

Clarence Town Environmental Quality Review  
(TEQR)  
Meeting Minutes  
Monday January 26, 2009

Chairman Matthew Balling called the meeting to order at 7:06 p.m. and led the pledge to the flag.

TEQR Members Present:

Matthew Balling	John Moulin
Paul Shear	Richard McNamara
Lisa Bertino-Beaser	Jonathan Hickey

TEQR Members Absent:

Robert Sackett

Other Town Officials Present:

Director of Community Development James Callahan  
Planner Brad Packard  
Town Attorney Steven Bengart  
Councilman Peter DiCostanzo  
Planning Board Liaison Jeffrey Grenzebach

Other Interested Parties Present:

Paul J. Casilio	Rob Pidanick
Sean Hopkins	Jim Collins Jr.
Al Hopkins	

**Item 1-**Approval of minutes from the previous meeting.

Motion by Paul Shear, seconded by John Moulin, to **approve** the minutes for the meeting held on December 15, 2008, as written.

Matthew Balling	Aye	John Moulin	Aye
Paul Shear	Aye	Richard McNamara	Aye
Lisa Bertino-Beaser	Aye	Jonathan Hickey	Aye

MOTION CARRIED.

**Item 2-**Communications.

Chairman Balling explains that the deadline for project information is due to the Planning and Zoning office 2 weeks prior to the TEQR Meeting. This affords time for distribution to and review by the TEQR members.

**Item 3a-Shadow Woods Open Space Design Subdivision, Goodrich Road.**

(Coordinated review initiated on 3/26/08-Lead Agency established 10/20/08).

**DISCUSSION:**

Jim Callahan explains the project is located on the west side of Goodrich Road, north of Keller Road. It is a proposed Open Space Design Subdivision that was referred from the Planning Board on February 20, 2008. The application was tabled at previous meetings pending receipt of additional information. The latest submittal includes a traffic analysis received on January 21, 2009.

Sean Hopkins from the law offices of Hopkins and Sorgi is representing the applicant. David Chiarolanza and Rob Pidanick are also present. Mr. Hopkins explains that the traffic study has been forwarded on to Erie County Department of Public Works and to the NYS Department of Transportation (DOT). Mr. Hopkins said the study shows that the proposed project will not result in any significant traffic impacts.

Mr. Shear refers to a letter from the DEC dated November 16, 2008 regarding the wetlands delineation and a subsequent letter from Mr. Hopkins regarding the same. Mr. Shear asked if there has been a change in the wetland delineation from what the TEQR members have seen on the overview. If it has changed, the TEQR Committee needs the information so they can review the changes. Mr. Hopkins said the concept that the TEQR Committee has been reviewing includes the updated wetlands delineation.

Chairman Balling said the project remains tabled.

Jim Callahan asked if the applicant was working with Town Engineer Mr. Latona in terms of sewage flow. Mr. Hopkins said yes.

Chairman Balling asked the applicant to submit a copy of the results of the down flow analysis to the TEQR Committee. Mr. Hopkins will forward the documentation.

**Item 3b-Wood Meadows Open Development Area, 8625 Tonawanda Creek Road.**

(Coordinated review commenced on 6/25/08).

**DISCUSSION:**

Jim Callahan explains the property is located on the south side of Tonawanda Creek Road, west of Northfield Road. It is a proposed 4-lot Open Development Area and was referred for coordinated review on June 25, 2008. The application has been tabled at previous meetings pending receipt of additional requested information. No information has been received as of this date. Mr. Callahan has been unable to contact the representative. The project remains tabled.

**Item 3c-**Newhouse Acres, West side of Newhouse Road between Roll Road and Clarence Center Road, Proposed Incentive Lot Design Subdivision.  
(Coordinated review commenced on 10/22/08).

**DISCUSSION:**

Jim Callahan explains the project is located on the west side of Newhouse Road between Roll Road and Clarence Center Road. It was referred from the Planning Board on September 17, 2008. Action has been tabled seeking Lead Agency concurrence from NYSDEC.

Rob Pidanick with Greenman Pederson Inc. is representing the applicant. Sean Hopkins is also present as he is council for the petitioner. Mr. Pidanick explains that the applicant has responded to all items addressed in the letter from NYSDEC; however DEC is still requesting that a meeting be held. The applicant is in the process of obtaining a meeting date with the DEC. Chairman Balling will accept the invitation to attend this meeting on behalf of the Town of Clarence. As soon as the meeting date is set Mr. Pidanick will forward the information to Chairman Balling along with the list of attendees for that meeting. Mr. Shear would like the opportunity to attend this meeting as well. Town Attorney Steve Bengart explains that if the majority of the TEQR Committee attends the meeting, a notice of the meeting needs to be posted.

The project remains tabled subject to the DEC's releasing the Town's Lead Agency request. The DEC's letter states that they are not in concurrence with the Town's Lead Agency request.

**Item 3d-**StoneRidge Estates Subdivision, south side of Stage Road east of Ransom Road, Proposed Open Development Area with Frontage Lots.  
(Coordinated review commenced on 10/22/08).

**DISCUSSION:**

Jim Callahan explains the project as a proposed Open Development Area with frontage lots. It was referred from the Planning Board on September 17, 2008. The application was tabled at the December 15, 2008 meeting pending receipt of additional information.

Clayt Ertel, of Realty USA, is the real estate broker involved with the project. Al Hopkins, of Metzger Civil Engineering, is the engineer who is present.

Mr. Hopkins addressed the issues of percolation at the site, whether the soil is suitable for home construction and whether the soil is suitable for roadway construction. The applicant hired a geotechnical professional in order to perform tests on the issues listed. The report is on file. In summary, the soil is stable and the site is suitable for home construction. The percolation tests were acceptable except for one site where the soil was compact. Additional percolation and geotechnical tests will need to be done as the project develops. Chairman Balling would like to see information included in the Part 2 and Part 3 regarding this problem, along with a solution for it.

Mr. Hopkins addresses the water pressure issue and the complaint that is historically low in the area. The Erie County Water Authority tested 2 hydrants at the site at 12:15 p.m. on October 23, 2008. The results are on file and show the water pressure is acceptable.

Mr. Shear refers to a memo from Town Engineer Joe Latona dated March 17, 2008. The letter refers to soil testing requirements for residential construction.

Chairman Balling refers to the Part 2-Project Impacts and their Magnitude. The preparation of this part of the Environmental Assessment is the responsibility of the Lead Agency. The Town Board is Lead Agency not the TEQR Committee. The Part 2 should reflect 1 potentially large impact, which is number 1-the proposed action will result in a physical change to the project site. Under other impacts it is listed that soils may present challenges, mitigation to require soil borings at building permit issuance.

Mr. Shear said there is a concern with construction on slopes 15% or greater. This would be a potentially large impact that could be mitigated by investigations at the time of construction. Mr. Shear also takes issue with construction of land where bedrock is exposed to generally within 3 feet of existing ground surface, this can be mitigated.

Chairman Balling continues with the Part 2 and 3. Items 2 and 3 are answered “no”. Number 4 is a potentially large impact that can be mitigated. Injection wells may impact depth of water. Impact to be identified in determining future home location. The answer to Item 5 is yes. The proposed action will allow residential uses in areas without water and/or sewer services. This is a potentially large impact and can be mitigated by a project change. Injection wells may impact water quantity, home locations will be monitored. The answer to Item 6 is yes, the proposed action may cause substantial erosion. The mitigating action will be a Storm Water Pollution Prevention Plan, which is always required. Items 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 (there will be no blasting), 18, 19 and 20 are all answered “no”. Chairman Balling requests the Planning Department to prepare the Part 3 based on the Part 2 information.

**ACTION:**

Motion by Paul Shear, seconded by John Moulin to **recommend** the EAF Part 2 for the proposed Stone Ridge Estates Open Development Area to the Town Board as discussed.

Matthew Balling	Aye	John Moulin	Aye
Paul Shear	Aye	Richard McNamara	Aye
Lisa Bertino-Beaser	Aye	Jonathan Hickey	Aye

MOTION CARRIED.

**ACTION:**

Motion by Paul Shear, seconded by Richard McNamara to **recommend** the Town Board issue a Negative Declaration on the proposed Stone Ridge Estates Open Space Development Area subject to completion of the Part 3.

Matthew Balling	Aye	John Moulin	Aye
Paul Shear	Aye	Richard McNamara	Aye
Lisa Bertino-Beaser	Aye	Jonathan Hickey	Aye

MOTION CARRIED.

**Item 3e-**Milherst Construction, south side of County Road, west of Strickler Road.  
(Coordinated review commenced on 12/17/08).

**DISCUSSION:**

The proposed Industrial Business Park use was referred from Planning Board on October 8, 2008. Coordinated review was initiated on December 17, 2008.

Rob Pidanick of Greenman Pedersen, Inc. is representing the applicant. Jim Collins and Ron Mauer are present. Mr. Pidanick hopes that a Negative Declaration will be recommended to the Town Board this evening. The EAF Part I was determined to be complete by the TEQR Committee and was submitted out for coordinated review. The State DEC responded with a letter concurring that the Town of Clarence should act as the Lead Agency. Mr. Pidanick goes on to identify 5 items in the letter that need to be addressed. The DEC said a portion of the project site was located adjacent to NYS Fresh Water Wetlands. The project sponsor's plan is for outside the areas in which the State has any jurisdiction. The second item was in connection with the sanitary sewers; the service will be provided on the site with a septic system and leach field. The applicant will not need a SPDES Permit as they are not in excess of 1,000 gallons a day. The DEC also identified that there are hydric soils on the project site. The sponsor has retained Wilson Environmental Technologies to conduct a Federal and State Wetland Delineation on the site. That report has been submitted to the US Army Corp of Engineers in November 2008 for boundary verification. The verification has not been done yet. The applicant anticipates a letter of no jurisdiction to be coming from the US Army Corp of Engineers. The State also pointed out that if there was disturbance of more than an acre of land the project would need to comply with SPDES for storm water discharge. This project will comply with the State's and the Town's requirements for storm water quantity and quality. According to the NYS National Heritage Program, previously in this same area, it was identified that there may be a possibility of an endangered species, the short-eared owl. The DEC suggested the site be monitored over the winter by the sponsor to check for existence of the short-eared owl. The applicant has agreed to do this. A letter was issued in August 2008 indicating that there would be no potential impacts to cultural resources on the site. The letter is on file.

Mr. Pidanick explains the proposal includes a 5320 square foot office building with 2 attached shops totaling 12,690 square feet. The site will be served by an existing public water line on County Road. The sponsor is proposing berming on the south side of the property and the entire east property line. The berms in both locations will be 5' high. 30 parking spaces are proposed, 27 is required by the code.

Mr. Shear points out that he does not have a copy of the DEC letter dated December 29, 2008.

Chairman Balling drafted a Part II for the project. There are no potentially large impacts identified by any involved agencies, however there are standard impacts that accompany a construction project and these are reflected in the Part II. Chairman Balling refers to the Part II which indicates there will be an impact with the conversion of vacant land; this is a potential impact on the building space in the Town because of the preservation of it. This impact can be mitigated by a project change. The proposed action will affect surface and ground water quality and quantity, a discharge permit will be required; this is a small to moderate impact. The project will create a potentially large impact on water due to the alteration on drainage flow patterns. A Storm Water Pollution Plan and an Erosion Sediment Control Plan will be required. There will be impacts on aesthetic resources as there is sharp

contrast in surrounding land use patterns; this can be mitigated by a project change such as landscaping.

**ACTION:**

Motion by Matthew Balling, seconded by John Moulin, to **recommend** the Town Board accept the EAF Part II as drafted.

**ON THE QUESTION:**

Mr. Shear asked Chairman Balling if he is satisfied with the comments, information put forward and the responses regarding the DEC letter of December 29, 2008. Chairman Balling said he is.

Matthew Balling	Aye	John Moulin	Aye
Paul Shear	Aye	Richard McNamara	Aye
Lisa Bertino-Beaser	Aye	Jonathan Hickey	Aye

MOTION CARRIED.

**ACTION:**

Motion by Matthew Balling, seconded by Lisa Bertino-Beaser, to **recommend** the Town Board issue a Negative Declaration for the project subject to completion of the Part III by the Planning and Zoning Department.

Matthew Balling	Aye	John Moulin	Aye
Paul Shear	Aye	Richard McNamara	Aye
Lisa Bertino-Beaser	Aye	Jonathan Hickey	Aye

MOTION CARRIED.

**Item 3f-Rubino Subdivision, Clarence Center Road and Shimerville Road.**

(Referred from Town Board at the November 26, 2008 meeting).

**DISCUSSION:**

Jim Callahan describes the project as being located on the south west corner of Clarence Center and Shimerville Roads. It is a proposed Open Space Design Subdivision. The Town Board has referred the application back to TEQR for further proceedings on the creation of a record which comments on significant evidence submitted by the petitioners. The application was tabled at the December 15, 2008 meeting to allow for a FOIL request to be sent to the NYS DEC, ECSD #5 and the Town of Amherst.

Sean Hopkins, from the law firm of Hopkins and Sorgi, is representing the applicant. John Rubino is present. Mr. Hopkins said litigation commenced last April in the form of an Article 78 proceeding, challenging the Positive Declaration that was issued by the Town Board. In October 2008 the judge issued a decision invalidating the Positive Declaration. Mr. Hopkins reads from the decision.

He refers to the FOIL requests and the responses. A letter from the Amherst Town Engineer that confirms there is 74,200 gallons a day of peak flow available in the North French sewer. The letter is on file. The Rubinos paid \$55,700 for upgrades to the sewer; they freed up 400% more capacity than they needed. Amherst is well aware of the flows in the system. A letter from Erie County dated December 31, 2008 was received and is on file. Mr. Hopkins refers to a letter from the previous Town of Amherst Engineer, Jeff Burroughs, dated February 5, 2008 in which Mr. Burroughs disagrees with the down stream capacity, he also disagrees with the TEQR comment relative to CSD #6 reaping the benefits of any surplus capacity created by the project, the letter is on file.

John Rubino said he is asking the Board to recommend a Negative Declaration for this project.

Mr. Shear clarifies that the TEQR Committee did not recommend a Positive Declaration; the project was referred to the Town Board without a recommendation from the TEQR Committee because there were areas the Committee could not get past.

Town Attorney Steve Bengart said there were legal opinions that were given that he doesn't necessarily agree with. Mr. Hopkins said he is willing to discuss that. Town Attorney Bengart clarifies that the accuracy of the record may or may not be totally correct as to what the court decided. Chairman Balling agrees with Town Attorney Bengart. Town Attorney Bengart recommends that the applicant and the TEQR Committee do not get into a debate or a question and answer period this evening. Mr. Rubino said this is the third time the Town of Clarence has asked the involved agencies for information on this project. Mr. Hopkins points out that ultimately the Erie County Health Department must sign off on this project as well.

The item remains tabled until the TEQR Committee receives and reviews responses from the FOIL requests.

**Item 4a**-Epiphany United Church of Christ, 9520 Wehrle Drive.  
(Referred from Planning Board at 12/10/08 meeting).

## **DISCUSSION:**

Jim Callahan describes the project as being located on the north side of Wehrle Drive, just west of Gunnville Road. It is a proposed new church and was referred from the Planning Board at the December 10, 2008 meeting. The applicant previously submitted an EAF for the Board's consideration.

Chairman Balling explains that because of the project's size it automatically qualifies under Town Law as a Type I Action.

Mr. Shear questions item 3a of the EAF and asked about the other 48% soil drainage. Jim Callahan said when this information goes to the DEC; they will break it down thoroughly.

The setback in the agricultural zone will require a variance. The applicant was granted a variance prior to coming before the TEQR Committee.

Mr. Shear questions the location of the driveway proposed on the west side of the property and asked if it will be affected by the variance. Mr. Callahan said there is only one access; Mr. Packard said the concern was the alignment. This issue was not brought up at the Zoning Board of Appeals

meeting; the TEQR Committee can review it if they feel it necessary. Mr. Callahan clarified that the driveway on the west side of the property has been eliminated. The proposed driveway is on the east side of the property. The site plan labeled C1 is incorrect; C2 and C3 are correct.

**ACTION:**

Motion by Matthew Balling, seconded by Richard McNamara, to **accept** the EAF Part I subject to a correction on item 3a and **recommend** the Town Board seek Lead Agency Status and commence coordinated review.

Matthew Balling	Aye	John Moulin	Aye
Paul Shear	Aye	Richard McNamara	Aye
Lisa Bertino-Beaser	Aye	Jonathan Hickey	Aye

MOTION CARRIED.

**MISCELLANEOUS:**

Chairman Balling reminds the committee members that there is a Land Use Training program available through the Town.

The next meeting date is February 23, 2009.

Meeting adjourned at 8:30 p.m.

Carolyn Delgato  
Senior Clerk Typist