone the Segment B portion of Transit Road, between Roll Road and Clarence Center Road, from Major Arterial to Commercial, maintaining the same depth of zoning, was based on good data and sound planning principles, and recommended that the Town Board adopt this original zoning amendment recommendation that was referred to the TEQR Committee in April of 2008.

On July 8, 2009, the Town Board once again referred the Master Plan amendment for Segment B back to the Planning Board with the request that the matter be referred back to the TEQR Committee for further review. The Planning Board subsequently researched available information and data regarding the existing transition zones and current setbacks between existing structures and commercial development in the Major Arterial Zone along the Transit Road Corridor, from Wehrle Drive to Clarence Center Road.

On September 2, 2009 after such further review and analysis, the Planning Board referred a request to the TEQR Committee to evaluate the potential impacts of increasing the depth of Major Arterial District at 5731 Transit Road and 8040 Roll Road by 180' to the east.

Pursuant to SEQRA, 6 NYCRR Part 617.2, the "action" subject to evaluation by the Town of Clarence is the amendment of the Master Plan 2015.

Pursuant to Chapter XI of the Town of Clarence master Plan § 91 of the Clarence Town Code the Town Board of the Town of Clarence is the decision making authority as to Master Plan amendments within the Town, and as such is the lead agency under SEQRA.

The Town of Clarence Planning Board, acting on behalf of the Town, has not completed a full Environmental Assessment Form for the referral made to the TEQR Committee on September 2, 2009 for additional review of the recommendation for Segment B, and as such the TEQR Committee has not received any matter for review and it is not on their agenda.

The Negative Declaration that was issued under SEQRA by the Town Board to down-zone Segment B, as adopted by the Town Board on July 23, 2008, remains in full force and effect under SEQRA.

On October 28, 2009 the Town Board adopted a motion requesting that the Town Planning Board clarify their prior motion for referral of the application for zoning amendment for Segment B, dated September 2, 2009, to the TEQR Committee.

Ms. Salvati believes that the Town Board’s request for the TEQR referral for further analysis of full build-out has already been looked at and evaluated by the Planning Board. She is not sure that the Planning Board needs to take a motion that is beyond what they have already passed.

**ACTION:**

Motion by George Van Nest, seconded by Jeffrey Grenzebach, that in light of all foregoing proceedings and analysis performed by the Town of Clarence with respect to the Segment B of the Transit Road Corridor since 2008, there is no need for further action or review under Chapter XI of the Town of Clarence Master Plan or SEQRA relative to potential Master Plan amendments to Segment B. The TEQR Committee has already reviewed the proposed Master Plan amendment recommendations made by the Planning Board and recommended a Negative Declaration under SEQRA for Segment B, which the Town Board adopted on July 21, 2008 and which Negative Declaration remains in effect in accordance with SEQRA. Therefore, in light of the foregoing, the Planning Board respectfully submits that the Town Board, as project sponsor, should adopt the prior recommendations of the Planning Board to down-zone the portion of the Transit Road Commercial Corridor between Roll Road and Clarence Center Road from Major Arterial to Commercial, maintaining the same commercial zoning depth.

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

MOTION CARRIED.

Meeting adjourned at 6:55 p.m.

Carolyn Delgato  
Senior Clerk Typist