

Clarence Town Environmental Quality Review
(TEQR)
Meeting Minutes
Monday December 15, 2008

Chairman Matthew Balling called the meeting to order at 7:00 p.m. and led the pledge to the flag.

TEQR Members Present:

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

Other Town Officials Present:

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

Other Interested Parties Present:

Al Hopkins	Leanne Voit
Jim Collins	Clayt Ertel

Item 1-Approval of minutes from the previous meeting.

Motion by John Moulin, seconded by Richard McNamara, to **approve** the minutes for the meeting held on November 17, 2008 with the following correction:

-Page 3, the vote for Robert Sackett shall reflect “recuse” in lieu of “abstain”.

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

MOTION CARRIED.

Item 2-Communications.

Communications will be discussed under the appropriate agenda item.

Item 3a-Shadow Woods Open Space Design Subdivision, Goodrich Road
(coordinated review initiated on 3/26/08-Lead Agency established on 10/20/08).

DISCUSSION:

Jim Callahan provides an update on the project. It is located on the west side of Goodrich Road north of Keller Road. The proposed Open Space Design Subdivision has completed coordinated review under SEQRA. Action has been tabled at previous meetings pending receipt of additional information, no new information has been submitted to the office.

Chairman Balling explains the subdivision has 54 lots. It was tabled pending a traffic study for the intersection. The TEQR Committee wanted to know the build-out year for the traffic study so it can be compared to the intersection of Clarence Center Road and Goodrich Road, they will also take into consideration the traffic generated from the Spaulding Greens Subdivision proposal. The project remains tabled.

Item 3b-Wood Meadows Open Development Area, 8625 Tonawanda Creek Road
(coordinated review commenced on 6/25/08).

DISCUSSION:

Jim Callahan provides an update on the project. It is located on the south side of Tonawanda Creek Road, west of Northfield Road. It is a proposed 4-lot Open Development Area and has been tabled pending receipt of required additional information including wetland delineations and archeological delineations. No new information has been submitted at this point. The project remains tabled.

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

DISCUSSION:

Jim Callahan provides an update on the project. It is a proposed Open Space Design Subdivision located in the Residential Single-Family zone. Coordinated review has been tabled pending concurrence from the NYS DEC. A formal meeting amongst involved agencies is being pursued.

Robert Sackett recused himself from any discussion and voting on this agenda item as he owns property that borders the proposed subdivision.

Leanne Voit, of Greenman Pedersen, Inc., is representing the applicant. She understands the project will be tabled this evening but wanted to introduce the revised plan to the TEQR Committee. A wetland delineation has been received and because of the growth of one of the wetlands along the creek the plan has been decreased to 58 lots, as opposed to 60. Between lots 9 and 10 there is increased open space due to the wetland in the area. The wetland delineation report is being worked on and should be submitted for TEQR's review in the coming weeks.

Chairman Balling asked if Ms. Voit had information on what appears to be an emerging creek on the property. Mr. Voit said it is a drainage ditch. Chairman Balling took photographs of the

property; they have become a permanent part of the file. He asked how Ms. Voit handles drainage situations like this. Ms. Voit said they do not stop the drainage, they deal with it; an analysis will be done of the site. Chairman Balling said when he visited the site he saw the water flowing rapidly in the drainage ditch; it is well formed. Mrs. Voit understands the concern. She will let the TEQR Committee know when the NYS DEC meeting will take place.

The TEQR Committee members received a copy of the letter from Mr. Doleski of the NYS DEC dated November 14, 2008. The letter is on file. The project remains tabled.

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 provides an update on the project. It is located on the south side of Stage Road, east of Ransom Road. It is a former quarry area located in the Agricultural Rural-Residential zone. The applicant is proposing an Open Development with frontage lots. Coordinated review was commenced on October 22, 2008; the 30 day comment period is now complete.

Al Hopkins, of Metzger Civil Engineering, is representing the applicant.

Chairman Balling said the Clarence School District was contacted and they indicated they feel there is enough capacity in the district for this project. The NYS DEC replied indicating the project was a significant down-size of a previous project. In a work session the TEQR Committee discussed the construction on the property and septic systems. Clayt Ertel joins the meeting. Chairman Balling previously distributed a copy of data from the USDA soil survey. 56% of the site consists of Pu Soils, this type of soil is unrated for its suitability for construction, public road to streets, lawns or landscaping. Chairman Balling suggests the applicant perform percolation tests so the TEQR Committee can confirm if the soil is suitable and what methods the applicant would use to address the test results. Mr. Ertel said he understands the concern but all the homes just down the road on Shisler Road have been constructed under the same soil conditions. There are also properties on Stage Road and Ransom Road with same soil conditions. Chairman Balling is not familiar with the other areas Mr. Ertel is referring to and does not see how the environmental review can move forward on this project as there is not enough information. Mr. Ertel said the properties he is referring to are from the same piece of land this proposal is for; they were divided from the property in question. Mr. Ertel said the Town Engineer can verify the information. Chairman Balling said the TEQR Committee received copies of the International Building Code; they did not receive an opinion from the Town Engineer's office as to whether he thought the land was suitable for construction. Jim Callahan explains that the Town Engineer will not give a "sign off" on the project; he will approve engineering as presented but will not provide an opinion as to suitability at this stage. Town Attorney Steven Bengart asked if the TEQR Committee would entertain the idea of foiling the Health Department to obtain further information on the lots. Chairman Balling said if the soil type is the same he would not have a problem with taking that secondary tier of information for the record. But he thinks it would be just as costly to do that as it would be to do a percolation test in five different areas on the property. Mr. Ertel said permits would not have been issued by the Building Department if there were no permits from the Board of Health. Town Attorney Steven Bengart suggests the applicant foil the Health Department for the information the TEQR Committee is looking for.

Robert Sackett said it appears that this project site is closer to bedrock than the property Mr. Ertel is referring to. He does not know how to address this issue with the information Mr. Ertel is proposing to provide. Mr. Ertel said the depth is different but the soil conditions are the same. His point is that it is not the Town's concern whether this is an issue because the Board of Health would not have issued the permits for the project to go forward. Mr. Sackett asked for confirmation that Mr. Ertel is going to provide information about the quality and quantity of the soil at the site in question. Mr. Ertel explained what a percolation test is. He thinks asking for this information is redundant. Chairman Balling disagreed; this is the first time a project is proposed on this particular site.

The TEQR Committee is requesting a preliminary soil evaluation and percolation report be prepared. The report should include a sampling of sites, show the results of the percolation tests and identify what techniques will be used to address the conditions.

Chairman Balling refers to the Planning Board minutes of September 17, 2008 in which a discussion was held regarding the Subdivision Regulations. These regulations require 8" of topsoil be re-applied throughout the subdivision area. He asked if the applicant is proposing to do such or is he going to ask the Town Board for a variance so he doesn't have to have the topsoil. Mr. Hopkins said the key word is "re-apply"; in this case you can't re-apply something that is not there. Topsoil will probably not be trucked in to the site. Mr. Ertel said the concept was to leave much of the soil conditions natural. It is too early in the design to say if topsoil will be brought in.

Chairman Balling voices his concern regarding the road that will access the project; it has been discussed as to whether the road will be public, private or a cul-de-sac. Jim Callahan clarifies that the Planning Board forwarded a recommendation on an Open Development, which is a private road; this is what is before the TEQR Committee. Chairman Balling said the problem with an Open Development is that there can't be more than four (4) lots, this plan has 14 lots. Jim Callahan clarifies that the proposal is for an Open Development plus frontage lots. Mr. Hopkins said the plan is for five (5) frontage lots, five (5) Open Development lots and there rest are off the private road. Paul Shear said the TEQR Committee has not seen any of this information at this point so they are not in a position to make any comments. Full color copies of the most recent plan will be forwarded to all the TEQR Committee members.

The length of the road is approximately 1280' to the center of the cul-de sac, the private drive beyond that.

Chairman Balling refers to the Subdivision Regulations which requires 12% of the site be left for recreation area, the proposal does not include this. Would the applicant reconsider this in light of the uniqueness of the property? Mr. Ertel refers to the corner of Ransom Road and Stage Road and indicates this area will never be developed. The peripheral of the site will remain green space. Jim Callahan explains the Planning Board referred this project as an Open Development which is a private road, they also identified they would accept a payment in lieu because Open Developments generally require a recreational component.

Chairman Balling said a communication has been received regarding the water pressure issue on the property. Mr. Hopkins explains that the Erie County Water Authority conducted two (2) tests, one at a hydrant on Ransom Road, north of Bergtold Road, and the other on Stage Road. Excellent pressures were reported, one hydrant had 78 psi pressure with over 2400 gallons flowing per minute, the other hydrant had 74 psi pressure and over 2400 gallons flowing per minute. Chairman Balling asked the applicant for documentation regarding this data. Mr. Ertel will forward a copy of the data.

Paul Shear refers to the EAF Part I dated October 10, 2008 in which it states there will be no blasting during construction. Mr. Hopkins confirms this is true.

ACTION:

Motion by Matthew Balling, seconded by Robert Sackett, to **table** the project pending receipt of the information requested from the applicant in terms of soil evaluation and water pressure issues. A full sized site plan is to be distributed to all TEQR Committee members as soon as possible.

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

MOTION CARRIED.

Item 4a-Milherst Construction, south side of County Road, west of Strickler Road.
(referred from Planning Board to commence environmental review).

DISCUSSION:

Jim Callahan provides the background on the project. It is located on the south side of County Road, west of Strickler Road. It is a proposed Industrial/Commercial operation in the Industrial Business Park zone. The application was forwarded at the November 12, 2008 Planning Board meeting for a recommendation under the State Environmental Quality Review Act (SEQRA).

Ken Zollitsch, of Greenman Pedersen Inc., is present along with Jim Collins of Milherst Construction. Mr. Zollitsch is requesting the start of the Environmental Review for the office site. It is a 17 acre site, Milherst Construction wants to locate a new office and have storage for construction equipment. It is a small 30 space parking lot. There will not be a lot of traffic generated, only a few office workers. There will be two (2) shops to work on the construction equipment totaling 12,690 square feet; the shops will be located at the back of the office. The site will be serviced by public water that is along County Road. A septic system will be needed on site; it will be located in the front between the office building and County Road. Storm water quality and quantity will be addressed; the storm water basin will be located on the site.

Paul Shear points out that there is an access drive on the property and asked if this is the approximate location of the entrance shown on the plan. The applicant said yes.

Robert Sackett asked the applicant to discuss the traffic. Mr. Collins said soils would not be hauled in and out of this site. The most traffic will be when the trailer moves the equipment in and out of the site. In the spring the equipment goes out to the job and remains there for 10 months out of the year. He has 8 cube vans which are used for tools; these vans will be in and out of the site on a regular basis.

Chairman Balling said this proposed action is classified as a Type I under the State Environmental Quality Review Act because there is construction activity affecting a land area greater than 10 acres. As such, the Town is obligated to conduct a coordinated review of interested and

involved agencies. The agencies are to include, but are not limited to, the Erie County Highway Department and the Department of Environmental Conservation.

ACTION:

Motion by Matthew Balling, seconded by Jonathan Hickey, to **accept** the Part I as written and to **recommend** the Town Board initiate coordinated review under Article 617.

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

MOTION CARRIED.

Item 4b-Rubino Subdivision, Clarence Center Road and Shimerville Road.
(referred from Town Board at the November 19, 2008 meeting).

DISCUSSION:

Jim Callahan provides the history on the project. It is located on the south west corner of Clarence Center and Shimerville Roads and is a proposed Open Space Design Subdivision located in the Residential Single-Family. Town Board referred the application back to TEQR at the November 19, 2008 meeting for further proceedings on the creation of a record which comments on significant evidence submitted by the petitioners.

Town Attorney Steven Bengart explains that this matter was before the TEQR Committee once before and at that time, after a thorough review, there was not recommendation from this committee and the project when back to the Town Board; a Positive Declaration was issued. Thereafter, the applicant sought Article 78 proceeding asking that the Board's decision be nullified as arbitrary and capricious. The Court felt the Town's decision was arbitrary and capricious. The Court would set aside the Positive Declaration and the matter was referred back to the respondents for further proceedings and creation of a record which documents or comments on significant verbal and documentary evidence offered by the petitioners. Town Attorney Steven Bengart said the Town needs to create a record on everything that has been provided and cover all issues more thoroughly.

Joe Rubino is present.

Chairman Balling explains that an archeological Phase I report with a potentially large impact was not addressed in the Part II and Part III. Chairman Balling refers to a letter from the NYS Office of Parks and Recreation dated August 28, 2006 stating there is an archeological site adjacent to the project area. The applicant needs to submit an Archeological Phase I report. Mr. Rubino said he submitted the report and it should be in the file.

Chairman Balling said the second matter to be addressed is the sewer capacity. The TEQR Committee will need to obtain information regarding the build-out of Erie County Sewer District #5. Is there still a problem with back flow and sewage to existing homes? Did the remedy to provide capacity have a positive impact? Chairman Balling refers to the Master Plan 2015 Sewer Expansion Priorities which prescribes the way the County expects the Town to build out and how sewers are to

drive that growth. That document shows there are approximately 600 equivalent dwelling units that will complete a full build out of Erie County Sewer District #5. The TEQR Committee wants to know if there is enough capacity to service the 600 dwelling units. Mr. Rubino clarifies saying the TEQR Committee wants to know if there is enough capacity in Erie County Sewer District #5 for 644 units. Chairman Balling said that is correct. Information is also needed from the Department of Environmental Conservation (NYS DEC) about back flow and discharge problems on the Dodge Road interceptor. On January 11, 2008 Chairman Balling had a conversation with Richard Rink of the NYS DEC in which Mr. Rink said he was aware of surcharges and back ups into the lines along Dodge Road. The smaller pipe between Dodge Road and the improvements the applicant constructed still remain, there was a bottleneck. Mr. Rink indicated a downstream sewer capacity analysis would be important for the Town to obtain. The Town of Clarence will foil all the necessary documents from the DEC.

The TEQR Committee wished to obtain the applicant's mitigation project regarding North French Road and how it related to the bottlenecks on the Dodge Road interceptor. Mr. Rubino said this information was submitted many times to every Board in Town. Chairman Balling would like to obtain as much information as possible that an independent engineer would be able to review it and state, unequivocally, that the \$50,000 French Road improvement did indeed free up capacity on the Dodge Road interceptor that the Town of Clarence convey sewage through. Mr. Rubino said all this information is in the file. He is unclear as to what the TEQR Committee is asking him to do.

Town Attorney Steven Bengart clarifies that the TEQR Committee will be obtaining foil requests from NYS DEC, the Town of Amherst and Erie County Sewer #5. The applicant has the opportunity to do the same if he chooses to. Once the TEQR Committee has all the data, and if they are able to absorb it, they will make an informed decision. If they feel the need to hire an expert to review the data and advise the TEQR Committee, they will. The expense of hiring an expert will fall to the applicant.

The Planning and Zoning office will process the foil requests.

Mr. Rubino asked if there is anything else the TEQR Committee is looking for. Town Attorney Steven Bengart said if another Positive Declaration is issued for the project, there would be a scoping session and there may be other issues brought up then.

ACTION:

Motion by Matthew Balling, seconded by Robert Sackett, to **request** the Planning and Zoning Office prepare foil requests on the subjects discussed. Foil requests will be sent to the NYS DEC, Erie County Sewer District #5 and the Town of Amherst.

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

MOTION CARRIED.

ACTION:

Motion by Matthew Balling, seconded by Lisa Bertino-Beaser, to **table** the project pending receipt of the foil requests.

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

MOTION CARRIED.

The next meeting date is January 26, 2009.

Meeting adjourned at 8:20 p.m.

Carolyn Delgato
Senior Clerk Typist