

Work Session of the Clarence Town Board was held on October 14, 2009 at Clarence Town Hall, One Town Place, Clarence, NY.

Supervisor Scott Bylewski called the meeting to order at 5:30 P.M. Members of the Town Board present were Council members Joseph Weiss, Bernard Kolber, Patrick Casilio and Peter DiCostanzo. Other town officials present were Director of Community Development James Callahan, Town Attorney Steven Bengart, Town Engineer Joseph Latona, Senior Building Inspector David Metzger, Director of Administration and Finance Pam Smith, Highway Superintendent Ted Donner and Confidential Secretary to the Supervisor Karen Jurek.

Highway Superintendent Ted Donner

Supervisor Bylewski stated that this is a tough budget year and given some of the issues that have come up, he wanted to give an opportunity to any department head that wished to be heard. Highway Superintendent Donner has some concerns he wished to bring to the Board.

Mr. Donner stated that as he goes through his presentation, it is accumulative and asked that if there is something that the Board does not agree with, it would be better to keep comments until the end of the presentation.

Mr. Donner thanked the Supervisor for preparing the budget; he realizes the amount of work and time that goes into it. He thanked the Town Board for allowing him the opportunity to discuss his budget with them. Mr. Donner recognizes that we are going through some difficult economic times and everyone has to do more with less.

In the last fifteen years that Mr. Donner has been with the highway department, he has been operating with one less blue collar employee and one less secretary than the former Highway Superintendent. He is constantly trying to do more with less by trying new road methods and maintenance as was demonstrated in Harris Hill Gardens. His 2010 budget request was set to do more also with less. With his budget submission in conjunction with the funds the Supervisor used from surplus Mr. Donner felt the tax rate should have gone down three cents per thousand of assessed valuation and it is almost an increase of three cents per thousand. Supervisor Bylewski took \$80,000 out of Personal Service from the Highway Budget. The \$80,000 is used for unanticipated storms – in WNY we never know when a storm will hit. We are coming up on the third anniversary of the October Storm and if we ever have another storm like that without sufficient funds to carry our personnel, it will be devastating. Historically Mr. Donner has used those funds for overtime and other expenses associated with such storms.

The submittal of Highway Superintendent Donner's 2010 budget included all the funds necessary to meet the needs of his road system. It should have resulted in a tax rate decrease of three cents per thousand of assessed valuation and instead increased three cents per thousand of assessed valuation. The gentlemen's agreement that was put in place many years ago to share the Erie County sales tax has been violated. Since the town shares the sales tax to be received either by General Fund or Highway Fund, a transfer between these funds has been budgeted for many years to share the revenue. This was done to remove the politics inherit with a situation where a tax burden can inappropriately be shifted. However in the 2010 budget Supervisor Bylewski has decreased this transfer from \$650,000 to \$450,000 resulting in a Highway Fund tax rate increase. Basically the budget is disguised which properly should have been shown as a General Fund tax rate increase. Highway Superintendent Donner respectfully requested that his much needed Personal Services in a transfer to the Highway Fund from the General Fund be restored. A General Fund tax rate increase should be represented as such to the tax payers. To represent the Highway tax rate as an increase from 2009 – 2010 is not representative of the facts and the circumstances.

Councilman Weiss stated that Supervisor Bylewski put the budget together and it was his rational as to why the money was decreased.

Supervisor Bylewski stated that for years a contribution has been made from the General Fund to the Highway Fund. In 2002 that contribution went up tremendously.

As to a gentlemen's agreement regarding the sales tax he will have to look into that. The budget for both the General Fund and for the Highway Fund, have appropriations increasing, and the tax rate is going up. Supervisor Bylewski could not justify any further subsidy being sent from the General Fund to Highway when you have the General Fund decreasing, the Highway Fund increasing to a level of almost half of what the operating budget would be. That would be something that through the State Comptroller's Office we would be sorely reprimanded for given the level of fund balance. Something needs to be done with that fund balance. On the General Fund, Highway Fund is increasing. They are all funds that the Town Board has control over – the Supervisor asks for a budget request from all department heads. The Supervisor's office in conjunction with various consultants (Dresher & Malecki, Finance Office, Legal Department) given the budget that was submitted where he reduced the subsidy from General Fund to Highway Fund that seemed to be the appropriate and financially prudent thing to do because we would be looking at having a fund balance in the Highway Fund of an inappropriate amount.

Councilman Weiss questioned whether there could be some negotiation in reducing the existing fund balance and keep the transfer of sales tax revenue.

Supervisor Bylewski stated that he used enough of the General Fund that based on any further reduction of General Fund monies assuming status quo of his submitted budget. There have been some changes as a result of meetings with the Town Board which has resulted in reducing the rate by not quite one cent. To restore the entire transfer to the Highway Fund, we would be looking at a six cent or more per thousand increases in the General Fund tax rate.

If you look at what we have actually earned, it is pretty close to what we had budgeted. There is a slight deficit in revenue. From what the Supervisor is seeing, projections for next year are essentially to remain at this year's financial levels. Supervisor Bylewski referenced the Buffalo News; every town budget is being looked at and scrutinized very closely by everyone involved to make sure that we do have the savings in place. That is why he has implemented the Six Sigma Program to try and have savings in place and he thanked the Planning and Parks Department for taking advantage of it. Supervisor Bylewski has been looking at Outcome Based Budgeting to make sure that we budget appropriately and that we fund the services that we want to use. The Highway Department is coming on board with that this year so that we can make sure we do what we need to do.

As to that gentlemen's agreement, Supervisor Bylewski stated that he would have to take a look back at it but he noted that there was a huge jump prior to his coming on as town Councilman in the transfer from General Fund to Highway Fund in the 2002 budget which was passed in 2001.

Highway Superintendent Donner stated that in the 15 years he has been with the town, it was never more than \$750,000. Supervisor Bylewski stated that in 2001 the transfer was \$350,000; in 2002 the transfer was \$750,000.

Highway Superintendent Donner asked what the plans were for the future. Supervisor Bylewski stated that his plans are to reduce the amount of the transfers and to eventually eliminate the transfer and to use more of the Highway Fund balance.

Highway Superintendent Donner stated that he does not have a problem using the Highway Fund Balance, as it is at a healthy balance however what is going to happen in four years when you have depleted the fund balance and there is no more General Fund transfer. As it goes down, to be more realistic with the budgeting on the Highway Fund end, there may have to be an increase in the Highway Fund rate.

Highway Superintendent Donner stated that his Highway Fund is healthy now however, the gentlemen's agreement that was put in place several years ago is going to be rescinded so that in four years Mr. Donner is going to have to raise the highway tax and it will look as if he did something wrong even though the operation of the department is as efficient as it can be, and it has been the same for several years.

Supervisor Bylewski stated that Mr. Donner's appropriation (spending) have been going up, this year spending increased by 5%. Under the General Fund in Supervisor Bylewski budget, he is looking at appropriations going up less than two hundredths of a percent. And still despite that fact because revenues are down, we had to increase usage of fund balance while still trying to maintain the same tax rate however in the preliminary budget it is scheduled to go up by two cents per thousand of assessed value. Based on the financial conditions, Supervisor Bylewski felt he submitted the most prudent budget that he could and that is before the town board to consider at this time.

Highway Superintendent Donner stated that he was shocked when he looked at the budget, last year the Supervisor barley did anything to it and this year he "took a hatchet to it." If our town is in this bad a condition then Mr. Donner felt the Supervisor should have talked to him a month ago. Four years down the road it is going to be in poor condition which is why he is before the Board tonight. Without casting stones on other spending that has been done, Highway Superintendent Donner does not know what he can do to improve his spending; he is trying all the time keep spending down. What the people in the town see is the highway, it is a service they come to respect and he can not visualize not have the money to do the proper road work in four years.

Supervisor Bylewski stated that Superintendent Donner will have the money in four years to do the proper road work and to have what is being budgeted going into the future. While Supervisor Bylewski understands Superintendent Donner's concern, it is a concern among all Town Supervisor's that right now financially speaking; the economy is hurting towns tremendously.

Councilman Weiss stated that he can understand Mr. Donner's concerns and he does not want to see a cloud cast upon this department because we are doing something different. Councilman Weiss felt that the money would be there for him to do what needs to be done whether it is an emergency or whatever. He can share his concern politically that if the highway tax rate goes up, residents will be questioning what he is doing. Councilman Weiss does not want to see Mr. Donner take criticism for the changes that are being made.

Supervisor Bylewski said that when it comes right down to it, it is all the town governments' money and before that it is the people's money. Most people look at their tax bill to see if it went up or down, they don't look at each line item.

Supervisor Bylewski stated that if you look at the letter he submitted with the budget, there was no disparaging comment made about any department. As time goes on, the Supervisor provides financial statistics to each department head some department heads ask "why are you wasting your time sending this information to me" – the information is being sent as a "heads-up." There are some serious issues out there and if you don't want to look at it, that is your call but the Supervisor is providing this information to you and projecting out - we all know how the markets have done.

As a Town Board policy, you should have a fund balance of at least 15% of what your appropriations would be as a floor to allow for the first couple of months to go by because you normally do not receive any revenue during that time. Although there is not any strict guidance that the Supervisor has seen, once fund balances rise to a certain level, the Office of State Comptroller says you do have to use it.

Highway Superintendent Donner is concerned about the future. The budget has not been portrayed as a General Fund tax increase the way Mr. Donner feels it should be and by the looks of things it appears that it is the Supervisor's intention to eliminate the General Fund transfer which Superintendent Donner has issues with. Highway Superintendent Donner would like to pursue a Local Law to make it shared as it always has been otherwise in four years, they are just going to point fingers at Superintendent Donner and say he raised the highway tax after he used up the majority of his fund balance.

Supervisor Bylewski suggested Mr. Donner talk to his liaison and if he wants to pursue a local law and if it is something that can be done, he should pursue it. Mr. Donner is willing to compromise and take another \$100,000 out of his fund balance and get the two employees back as long as it is understood in the future that this is not going to happen like it is projected in the future budgets. Supervisor Bylewski stated that this is something the Town Board could consider.

Councilman Casilio stated that the estimated over-time and out-of-title budget for the Highway Department in 2009 was \$191,000 and \$196,730 is budgeted for 2010. The Blue Collar wages come out of the Highway Fund and the Highway Superintendent, Deputies and Clerk's salary comes out of the General Fund. Highway Superintendent Donner asked that the Town Board consider his request.

Director of Community Development - James Callahan

Public Hearings:

Benchmark/Shops at Main and Transit 4401 Transit Road

Applicant is proposing to fill previously approved outparcel space with an automotive service use (AAA). The proposed site is situated on the southeast corner of Main Street and Transit Road in existing commercial plaza located in the Major Arterial Zone. Per the Zoning Law, the Town Board has authority to approve automotive uses via a Special Exception Use Permit. Councilman Casilio would like to make sure that the applicant is aware that bill board type trucks are not parked at Main Street if they don't have to be.

Town Historical Museum 10465 Main Street

The Town of Clarence Historical Museum located at 10465 Main Street serves the community as an excellent example of a rare mid-nineteenth century stone Greek-Revival structure. The Historical Museum was utilized as a home for the groundskeeper of the Automobile Club, and then housed a number of commercial restaurants until purchased by the Greatbatch Foundation to be used as a local historical museum. This property has received a positive recommendation for Local Historic Landmark Nomination from the Historic Preservation Commission and has been listed as a significant contributor of historical value in the Intensive Level Survey as prepared by Clinton Brown and Associates.

Verizon Wireless - 8095 Tonawanda Creek Road

Applicant is proposing to construct a 99' tall telecommunications tower on the south side of Tonawanda Creek Road, east of Transit Road on existing vacant land consisting of 36+/- acres in the Agriculture Flood Zone. Per the Zoning Law and Satellite, Antenna and Tower Law, the Town Board may consider telecommunications tower via a Special Exception Use Permit. Town Engineer Latona stated that a Flood Plain Development Permit will be required. The applicant will be impacting wetlands and will have to replant 85 trees.

Jerry Dewes 10470 County Road

Applicant is proposing to construct an in-law apartment as an addition to existing single-family residential structure. The proposed site is located on the north side of County Road, east of Strickler Road at existing residential property located on 10.5+/- acres in the Agriculture Rural Residential Zone. Per the Zoning Law, the Town Board may approve secondary living units via a Special Exception Use Permit. Councilman Casilio asked that we keep a running list of all applicants constructing in-law apartments.

Community Development Block Grant (CDBG)

A Public Hearing is scheduled for 8:05 PM to provide an opportunity for citizens to express community development and housing needs and to discuss possible projects which would benefit low and moderate income persons in the Town of Clarence to be submitted for possible funding by the Federal Community Development Block Grant Program. The projects discussed were handicap accessibility at the Legion Hall and sidewalks along Main Street.

Formal Agenda items:

Miranda Auto 8870 Sheridan Drive

Applicant is proposing to construct a small addition to the existing commercial structure. The proposed site is situated on the northeast corner of Sheridan Drive and Shimerville Road at existing automotive repair operation located in the Restricted Business Zone. Per the Zoning Law, the Town Board has authority to approve building permits in the Restricted Business Zone as to architectural style and functional plan. The proposed addition is in conformance with setback requirements.

Brookfield Country Club – Fire Works Display permit

Brookfield Country Club is requesting a Fire Works Display Permit for October 24, 2009. All permits, fees, insurance and fire chief approvals have been submitted and filed.

Work Session items for consideration October 28, 2009:

Janice Carson 10589 Main Street

Applicant is proposing to sell vehicles in the front yard of existing operation. The proposed site is located on the south side of Main Street, west of Ransom Road in an existing automotive detail operation located in Clarence Hollow TND and Overlay. Per the Zoning Law, the Town Board may consider an automotive sales operation via a Temporary Conditional Permit. Areas of concern include the number of vehicles and the proposed display area.

Patricia Valenti 5711 Transit Road

Applicant is proposing to operate a used automotive sales operation on the property. The proposed site is situated on the east side of Transit Road, south of Highland Farms Drive in existing commercial structure located in the Major Arterial Zone (former Salon Giante). Per the Zoning Law, the Town Board consider automotive sales operations via a Temporary Conditional Permit. Areas of concern include the number of vehicles and proposed display area. Supervisor Bylewski requested a letter from the owner of the property allowing the applicant to proceed with this project.

Waterford Village PURD (Waterford Greens and Landings)

Applicant is seeking final site plan approval on the Waterford Greens and Waterford Landings Phases. The proposed site is situated on the north side of Roll Road between Shimerville Road and Thompson Road. Previously approved PURD Development Plan consisting of Patio Homes and Townhouses, the area is identified as a pre-existing PURD Zoning Classification subject to conditions of original approval. Per the PURD, the Town Board has final authority to approve site plans. The Planning Board has forwarded a recommendation with conditions to approve the site plans as submitted. Town Engineer Latona stated that Waterford Greens will require 100 sewer taps and Landings will require 34 taps which comes off the original 1000 taps and this is being tracked. Supervisor Bylewski stated that when this project comes up in two weeks, we have to be extremely cautious with the language especially considering we no longer have PURD Zoning.

Patrick Open Development – Roll Road, west of Shimerville Road

Applicant is seeking concept approval to develop a 4-lot Open Development Area. The proposed site is situated on the south side of Roll Road, west of Shimerville Road on existing vacant land consisting of 8.37+/- acres in the Residential Single-Family Zone. Per the Subdivision Law, the Town Board has final authority to approve Concept Plans. The Planning Board has forwarded a recommendation on the concept with conditions.

Supervisor Scott Bylewski

There is interest in meeting after the formal Town Board meeting to discuss the budget. If enough work is done tonight, the budget meeting scheduled for tomorrow may be cancelled.

Supervisor Bylewski will mention the prior motions that were passed at the October 7th Work Session.

The Town Justices are scheduled to meet with the Town Board at 6:30PM this evening.

Supervisor Bylewski said that Erie County Department of Environment and Planning has asked us to announce at the meetings for the next few months that they designated November 1 through November 30 as the annual thirty-day time period within which a landowner may request predominantly viable agricultural land for inclusion to a certified agricultural district. Applications are available in the offices of Town Clerk, Assessor and Supervisor. You can also contact John Opalka, Erie County at 858-6229 for more information.

Supervisor Bylewski had a meeting with the Harris Hill Fire Chief at Harris Hill VFC along with the Fire Chief from Swormville VFC, Town Engineer Joseph Latona, representatives from Amherst Fire Control and Erie County Water Authority. As a result of that meeting, Harris Hill VFC does not need to submit a remediation plan, what they have done to date has boosted them into their prior ranking. Swormville VFC was in a similar situation as Harris Hill VFC, Supervisor Bylewski is waiting to hear back from them.

Town Engineer Latona stated that the town received a NYSERDA grant for solar panels. They will be installed and operating by the end of November.

Supervisor Bylewski will make a motion to transfer funds from 2009 budget line A1.1420.0470 Expense and Travel to 2009 budget line A1.1420.0449 – Recording Fees.

Supervisor Bylewski will make a motion to retain the services of HPA Consulting Group, Inc. to review the Town of Clarence RFP for IP Telephone System & Internet Service Upgrade subject to the terms and conditions of the October 14, 2009 quote.

Supervisor Bylewski will set a Public Hearing for Wednesday, November 4, 2009 at 7:45 PM to consider the Preliminary Budget and Special District Assessment Rolls for the Town of Clarence for the year 2010.

Supervisor Bylewski received one IDA application. This will be discussed at the IDA meeting tomorrow.

Supervisor Bylewski will comment on the Clarence Bee editorial in today's paper. There are many things that we do inter-municipality already that the public does not know about and there are other areas and avenues that we try to take advantage of.

Councilman Joseph Weiss

Councilman Weiss will make a motion to waive the Open Space Fees for the Clarence Center VFC for construction of their training facility project. This has been done in the past for other fire companies and churches.

Councilman Weiss will make a motion that the Clarence Town Board ratifies the appointment of Architecture Unlimited, LLC, for the purpose of inspecting the premises located at 8553 Sheridan Drive pursuant to the Code of the Town of Clarence, Chapter 75, Section 75-7. The Clarence Town Board further authorizes the Town Attorney's office to proceed with an application to a Special Term of the Supreme Court of Erie County for an order to remove, secure and/or demolish the structure and further permits the Town Attorney's office to obtain a money judgment in favor of the Town to recover the costs and expenses incurred by the Town in connection with the proceedings.

Parks Crew Chief John Burns is recommending Jason Holden be appointed to the position of Motor Equipment Operator effective 10/17/2009.

Councilman Weiss will give an update on the deer abatement program.

Councilman Weiss attended the Clarence Hollow Association meeting. They will be putting together a brochure - Partners for a Viable WNY.

Councilman Weiss has one Attorney-Client item to discuss.

Councilman Bernard Kolber

Councilman Kolber stated that our Town Code is on the website but he felt that it was not easily assessable. He would like to see a link on our homepage on the left column where the other links are located.

Councilman Kolber received a request from the residents of the Claremount to see if they could get a cross-walk at the light at Clarence VFC. Councilman Kolber contacted DOT and it was suggested that Councilman Kolber submit his request in writing.

Councilman Patrick Casilio

Testing was done on the camera at Memorial Park and hopefully in two weeks the second camera will be operational. The Town owns all the equipment, the poles and concrete as well. On November 5th, Councilman Casilio will be picking up more funding for the cameras most of the money raised for the cameras have been via private donations.

Supervisor Bylewski has received a warning order for Operation Vigilant Guard. The National Guard, Reserves and regular forces throughout the northeast will come into town for a two week natural disaster drill.

Councilman Casilio noted that Time Warner is charging the town for the TV at the Youth Bureau. Supervisor Bylewski stated that they provide free internet access. Time Warner along with the Public Service Commission has taken the position that internet services are not a cable negotiable item.

Councilman Casilio attended the meeting at the Clarence Hollow and was taken aback by the speaker's comments regarding Main Street.

Councilman Peter DiCostanzo

Councilman DiCostanzo received a letter regarding Ransom Creek. The person thought the creek should be dug deeper to keep it from flooding. Councilman DiCostanzo will copy the Highway Superintendent and Town Engineer on the correspondence he received.

Councilman DiCostanzo received a letter from a student regarding Greiner Road and Eastbrook Place and the trouble he has pulling out onto Greiner Road from Eastbrook Place because trees are blocking the view. This will also be forwarded to Highway Superintendent Donner.

The Town Board received an e-mail from a group of private individuals that would like to build a recreational facility in the Town of Clarence.

Councilman DiCostanzo reported on Animal Control kill report.

Councilman DiCostanzo has one item to discuss in Executive Session regarding the employment history of an individual and one Attorney-Client item to discuss.

Town Justices Michael Powers and Robert Sillars

Several months ago Councilman DiCostanzo had requested an informal meeting with the Town Justices to get an update on what is taking place in our Justice Court. Justice Powers stated that it has become a very, very busy court.

Justice Sillars stated the between the two courts, they are doing 8,000+ cases a year between both judges, that also includes mail-in pleas. Justice Powers had 130 cases last night both criminal and vehicle/traffic. Our jurisdiction includes the Thruway, Transit Road, all the strip malls along Transit Road, Eastern Hills Mall and DWI's most of which end up going to trial so there are usually three or four trials scheduled every night along with various other things.

Some of the innovative things that Judge Powers and Judge Sillars have done are the implementation of Drug Court. It is very intense and takes a lot of time and effort. A

number of clients that have been clean for over a year and have tried every other treatment and have never been able to complete a program will be graduating this year.

Judge Powers and Judge Sillars have also started Driving School. A lot of people that had to go to school were going to Maryvale which was inconvenient for Clarence residents and it was sending the money to Maryvale instead of keeping it in Clarence. You have a choice as to which school you want to attend but this makes it more convenient for everyone in Clarence and the surrounding areas. This was originally done in part to off-set a paid drug coordinator. He is no longer with us so volunteers are used.

The Justice Court was able to trim their budget for two consecutive years and was able to cut their expenses in several categories by 10 – 15%.

Judge Sillars and Judge Powers both run a Domestic Violence Court not within the structure of a formal Domestic Violence Court but they follow all the principals of Domestic Violence Court in terms of monitoring orders of protection, emphasis on protecting the victim and keeping the defendant away from him/her. We have a high rate of Domestic Violence; some of it is related to drugs and alcohol. Domestic Violence could be between spouses, father/son, father/daughter, mother/son etc.

Judge Sillars currently has a case in front of him for someone growing a large quantity of marijuana.

Clarence Town Court is the only court in WNY that has a Community Service Program. Approximately 95% of cases are doing community service in Clarence. Town Justice Powers had a young girl in court last night for speeding, instead of a fine which her parents would have probably paid; he sentenced her to 5 hours of Community Service. Animal Control and the Highway Department have also had violators providing Community Service for them as well. They pay careful attention to who they place where.

Both Town Justice Sillars and Judge Powers stated that one of their biggest concerns is the amount of larcenies they have seen. Judge Powers has sentenced a significant number of people to jail and quite often for the maximum. Many of them have committed the crimes in Clarence before. He is hoping to see the rates of larcenies drop off over time.

Judge Sillars stated that some of the larcenies are from local kids but a lot of it is coming from outside the town.

Many times the Justices will be called out in the middle of the night or on the weekends to arraign someone.

Councilman Casilio would like to see improvements in our court facility especially if we move forward with a Community Center that we have a better way of handling our criminals when we are in the building that we don't have to share the lavatories and hall ways with them, or have criminals waiting in the lobby in handcuffs when they should be in a holding cell.

Town Justice Powers stated that down the road, the NYS Police will need a new facility. There will be state money and grant money available. The NYS Police need a lockup - that is why they call the judges out at all hours. The Erie County Sheriff can take them to the holding center. At some point in time we are going to outgrow the Town Hall, we currently don't have enough room for driving school. People for drug court are mixed in with other violators. At some point in time the town will have to consider building another structure and Judge Powers would recommend doing it jointly with the NYS Police and the Erie County Sheriff.

Town Attorney Steven Bengart

On Wednesday, September 9th, Susan Ballard from Patrick Homes came before the Town Board to get architectural approval for a three-unit residence at 9376 Clarence

Center Road. After that, it was forwarded to the Building Department for review. It appears this is going to be townhouses and that is not what has been approved. Town Attorney Bengart met with Assistant Planner Brad Packard, Senior Building Inspector David Metzger, Building Inspector David Burke and Paul Gross and Town Engineer Latona this week and they looked into that issue. The bottom line based on our laws that exist is that the Building Department wanted to make sure the Town Board understood what Ms. Ballard is requesting. This could very well include either three units that would be multiple dwelling and/or three separate units that could be considered townhouses. It was Town Attorney Bengart's opinion that our law would allow for that. However the Building Department wanted to make sure the Town Board was fully aware of either possibility. From a tax standpoint, it will make no difference as these are not condominiums or anything along those lines.

Senior Building Inspector David Metzger stated that he wanted to make sure that the Town Board understood that from a construction perspective it will probably be a townhouse type construction. If it were multiple dwelling it would require a sprinkler system which would be a huge financial cost and was not originally intended. The other option is to go with a townhouse construction which would be three individual units under one roof. Town Engineer Latona stated that it would also require three individual sewer taps and three water taps. The rationale and motivation behind the request is to not have to install a sprinkler system. Town Attorney Bengart stated that there is nothing in the law to prevent the project from moving forward as such but the Building Department was legitimately concerned and wanted to make sure the Board was aware that townhouses are being proposed and not a multiple dwelling. Town Engineer Latona stated that townhouses have to adhere to the townhouse requirements and the applicant understands that.

Director of Community Development James Callahan stated that the Resolution reads the Clarence Town Board grants and approves the request of the applicant, Susan Ballard, for Architectural Approval for the construction of a three-unit residence at 9376 Clarence Center Road, subject to Open Space and Recreation Fees.

Town Attorney Bengart stated that if the applicant wants to build town houses she can or if she wants to build a multiple dwelling unit she can however she will have to meet the requirements for either construction. Three separate units would mean three separate taxable units and there would be some type of homeowner's agreement regarding the common areas.

Town Attorney Bengart has one item to discuss in Executive Session regarding the proposed acquisition of real property.

Motion by Supervisor Bylewski, seconded by Councilman Kolber to enter into Executive Session pursuant to §105 (1) F of the Open Meetings Law to discuss the employment history of a particular person and §105 (1) H the proposed acquisition of real property but only when publicity would substantially affect the value thereof. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, the Work Session adjourned at 6:56 PM.

Darcy A. Snyder
Deputy Town Clerk

Councilman Casilio left the Executive Session at 7:24 PM.

Motion by Supervisor Bylewski, seconded by Councilman Kolber to adjourn the Executive Session at 7:28 PM. Upon roll call – Ayes: Councilman Kolber, Councilman Weiss, Councilman Kolber, Supervisor Bylewski; Noes: None. Absent: Councilman Casilio. Motion carried. No action taken.

Regular meeting of the Town Board of the Town of Clarence was held Wednesday, October 14, 2009 at the Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor Scott Bylewski called the meeting to order at 7:35 P.M. Pledge to the flag was led by Councilman Patrick Casilio, followed by a prayer given by Rev. David Kofahl of Clarence United Methodist Church.

Members of the Town Board present were Councilmembers Peter DiCostanzo, Patrick Casilio, Bernard Kolber, Joseph Weiss and Supervisor Bylewski. Other Town officials present were Director of Community Development James Callahan, Town Attorney Steven Bengart, Town Engineer Joseph Latona, Planner Brad Packard and Building Inspector David Metzger.

Motion by Councilman Weiss, seconded by Councilman DiCostanzo to accept the minutes of the previous meeting held September 9, 2009. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Weiss to accept the minutes of the previous meeting held September 23, 2009. Upon roll call – Ayes: All; Noes: None. Motion carried.

Supervisor Bylewski said as has been past practice, any motions that were made at a Wednesday morning work session are announced at the next regular meeting. Motions made at the work session held October 7, 2009 were: posting for the position of Parks Crew Chief; a Civil Service appointment for Mary Morris; a Special Event Permit for the Clarence High School Homecoming Parade; a number of vehicles and equipment declared surplus from the Highway Department; a settlement on a contractual claim; contract with Joseph Braunscheidel for traffic signal maintenance; a settlement for car windshield damage and a bid award for the museum porch.

Supervisor Bylewski said as mentioned at a previous meeting, the Erie County Legislature has designated November 1 – 30 as the annual 30-day period during which landowners can submit requests to include predominantly viable agricultural land for inclusion to a certified agricultural district. Applications and contact information is available.

Motion by Supervisor Bylewski, seconded by Councilman Casilio to approve the transfer of \$500.00 from the 2009 budget line A1.1420.0470 – Expense and Travel to the 2009 budget line A1.1420.0449 – Recording Fees. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Bylewski, seconded by Councilman Weiss to retain the services of HPA Consulting Group, Inc. to review the Town of Clarence Requests for Proposals (RFPs) for IP Telephone System & Internet Service Upgrade subject to the terms and conditions of the October 14, 2009 quote. Funds to be allocated from A1953. On the question, Supervisor Bylewski said we have been looking at upgrading our telephone services and because of the technical nature of it, we felt it would be beneficial to have a consultant onboard. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Bylewski, seconded by Councilman Kolber to set a Public Hearing for Wednesday, November 4, 2009 at 7:45 p.m. to consider the Preliminary Budget and Special District Assessment Rolls for the Town of Clarence for the year 2010. Upon roll call – Ayes: All; Noes: None. Motion carried.

Supervisor Bylewski said the Town Board will be going back into a work session after the regular meeting specifically to discuss the budget.

Supervisor Bylewski commented on the editorial, “Cooperation Among Communities – Key to Efficiency”. There are a number of ways that this municipality already cooperates with other communities. We have an inter-community committee where supervisors or their representatives from Newstead, Amherst, Lancaster and Alden get together to talk about mutual issues and ways we can engage in cost reduction, or cost sharing of services. We have a number of mutual aid agreements with other municipalities for highway purposes or disasters. There is also infrastructure that is shared. Erie County Sewer District moves our sewage for treatment in

the Town of Amherst treatment plant. There are a number of ways that we are already cooperating and will look for additional ways to cooperate to help reduce the taxpayer burden.

Motion by Councilman Weiss, seconded by Councilman Casilio that upon recommendation of Parks Crew Chief John Burns, Jason Holden is appointed to fill the position of Motor Equipment Operator in the Parks Department. He has worked for the department for 13 years and is an excellent equipment operator. The change would be effective 10/17/09. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Weiss said he attended the deer abatement program meeting with the representative from the DEC. They have been able to get an early start and already took 25 animals to the food bank.

Councilman Weiss said he and Councilman Casilio went on the walk through for the Hollow. Elaine Wolfe is putting together the narrative of what they found.

Councilman Weiss reminded everyone to stay away from fox or raccoons and call the Animal Control Office.

Councilman Weiss said the Youth Bureau and Recreation Department will hold a Halloween Party on Friday, October 23rd from 5:30 to 8:30 p.m. The costume contest is at 7:30 p.m. It is a fun event for the kids.

Motion by Councilman Weiss, seconded by Councilman Kolber that the Clarence Town Board hereby waives the open space fees for the Clarence Center Volunteer Fire Company construction of the training building project. On the question, Supervisor Bylewski said we have done this for other fire companies and churches. Upon roll call – Ayes: Councilmembers DiCostanzo, Kolber, Weiss and Supervisor Bylewski; Noes: None. Recuse: Councilman Casilio. Motion carried.

Motion by Councilman Weiss, seconded by Councilman Casilio that the Clarence Town Board ratifies the appointment of Architecture Unlimited, LLC, for the purpose of inspecting the premises located at 8553 Sheridan Drive pursuant to the Code of the Town of Clarence, Chapter 75, section 75-7 and further, pursuant to all of the requirements of the Code of the Town of Clarence Chapter 75 being met, the Clarence Town Board further:

1. Authorizes the Town Attorney's office to proceed with an application to a Special Term of the Supreme Court of Erie County for an order to remove, secure and/or demolish the structure or part or parts of such structure pursuant to sections 75-7 and 75-8 and further permits the Town Attorney's Office to obtain a money judgment in favor of the Town to recover the costs and expenses incurred by the Town in connection with the proceedings to remove or secure, including the cost of actually removing, said building or structure or part or parts thereof; and
2. Pursuant to section 75-9 that the Town shall assess all costs and expenses incurred by it in connection with the proceeding to remove or secure, including the cost of actually removing said building or structure or part or parts thereof, against the land on which the same is or was located.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Kolber said he was recently told that the Code of The Town of Clarence has been on our website for quite some time. He does not believe anyone knows about it. He asked Karen Jurek to have it listed on the front so it is easier.

Town Clerk Nancy Metzger said it has been there for at least 4 or 5 years and we never had a complaint that people were unable to find it. All you have to do is hit links and it is on the list.

Councilman Kolber said we have had several requests from residents of the Claremount for a crosswalk from their property across Main Street so they can go to the town park. He has talked to the DOT and they will investigate the possibility of tying it with the signal that is there.

Councilman Casilio thanked the Clarence Hollow Association for bringing in Partners for a Viable Western New York. They spent about four hours reviewing what we have in the Hollow. It is more of an economic basis, rather than structural to come up with a report to see how we can make improvements.

Code Enforcement Officer David Metzger and his office are working on 21 properties to bring them into compliance.

Councilman DiCostanzo said Judge Powers and Judge Sillars were at the work session earlier to report on what is going on in the courts. It was very interesting.

Councilman DiCostanzo reminded everyone that school taxes are due tomorrow, as well as income taxes.

Supervisor Bylewski said he would like to comment further on communities cooperating. The Town of Clarence has been working on Lean Six Sigma Implementation. One other item that has come up for discussion is not only to have the training provided for other towns, but also a possible cooperative Six Sigma project.

Town Clerk Nancy Metzger said that for the record, she has received the financial audit for the year ended 12/31/2008 for Clarence Fire District No. 1.

Also, Clarence Fire District No. 1 will hold a public hearing on October 20, 2009 at 7:00 p.m. at 10355 Main Street to consider the Preliminary Budget for 2010. A copy is on file in the Town Clerk's Office.

Town Clerk Nancy Metzger also reminded everyone that school taxes are due tomorrow, October 15th.

Supervisor Bylewski thanked all department heads present for attending.

A Public Hearing was held to consider the request for a Special Exception Use Permit for an automotive service center at the Shops At Main and Transit. James Callahan said the location is the northeast corner of Main and Transit within the Major Arterial Zone. The applicant is looking to modify a previously approved building to accommodate automotive services.

Martin DellaBovi, EVP of Benchmark Group said the tenant that would like to occupy this space is AAA. Included in the 10,200 sq. ft. building would be a travel agency, an insurance office and some service work. Any vehicles that remain overnight would be stored inside. They are not going to have a fleet of cars parked there. It will look identical to the other building that is already there.

Councilman Casilio thanked him for removing some of the stop signs in the plaza. He expressed concern about the plow trucks sitting out front for months during the winter.

With no one else speaking to the subject, motion was made by Councilman Casilio, seconded by Councilman Kolber to close the Public Hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Weiss to adopt the following resolution:

RESOLVED, that the Clarence Town Board, after a public hearing duly held on October 14, 2009, and after all interested parties being heard, grants a Special Exception Use Permit to the applicant, Benchmark, for automotive service center use (AAA) at the southeast corner of Main Street and Transit Road subject to the following:

1. Open Space and Commercial Recreation Fees.
2. No outside parking, storage or display of vehicles.

Upon roll call – Ayes: All; Noes: None. Motion carried.

A Public Hearing was held to consider Historic Preservation Status for the Clarence Historical Museum at 10465 Main Street. Brad Packard said the Town of Clarence Historical Museum, located at 10465 Main Street, serves the community as an excellent example of a rare mid-nineteenth century stone Greek-Revival structure. The property is located within the historic Clarence Hollow community, an important and valued hamlet within the Town of Clarence. Located on property that was originally part of a 144 acre purchase by Asa Ransom in 1803 and

built with locally derived limestone, the structure is significant both architecturally and culturally. In later years the Historical museum was utilized as a home for the groundskeeper of the Automobile Club, then housed a number of commercial restaurants until purchase by the Greatbatch Foundation to be used as a local historical museum. This property has received a positive recommendation for Local Historic Landmark Nomination from the Historic Preservation Commission and has been listed as a significant contributor of historical value in the Intensive Level Survey as prepared by Clinton Brown and Associates.

Supervisor Bylewski said it was a unanimous vote in favor of designation by the Historic Preservation Commission. There is work going on to the porch of the museum. The plans for this work were submitted multiple times to the Historic Preservation Commission and they have approved those changes. Mr. Packard added that we have received a certificate of appropriateness from the Historic Preservation Commission.

Councilman DiCostanzo asked if the addition of the Wilson Greatbatch display is included. Brad Packard said it is included.

With no one else speaking to the subject, motion was made by Councilman Casilio, seconded by Councilman Weiss to close the Public Hearing. On the question, Supervisor Bylewski said this will be the 11th property designated since the program was initiated. Town properties that have been designated are the Landow Cabin on the museum property, 10465 Main Street and 10405 Main Street which is the clubhouse.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to adopt the following resolution:

WHEREAS, the property located at 10465 Main Street and locally known as “The Clarence Historical Museum” has been the subject of an Intensive Level Survey as prepared by Clinton Brown Company Architecture, PC; and

WHEREAS, the property at 10465 Main Street has been identified to have Historic Value, Association With Historic Personages, and Contains Significant Historic Value Through its Architectural Style and Method of Construction; and

WHEREAS, The Town of Clarence Historic Preservation Commission has unanimously forwarded a recommendation to officially designate the home located at 10465 Main Street as an Historic Landmark within the Town of Clarence; and

WHEREAS, on October 14, 2009, the Clarence Town Board held a duly advertised public hearing on the proposed designation per the Town of Clarence Town Board Notification Policy.

NOW THEREFORE BE IT

RESOLVED, that the Clarence Town Board, approves the designation of 10465 Main Street, known as “The Clarence Historical Museum” as a Local Historic Landmark per the Town of Clarence Historic Preservation Local Law; and be it further

RESOLVED that the affected Site be designated on the Official Zoning Map of the Town of Clarence filed for recording in the Office of the Erie County Clerk.

On the question, Supervisor Bylewski thanked the Planning Office, Historic Preservation Commission and in this case, the Town Engineer.

Brad Packard noted that all of the properties are listed on our website.

Councilman Weiss thanked Brad for a fine presentation.

Upon roll call – Ayes: All; Noes: None. Motion carried.

A Public Hearing was held to consider the request by Verizon Wireless for a Special Exception Use Permit for a Telecommunications Tower at 8095 Tonawanda Creek Road. James Callahan said the location is the south side of Tonawanda Creek Road, east of Transit Road in the Agricultural Flood Zone. The applicant is proposing a 99 ft. communications tower. A Negative Declaration was issued August 26, 2009. Site Plan Approval was granted by the Planning Board on Sept. 2, 2009.

Ashley Baker of Nixon Peabody was present on behalf of Verizon Wireless. Representatives from Verizon were also present. Ms. Baker said everyone was provided a copy of the application. Verizon is experiencing a gap in coverage along the Transit Road area. At the request of the Town, they have reduced the height to 99 feet. They recently received comments from the Erie County Planning Department and Dept. of Public Works with a few suggested alterations. The alterations have been made and the updated plan provided to the Town.

Councilman Kolber asked if the lower height would affect future collocations on the tower. Ms. Baker said that would depend on what they needed for height. It is possible for

collocation on this tower. There are situations where towers are extended upward upon review of engineers for structure capability.

With no one else speaking to the subject, motion was made by Councilman Casilio, seconded by Councilman Kolber to close the Public Hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Weiss to adopt the following resolution:

RESOLVED, that the Clarence Town Board, after a public hearing duly held on October 14, 2009, and after all interested parties being heard, grants a Special Exception Use Permit to the applicant, Verizon Wireless, for the construction of a 99 ft. tall Telecommunications Tower located on 36+/- acres of vacant land at 8095 Tonawanda Creek subject to the following conditions:

1. Site plans as approved by the Planning Board.
2. Floodplain Development Permit from Town Engineering Department.
3. Open Space and Recreation Fees.

Upon roll call – Ayes: All; Noes: None. Motion carried.

A Public Hearing was held to consider a Special Exception Use Permit for a secondary living unit at 10470 County Road. James Callahan said the location is the north side of County Road, east of Strickler Road in the Agricultural Rural Residential Zone.

Councilman Casilio said he has a business relationship with Mr. Dewes, so he will recuse himself from all discussion and voting on this item.

Gerald Dewes said they would like to convert an existing 2 ½ car garage into living space for his mother-in-law. The project would include construction of a detached 2 ½ car garage. He is aware of the stipulations for a secondary living unit.

With no one else speaking to the subject, motion was made by Supervisor Bylewski, seconded by Councilman Kolber to close the Public Hearing. Upon roll call – Ayes: Councilmembers DiCostanzo, Kolber, Weiss and Supervisor Bylewski; Noes: None. Recuse: Councilman Casilio. Motion carried.

Motion by Councilman Weiss, seconded by Councilman Kolber to adopt the following resolution:

Resolved, that the Clarence Town Board after a public hearing duly held on October 14, 2009, and after all interested parties having being heard, grants a Special Exception Use Permit to the applicant, Gerald Dewes, for the construction of a secondary living unit as an addition to the existing structure for an in-law apartment on the residential property located at 10470 County Road subject to the following conditions:

1. Unit must be secondary to the principal dwelling and not converted to a rental unit.
2. Occupancy shall be limited to family members, paid employees or temporary guest.
3. Occupancy shall be restricted to 2 persons to occupy the unit.
4. Deed restriction to be placed into the deed for the property restricting its use so as not to allow for the two-family dwelling to be utilized or converted into a rental unit and such deed restriction language **is to be submitted and approved by the Town Attorney prior to the filing the deed.**
5. Proof of filing of the approved deed required and must be submitted to the Town Attorney's office before a Certificate of Occupancy can be issued to the applicant.

On the question, Councilman Kolber said the specific language for the deed restriction may be obtained from the Town Attorney's office.

Supervisor Bylewski asked the applicant if he was in agreement with the conditions as stated. Mr. Dewes said yes.

Upon roll call – Ayes: Councilmembers DiCostanzo, Kolber, Weiss and Supervisor Bylewski; Noes: None. Recuse: Councilman Casilio. Motion carried.

A Public Hearing was held to provide an opportunity for citizens to express community development and housing needs and to discuss possible projects which would benefit low and moderate income persons in the Town of Clarence to be submitted for possible funding by the Federal Community Development Block Grant Program.

James Callahan said the Town of Clarence is a member of the consortium of Erie County governments and as such is eligible to apply through the Department of Environment and Planning for funding for projects that meet the statutory eligibility requirements of benefitting low and moderate income persons. This public hearing is held annually to obtain public input on potential projects within the Town.

Supervisor Bylewski said a number of projects have been discussed over the past year. One project that was not successful last year and he would like to submit again for this year is for handicap assessable modifications to the Legion Hall parking lot at 5850 Goodrich Road. We have also received several requests for extension of sidewalks along Main Street from Harris Hill Road to Thompson Road. Another project for consideration would be the contract with Rural Transit Service to provide transportation to those who do not have a vehicle.

With no one else speaking to the subject, motion was made by Councilman Casilio, seconded by Councilman Weiss to close the public hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio to adopt the following resolution:

WHEREAS, the Clarence Town Board is desirous to provide services to low and moderate income persons who reside in the Town of Clarence; and

WHEREAS, the Clarence Town Board set a public hearing for October 14, 2009 at 8:05 p.m. to provide an opportunity for public input to the citizens of the Town to express community development and housing needs and possible projects that would benefit low and moderate income persons residing in the Town; and

WHEREAS, the Clarence Town Board will consider and submit all projects that qualify for the Erie County Community Development Block Grant program for ECCDBG funds.

NOW THEREFORE BE IT

RESOLVED, that a meeting of the Clarence Town Board duly convened on Wednesday, October 14, 2009, a public hearing was held, and after all interested parties having been heard, the Clarence Town Board hereby authorizes Scott A. Bylewski, Supervisor of the Town of Clarence, Erie County, New York, to sign, submit and execute a contract with the Erie County Community Development Block Grant (ECCDBG) for the following projects upon approval of ECCDB:

1. Handicapped accessible renovations, including the parking lot, to the Town owned American Legion building located at 5850 Goodrich Road in the Town of Clarence;
2. Installation of sidewalks on Main Street from Harris Hill Road to Thompson Road.
3. Rural Transit Service for 2010-2011.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Casilio, seconded by Councilman Kolber to table the request by Miranda Auto for a recommendation for a Building Permit and Architectural Approval for an addition to existing commercial structure at 8870 Sheridan Drive until the applicant is available. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio to grant a Fireworks Display Permit to Brookfield Country Club for October 24, 2009 for a wedding celebration having received all fees, insurance and fire chief approval. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Weiss, seconded by Councilman Casilio to grant approval for the following: Clubhouse Applications - A. Clarence JV Field Hockey – Oct. 26, 2009; B. Cub Scout Pack #563 – Monthly Meetings Oct. – Dec. 2009; Apr. & May 2010; C. Girl Scout Troop #943 – Dec. 10, 2009; Legion Hall Applications - Girl Scout Troop #943 – Monthly Meetings for 2010; Clarence Bulldogs Cheerleaders – Nov. 8, 2009; Day In The Park Committee – Nov. 10, 2009; Gena Gimlin – Nov. 13, 2009; Mark Francisco – Dec. 11, 2009; Tom & Linda Mary Hall – Dec. 27, 2009; Cub Scout Pack #563 – Monthly Meetings Jan. – Mar. 2010; Nature Center Lodge - Clarence Senior Citizens, Inc. – Nov. 19, 2009. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Weiss, seconded by Councilman Kolber that after proper audit and review by the Town Board, the following bills of October 1, 2009 are approved for payment: General Fund - \$141,230.01; Highway Fund - \$76,505.90; Water District - \$2,365.69; Lighting District - \$862.34; Sewer Districts - \$254.96; Capital Fund - \$50,814.10; Aquatic Growth District - \$714.50; and Trust and Agency 203 - \$3,808.75 for a total amount of \$276,556.25. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Weiss, seconded by Councilman Kolber that after proper audit and review by the Town Board, the following bills of October 15, 2009 are approved for payment: General Fund - \$230,799.34; Highway Fund - \$10,355.70; Water District - \$33,131.33; Drainage District - \$811.64; Lighting Districts - \$852.64; Sewer Districts - \$1,993.07; Capital Fund - \$1,305.47; and Trust and Agency 203 - \$8,346.41 for a total amount of \$287,595.60. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, Supervisor Bylewski adjourned the regular meeting at 8:35 p.m. and reconvened to the conference room to continue discussion on budgetary matters.

Nancy C. Metzger
Town Clerk