

Clarence Town Environmental Quality Review
(TEQR)
Meeting Minutes
Monday March 16, 2009

Chairman Matthew Balling called the meeting to order at 7:00 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

Other Interested Parties Present:

David Bentivogli	Rob Pidanick
Paul J. Casilio	Lonny Lewis
Peter Sorgi	

Item 1-Approval of minutes from the previous meeting.

Motion by Lisa Bertino-Beaser, seconded by Jonathan Hickey, to **approve** the minutes for the meeting held on February 23, 2009, as written.

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

MOTION CARRIED.

Item 2-Communications.

Communications will be discussed under Unfinished Business.

Item 3a-Newhouse Acres, west side of Newhouse Road between Roll and Clarence Center Roads.
Proposed Incentive Lot Design Subdivision (coordinated review commenced on 10/22/08).

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the west side of Newhouse Road between Roll and Clarence Center Roads. The proposed Incentive Lot Design Subdivision was referred from the Planning Board in October 2008. Action has remained tabled pending concurrence from NYS DEC on Lead Agency Status. A meeting was held on March 4, 2009 with the DEC and correspondence from the DEC has been received identifying conditional Lead Agency determination.

Peter Sorgi, of Hopkins & Sorgi, is present and representing the applicant. Rob Pidanick, of Greenman Pedersen Inc., is also present. Mr. Pidanick said the DEC submitted a letter to the Board indicating the Board should not issue a SEQRA determination on this project until three (3) conditions were met. One condition is compliance with the National Flood Insurance Program, the second condition is that a Storm Water Pollution Prevention Plan be developed for the subdivision, the third condition is that it be demonstrated that sewer capacity is available for the subdivision. The applicant is prepared to address all these issues. Mr. Pidanick said the Dec is asking that the project be advanced before they allow this Board to make the determination.

Mr. Shear said if the Town takes the position of seeking Lead Agency, he understands there are some time restraints. The DEC is suggesting that no recommendation be made whether it is for a Positive or Negative Declaration before the items are fulfilled. Mr. Shear asked if it is appropriate for the Town to seek Lead Agency when the answers to some of the questions will possibly take significant periods of time.

Town Attorney Steven Bengart refers to the DEC letter and said it is arguable as to whether they agreed the Town could have Lead Agency or made it concurrent on certain events taking place before the DEC gives the Town Lead Agency. The appropriate course is most likely to continue the project as tabled. The Town ask that things move as quickly as possible to DEC so that the letter can be changed granting Lead Agency to the Town. Mr. Shear said items 2, 3, and 4 should be addressed and responded to the DEC's satisfaction prior to the Town seeking Lead Agency. Mr. Pidanick thinks, in accordance with the first paragraph of the DEC's letter, the Town should declare themselves Lead Agency. Chairman Balling said, for the record, if the DEC was not involved in this project, the three items listed are the same items he would ask for further details on. He agrees with tabling the project until the requested information is received. The other option, listed in 6NYCRR Part 16, is that within 30 calendar days one of the Agencies or the project sponsor has the right to request the Lead Agency get designation via the Commissioner's Office. Mr. Sorgi thinks the letter is clear and he disagrees with tabling the project. Town Attorney Steven Bengart said the bottom line is the applicant must provide the information.

Chairman Balling agrees that there is a floodplain problem; testimony has been provided by neighbors that flooding has become worse in the area. Another issue is the projects proximity to the horse farm to the north. The Concept Plan shows a buffer area between the residential neighborhood and the horse farm. Chairman Balling has obtained information from an expert on animal behavior. He suggested the applicant review the information. Town Attorney Steven Bengart provides the applicant with a copy of the information Chairman Balling is referring to.

The project will remain tabled and as soon as the information is received and DEC signs off that they have received it the TEQR Committee will continue with the proceeding.

Lonny Lewis, of 8177 Roseville Lane, asked for clarification as to when the Army Corp look at the property. This issue was brought up at the DEC meeting, but it was not brought up at this meeting. Chairman Balling can not clarify as he only has the official correspondence from the DEC. Mr. Callahan said there are identified Federal Wetlands on the project site, therefore there will need to be an Army Corp of Engineers Permit issued. The Army Corp representative identified that he would, in the near future, perform a site visit and make a determination on their involvement.

Paul Casilio, on behalf of Casilio Enterprises and the Casilio family, voices his concern that there is no buffer for lots 22 and 23, he asked the Board to please consider a buffer.

Mr. Pidanick said the US Army Corp of Engineers had to go out and verify the boundary information that Wilson Environmental Technologies had recently updated. The plan was designed not to impact the wetlands on the site.

Item 3b-Epiphany United Church of Christ, 9520 Wehrle Drive.
(coordinated review commenced on 2/11/09).

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the north side of Wehrle Drive, west of Gunnville Road. The proposed new church was referred from the Planning Board on December 10, 2008. The project has been tabled pending comments received from involved agencies.

Chairman Balling said a letter was received from the DEC, dated February 20, 2009 which states the project site appears to be within an archeologically sensitive area. The Town was requested to evaluate this concern by means of having the applicant preparing Phase I archeological study of the property. The project will remain tabled pending the preparation of the archeological study.

Item 4a-Brookfield Flying Club, 8600 Roll Road.

Requests approval to operate model plane flying club (referred from Town Board on 2/11/09).

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the north side of Roll Road, east of Harris Hill Road. The application was referred from the Town Board on February 11, 2009.

David Bentivogli is representing MW Development. Mr. Bentivogli said he was informed that the DEC made a phone call to a representative of the Town saying there is a complaint on the project. He has seen no correspondence and does not know what the nature of the complaint was. Mr. Bentivogli said the planes fly approximately 400' (maximum) above the giant berm that is there. This location was a National Gypsum pile from the National Gypsum Plant; the area is covered with dirt and grass. There is a structure on the property that Mr. Bentivogli refers to as a hut; it is approximately 12' long. The property owner bought the land in 2004. The top of the hill had to be graded. The land was disturbed when it was flattened out. Chairman Balling said the disturbing of the land may have exposed the community to whatever was buried underneath. As a landfill, questions come about with regard to what was actually in the landfill.

Mr. Shear refers to photos of the property which indicate the applicant brought in equipment and installed one or two landing strips. By disturbing the cap on the landfill, it is unknown as to what

has potentially been exposed. The landfill contents are a concern. He wants to know if the Town considers it appropriate to take core samples to indicate what is in the landfill unless this was done when the owner bought the property and it is a matter of record.

Chairman Balling refers to a letter from the DEC dated May 16, 2005 addressed to MW Development. The letter states that the eastern half of this property is an old landfill. This site has been removed from the Inactive Hazardous Waste Site list, because the allegations of hazardous waste dumping have gone unsubstantiated. However, some questions still remain about what is buried on this site. Depending upon the scope of this filling operations and possible development project, the Department may require further testing of the site to further characterize the contents of this landfill. Chairman Balling said the DEC has been monitoring this issue for almost four (4) years.

Mr. Bentivogli said the DEC, as part of the conservancy, routinely makes inspections every day or every month, it has never been an issue. Town Attorney Steven Bengart notes for the record that the DEC has not done any testing or monitoring of that property as a result of the purchase of that land, not before, not during and not after, that the Town is aware of. Mr. Bentivogli said he meant that the DEC performs visual inspections in a semi-routine basis as part of the conservancy. Mr. Bengart clarifies that these inspections are not related.

Chairman Balling states the DEC has had a previous interest in monitoring this property. The project is an activity that may affect the environment by changing the use, appearance or condition of any natural resource or structure.

ACTION:

Motion by Matthew Balling, seconded by John Moulin, to **recommend** the Town Board commence coordinated review and seek Lead Agency status.

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

MOTION CARRIED.

Mr. Shear refers to the DEC letter dated May 16, 2005, item 1 which states any activity or project that may disturb the cap of the landfill, or change the type or volume of material within the landfill will require notification to Mr. Mark Hans, Regional Solid and Hazardous Materials Engineer so that this department can evaluate potential concerns to ensure that there will not be any adverse environmental impacts. Mr. Shear asked if this representative was contacted prior to the land disturbance. Mr. Bentivogli said no.

A resident of Clarence points out that the project is in an industrial area. The flying field is park-like, just a plain grass area. The resident goes on to say that the Town has been treating this as one issue; he does not think it should be. If there is an issue with the land, that's different from what is on the agenda this evening. We are not talking about the land; the applicant is there to ask if there is an environmental impact of the planes flying above and around the area. They are separate issues, why do they have to be combined? Chairman Balling explains the State Law requires a permit and it is to protect the owner's rights. The TEQR Committee has to be aware of segmentation, they have to look

at the project as a whole, not break it down into segments. The resident invites the TEQR members to visit the property and see if they don't think it is a positive thing for this community.

MISCELLANEOUS:

Don Owens from Earth Dimensions will be at the April 15, 2009 Planning Board meeting to discuss the Town's soil and wetland issues. All are invited to attend.

The next meeting date is April 20, 2009.

Meeting adjourned at 7:44 p.m.

Carolyn Delgato
Senior Clerk Typist