

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, March 13, 2013, at Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell called the meeting to order at 6:00 P.M. Members of the Town Board present were Councilmember's Bernard Kolber, Patrick Casilio, Peter DiCostanzo and Robert Geiger. Other Town Officials present were Director of Community Development James Callahan, Assistant Planner Michael Hutchinson, Town Attorney Lawrence Meckler, Town Engineer Timothy Lavocat, Director of Administration and Finance Pam CuvIELLO, Confidential Secretary to the Supervisor Karen Jurek, Senior Building Inspector David Metzger and Planning Board 2nd Vice-Chairman Paul Shear.

Director of Community Development – James Callahan

Brandon Houck 8189 Tonawanda Creek Road

Applicant is proposing to construct a new home on the property located at 8189 Tonawanda Creek Road. Prior to filing for a building permit, the applicant has access to clean fill and is proposing to fill the lot to raise the base flood elevation to accommodate a future home. The proposed site is located on the south side of Tonawanda Creek Road, east of Transit Road on vacant land located in the Agriculture Flood Zone. Per Local Law, the Town Board has final authority to approve fill permits. The Zoning Board of Appeals has acted to grant a setback variance of 185'. Town Engineer Lavocat has reviewed the request and has submitted a letter with his recommendations and conditions for the approval. The fill would be coming from the Niagara County Produce project.

Dave Sutton 8825 Sheridan Drive and Overlook Drive

Applicant is proposing to demolish the existing commercial structure and construct a new mixed use building identifying first floor commercial below two upscale apartments. The site is located on the southwest corner of Sheridan Drive and Overlook Drive on existing mixed use property consisting of .68 acres located within the Restricted Business Zone. Per the Zoning Law, the Town Board has preliminary concept review authority to identify concerns prior to referring this item to the Planning Board for a comprehensive review. Referral to the Planning Board would initiate a comprehensive review. As the project includes two residential units, it is considered a duplex (not multi-family) which is allowed in this zone.

Dave Sutton 6449 Transit Road

Applicant is proposing to develop a mixed use project with retail/commercial on the ground floor with second story residential units in the front with two residential structures to the rear (4 units per building for a total of 12 units). Per the Zoning Law, the Town Board has preliminary concept review authority to identify concerns prior to referring the item to the Planning Board for a comprehensive review. The project will be classified as a multiple family housing project and would meet current and proposed density requirements.

Northwood's Open Space Design Subdivision

Applicant is seeking formal acceptance of the DSEIS as drafted and amended. The proposed 148 lot Open Space Design Subdivision is under Environmental Review. The Planning Board has recommended accepting the Draft Supplemental Environmental Impact Statement (DSEIS) as complete. The proposed development is planned for the north side of Greiner Road between Shimerville Road and Shadyside Drive in a residential classification. The Town Board is Lead Agency for the Open Space Design review. Upon acceptance by the Lead Agency, the document will be forwarded to involved agencies and the public for formal comment towards developing an FSEIS.

Councilman Casilio asked when the Town Board will find out where all the sewer taps are coming from. James Callahan stated that the draft does not have to be a perfect document, the Planning Board did discuss this and identified that they would like more detail. At this level what was submitted is acceptable. If more detail needs be submitted as part of the final, then that should come out in this review. Out of the 1000 taps, Councilman Kolber would like to know how many taps have been used so far so they are out of the mix. Certificates should be made up for the balance of the 1000 taps and given to the partnership group so they can allocate them thus keeping the town from getting involved in the middle of a legal hassle. Town Engineer Lavocat stated that the town has options and he has spoken to Town Attorney Meckler and James Callahan about that. Under this project, the developer will not exceed the 1000 taps. The issue is who has the right to the remaining taps after Northwood's is developed. There are 350 taps allocated for Spaulding Green which is all they have approval for at this time. Taps are allocated upon Development Plan Approval.

Gabe's Collision 5871 Transit Road

Applicant is seeking Town Board approval of a Special Exception Use Permit to allow for the use to be developed at this location. The proposed collision shop, car rental and used car showroom facility will be located on the east side of Transit Road, north of Highland Farms Drive on 2.5+ acres in the Major Arterial Zone. This area was part of the down-zoning of Transit Road in the 2008 Master Plan Amendment. Per the approved Master Plan 2015 amendment of 2008, the area is to be zoned commercial. As the Planning Board has forwarded a recommendation to not allow the SEUP, the matter is at the Town Board for a determination. The Town Board has final authority to approve Special Exception Use Permits after a require Public Hearing.

Work Session items for consideration March 27, 2013:

Harris Hill Commons

Applicant is seeking concept approval for a 66-lot Open Space Design Subdivision including the creation/extension of a Town Sewer District. The proposed site is located on the west side of Harris Hill Road between Greiner Road and Sheridan Drive on existing vacant land consisting of 66+/- acres in the Residential Single Family Zone. Per the Zoning Law, the Town Board has final approval authority for Open Space Design Developments. Creation/extension of a Town Sewer District in conformance with Master Plan 2015 and the Master Sewer Plan as well as providing a regional solution for sewer access. A public Hearing is required to consider the Concept Plan on an Open Space Design Development. Councilman Kolber stated that while he likes this project, we have to keep the Master Sewer Plan in focus. As part of this approval, the applicant has agreed to extend a trunk sewer line to the half way point between Greiner Road and Sheridan Drive.

Annual Renewal of Temporary Conditional Permits

The only applicant with issues is Zoe's Restaurant at 5701 Transit Road. They still have not completed their landscaping in the front of the building.

Lavocat Nursery/Greenhouse – 8441 County Road

Applicant is requesting review of plans for a greenhouse/nursery to be located on the south side of County Road, east of Stahley Road in the Agriculture Zone. A nursery/greenhouse is an allowed use in the Agriculture Zone. This proposal was before the Zoning Board of Appeals but the applicants ask to be removed from that agenda and bring his request to the Town Board for review of the actual use.

Director of Community Development James Callahan distributed a revised draft of the Multiple Family Housing Overlay Zone. The revision includes the following items for consideration:

- A cap on the maximum number of multiple family residential units that may be developed on a particular parcel or within a single project design. This cap is identified to preserve the long term viability of the commercial zoning classification for commercial uses and to provide a balance to the developing residential growth in the community and to avoid the concentration of multiple family residential units in a particular area of the Town. (for projects with a land area over 15 acres, the maximum number of units will be equivalent to 5 units/acre regardless of unit size and the commercial component requirement will be increased to 50% with the density calculation limited to the residential portion of the project)
- An increase in the allowable density for a stand-alone project within the Traditional Neighborhood District. The density allowance is increased to 8 units per acre while maintaining the maximum number of units for a particular project at 16 total units and the minimum lot size requirement at 2 acres
- Identifies an allowance for mixed use projects within the TND to allow a maximum density of 4 units per acre with a 25% commercial component for lots less than 2 acres
- All other components of the proposed law, as discussed in previous meetings to include open space requirements and 25% commercial component requirements remain

Mr. Callahan mentioned a joint Town Board/Planning Board meeting to the Planning Board however; it will be difficult scheduling a time. Several members of the Town Board said they would be willing to meet on a Saturday morning if necessary.

Supervisor David Hartzell

Supervisor Hartzell will set a bid date for April 2, 2013 for the sale of surplus office equipment.

At the March 6th morning Work Session there was a discussion regarding the purchase of a grapple truck and possibly contracting out for brush pickup during the summer months. Superintendent Donner is meeting with grant writer Bernard Rotella about purchasing a grapple truck with grant funds. The bidding out for brush pickup during the summer months is more difficult and will take more time but Superintendent Donner is working on that as well. Councilman Casilio stated that Mr. Donner's first move should be to purchase the grapple truck; the efficiencies would be over whelming (four men doing the work of 8).

Superintendent Donner has received the new town logos and several of the town vehicles are now identifiable with the new decals.

Councilman Bernard Kolber

Councilman Kolber will present a resolution to amend the Safe Act.

Councilman Patrick Casilio

Councilman Casilio will make a motion authorizing the Supervisor to sign the 2013 ATV/SxS Law Loan Program Agreement with Yamaha. The vehicle would be used by Park Security and there is no cost to the Town for the use of the vehicle. The vehicle is being loaned to the town for the summer months and will be returned at the end of the season.

Councilman Casilio spoke to Time Warner regarding the security cameras, they are anxious in moving forward with that, they are requesting specific locations.

Councilman Peter DiCostanzo

The cement around the town pool has been broken up for the new slide and the new life guard chair. The plan is to get that completed before the liner is installed. The bids for the liner project will be opened tomorrow.

The Ethics Board met this morning to review the Disclosure Statements. Gayle Brace submitted a list of twenty-three people that have not submitted their Statements. The Town Board was asked to contact any anyone on the list that they may be liaison to.

The Youth Bureau speaker series was held on March 11th however, that was the same night at the school budget hearing.

Recreation Director Chip Trapper has adult softball leagues forming; anyone interested should check the website.

Councilman DiCostanzo will make several motions:

- Post the position of Junior Planner
- Set a Public Hearing to consider the purchase of vacant land on Goodrich and Herr Road
- Allow the placement of a bike sign for “MS Southtowns Shuffle” Charity Ride

Councilman Robert Geiger

Councilman Geiger and Town Engineer Lavocat met at the Clarence Senior Center Executive Board last week, they are working on the drawings for the front entrance. Three plans were submitted to the Executive Board, they have decided on one of the drawings. Town Engineer Lavocat is working on obtaining grant money for this project.

Councilman Geiger is looking into getting a permanent power pole installed at the Farmers Market. They are hoping to have the pole set by the power company.

Councilman Kolber asked if anything has been done about getting a permanent rest room facility at the Farmers Market. Town Engineer Lavocat stated that the Parks Department is currently working on putting a facility at Parker Park. Currently the Farmers Market uses portable lavatories.

Clarence Senior Center 5th Annual Basket Raffle will be held on Saturday, April 27th.

The discussion resumed regarding a building cap for Multi Family housing. Using Director of Community Development James Callahan’s guidelines, Supervisor Hartzell suggested putting an up-front cap of 200 multi-family units per year which would be a double cap for what Mr. Callahan proposed which would be a per – acre cap. The Board already knows where it stands on residential and manufactured housing building caps. Councilman Casilio said that was a number he was thinking of as well possibly even 150 units.

Councilman Casilio attended the School Board Budget meeting and is concerned that we have not been able to develop enough commercial construction to possibly take the strain off the potential 10% tax increase the school board is proposing.

Supervisor Hartzell stated that when you get into the big complexes with 100 – 200 apartments, it taxes the school system. The best thing the Town can do is the smaller apartments with commercial on the bottom with one bedroom apartments on top. Usually high income, single individuals prefer this type housing. They contribute to the tax base but do not put a burden on the schools like a large 3 or 4 bedroom complex would.

Councilman Kolber said he did not know if the Town could legally make decisions based on financial impact. Town Attorney Meckler stated that he would like to give his opinion on this in Executive Session under Attorney-Client.

Councilman DiCostanzo commented on an article in the Buffalo News regarding local IDA's giving tax incentives to apartment complexes and the high demand for this type housing. If this Town Board keeps discussing this topic and not move forward, Lancaster, Hamburg and Amherst will take care of all the demand. Councilman Casilio stated that the three towns mentioned all have their own police department, if we have 10,000 more residents we would not have a police department to support it. Councilman Casilio does not understand why apartment complexes would be given a tax incentive.

Supervisor Hartzell stated that the position of the Clarence IDA is that they are not in favor of giving subsidies to apartment buildings. The role of the IDA is to create jobs, put businesses on the tax roll, possibly fill vacant buildings etc. It was Supervisor Hartzell's opinion that he did not feel subsidizing apartment buildings was a proper use of IDA funds.

The Town Board met with Town Attorney Meckler to discuss an Attorney-Client item.

There being no further business, the Work Session adjourned at 7:05PM.

Darcy A. Snyder
Deputy Town Clerk

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, March 13, 2013 at the Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell, Jr. called the meeting to order at 7:30 p.m. Pledge to the flag was led by Councilman Bernard Kolber; followed by a prayer read by Supervisor Hartzell.

Members of the Town Board present were Council Members Robert Geiger, Peter DiCostanzo, Patrick Casilio, Bernard Kolber and Supervisor Hartzell. Other Town officials present were Director of Community Development James Callahan, Town Attorney Lawrence Meckler, and Town Engineer Timothy Lavocat.

Motion by Councilman Casilio, seconded by Councilman Kolber to accept the minutes of the previous work session and regular meetings held February 27, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Casilio to set a bid date for April 2, 2013 at 10:00 a.m. for the sale of the following copy machines declared as surplus office equipment: 1 – E Studio 350-Toshiba Copier, Model No. DP-4520, Serial No. CVB524556; Minimum Bid -\$500.00; and 1 – E Studio Toshiba 350 Copier, Model No. DP-3520, Serial No. CPC537418; Minimum Bid-\$350.00. On the question, Supervisor Hartzell said we were able to purchase new copiers with some grant money. Town Clerk Nancy Metzger added that a previous bid date was set, but we did not receive any bids. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

WHEREAS, The Clarence Town Board is the representative government of the Town of Clarence residents; and

WHEREAS, the Town of Clarence has a population of 30,673 people; and

WHEREAS, on Monday January 14th, 2013, the rights of the people of the State of New York under the second Amendment of the Constitution of the United States were intentionally and egregiously violated; and

WHEREAS, The Gun Control Bill (S.2230) known as the NY SAFE Act was rushed through the New York State Senate and the New York State Assembly without any public hearings or input from law enforcement agencies; and

WHEREAS, New York State lawmakers did not have an opportunity to review such legislation; and

WHEREAS, the aforesaid law does nothing to enhance safety and infringes on the legal rights of law abiding citizens.

NOW THEREFORE BE IT

RESOLVED, that the Town Board of the Town of Clarence goes on record and demands that the Governor of the State of New York, the New York State Senate and the New York State Assembly take immediate action to rescind, repeal and re-write the aforementioned law; and be it further

RESOLVED, that the Town Clerk be directed to forward copies of this resolution to Andrew M. Cuomo, Governor of the State of New York, the New York State Senate, the New York State Assembly and to all other town governments in Erie and Niagara Counties.

On the question, Councilman Kolber said Erie County and numerous other counties have done this and he believes by doing this at the town level it adds a little more weight. We are a small town, but if all the towns get on board we could see some change.

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

Councilman Kolber said the Board met with the Highway Superintendent last week to discuss improving our brush pickup to make it more efficient and have summer pickups again. It was a very productive discussion with him and hopefully we can get this going.

Motion by Councilman Casilio, seconded by Councilman Kolber to authorize the Supervisor to sign the 2013 ATV/SxS Law Loan Program Agreement between the Town of Clarence and Yamaha Motor Corporation, USA, subject to receipt, review and approval of the Agreement by the Town Attorney.

On the question, Councilman Casilio said the vehicle would be used by the Park Security Department for a period of four months. There is no cost to the Town for the use of the vehicle.

The vehicle would be added to the Town's insurance and the Town would be responsible for routine maintenance. This vehicle moves faster than the current vehicles we have and gets security on the bike paths. We will see how it helps the Town over the summer.

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

Supervisor Hartzell thanked Joe Meacham of security for putting all the time and effort into this. It will benefit the Town at no cost.

Councilman DiCostanzo thanked Recreation, Parks and Engineering Departments for doing the work on getting the new slide for the Town Pool.

The Youth Bureau held a presentation on Monday night at the Middle School. Rob Ray and Scott McManigle spoke to the kids about success, relationships and respect. He thought it was very good.

The Youth Bureau is planning a "Just for Boys Program". Information is available on the website.

Chip Trapper, Recreation Director is forming adult softball leagues. Information is available on the website for anyone interested.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger to post the position of Junior Planner – Provisional with a salary of 85% of \$42,500.00 which is \$36,125.00.

On the question, Councilman DiCostanzo said that once the appointee has passed the Civil Service Exam or is employed in a provisional position for a period of one year from appointment (whichever comes first), the salary will increase to \$42,500.00.

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

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to set a Public Hearing for April 10, 2013 at 7:45 p.m. to consider the purchase by the Town of Clarence of approximately 20.32 +/- acres of vacant land located on the east side of Goodrich Road (SBL No. 44.15-1-3.1) and approximately 57.06 +/- acres of vacant land located on the west side of Herr Road (SBL No. 44.11-2-11.11) all in the Town of Clarence, Erie County, New York at a purchase price not to exceed \$1,000,000.00 plus any closing costs, processing costs, baseline studies, future stewardship fees and any and all costs and disbursements for open space purposes. Funds to be allocated from the open space bond act resolution, general fund and recreation fees (if it is determined that any portion of this property will be used for recreation purposes). Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to allow the placement of a Bike sign at the entrance of the bike path at the Highway Department on Goodrich Road and at the entrance to the Bike Path on Salt Road near Main Street to publicize the MS "Southtowns Shuffle" Charity Ride that will be held on August 10, 2013 subject to the following conditions:

1. The Town will not be responsible for vandalism to said sign or if the sign is stolen.
2. Jim Burkard of the Parks Department must be notified when the sign is to be put up and when it is removed.

On the question, Councilman DiCostanzo said the display of the bikes will be at the end of June and the beginning of July 2013 for about a two week period.

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

Councilman Geiger said he met with Town Engineer Tim Lavocat at the Senior Center to go over three proposals for improvements to the front entrance. We have given him permission to cost it out. We will also continue to pursue grants that might be available.

Councilman Geiger thanked Councilman Kolber for following through on the gun legislation. It was interesting at the Association of Erie County Governments when it was brought up for a vote a few weeks ago and they decided not to vote on it immediately. The reason being, that New York State did vote on it immediately without allowing the public any time to discuss it. He thanked Councilman Kolber for waiting to vote on it and not just pushing it through.

Councilman Geiger announced that the 5th Annual Basket Raffle is coming up at the Senior Center on April 27th from 11:00 a.m. to 3:00 p.m.

Brandon Houck requests a Fill Permit in advance of residential development at 8187 Tonawanda Creek Road. James Callahan said this is existing vacant land in the Agricultural Flood Zone.

Brandon Houck said the fill would be coming from the Niagara County Produce work site. He will bring in approximately 4,000 cubic yards of fill for construction of berms and a fill pad for the house.

Motion by Councilman Casilio, seconded by Councilman Geiger to approve the request of the applicant, Brandon Houck, for a Fill Permit in advance of residential development at 8187 Tonawanda Creek Road subject to the following conditions: 1. Town Engineer review and approval. Upon roll call – Ayes: All; Noes: None. Motion carried.

Dave Sutton requests Preliminary Concept Review of a proposed 3,000 sq. ft. mixed use structure(s) in the Restricted Business Zone at 8825 Sheridan Drive. James Callahan said the location is the southwest corner of Sheridan and Overlook Drive in the Restricted Business Zone. It is currently a mixed use with two buildings.

Dave Sutton said they are not demolishing either existing building. They are doing a substantial rehab. The plan is to add a story to the existing single-story 3,000 sq. ft. structure for a mixed use building. They want to salvage as much of the building as possible using the same footprint. It is on septic, which will be evaluated and certified by the County. The separate house will be renovated and rented out as a single-family house.

Motion by Councilman Casilio, seconded by Councilman Kolber to refer the request for Preliminary Concept Review of a proposed 3,000 sq. ft. mixed use structure(s) in the Restricted Business Zone at 8825 Sheridan Drive to the Planning Board for review. Upon roll call – Ayes: All; Noes: None. Motion carried.

Dave Sutton requests Preliminary Concept Review of a proposed 8,000 sq. ft. mixed use structure(s) in the Major Arterial Zone at 6449 Transit Road. James Callahan said the location is the east side of Transit Road, north of Old Post Road consisting of an existing residential property in the Major Arterial Zone and Residential Single Family to the rear. The applicant is proposing to construct a new mixed use structure with multiple family homes behind.

Supervisor Hartzell asked how many apartments were being considered.

Dave Sutton said they are proposing an 8,000 sq. ft. retail structure, but the footprint is approximately 11,000 sq. ft. per the site plan. The front mixed use building consists of four, 2,000 sq. ft. boutique style retail spaces. There will be four 2,000 sq. ft. luxury apartments on the upper level with a small patio at the rear, along with a two-car garage behind this building.

Mr. Sutton said they are also proposing two buildings with four units each with two-story townhouse style apartments. All of this is within the Major Arterial Zone considered as Phase I of the development. They are thinking possibly low density residential for the rear of the property, but not as part of this proposal.

Councilman Kolber said we have held off on all multifamily projects until we have a law in place. He does not think it is fair to move any forward.

Mr. Sutton said they are only proposing the front building at this time, but wanted to show their intent for the entire piece. This request is for four units in a mixed use building. They have been sitting on this project for over six months. They are also aware that there is a substantial draft for the multifamily law prepared.

Supervisor Hartzell said he is in favor of moving it along since it is only four units.

Councilman Casilio said he could see moving the four units forward and hopefully the law will be passed before they present the rest of the project. The front building is exactly what we are looking for.

Councilman Kolber said once you start the project, even though this is for the one building, the whole project is in the pipeline and violates the hold we have had on these proposals.

Councilman Casilio asked if the applicant was comfortable with only the request for the front building being referred to the Planning Board.

Mr. Sutton said they have no problem with that. They felt it was their obligation to show the intent of the entire project. They are only looking for approval to move forward with that front building.

Motion by Councilman Casilio, seconded by Supervisor Hartzell to refer the request for Preliminary Concept Review of the front building only, a mixed use structure in the Major Arterial Zone at 6449 Transit Road to the Planning Board.

On the question, Mr. Sutton explained that the 11,145 sq. ft. footprint includes 8,000 sq. ft. of retail space and the rest is the garage associated with the apartments.

Councilman Kolber said he is not opposed to the project; he has to keep the starting line at the same place that we held up other projects at. It is not a duplex like the other request.

Upon roll call – Ayes: Councilmembers Geiger, DiCostanzo, Casilio and Supervisor Hartzell; Noes: Councilman Kolber. Motion carried.

Northwoods Open Space Design Subdivision requests formal acceptance of the Draft Supplemental Environmental Impact Statement as recommended by the Planning Board. James Callahan said the location is the north side of Greiner Road between Shimerville Road and Thompson Road. A Positive Declaration was issued under SEQRA. The applicant has prepared a Draft Supplemental Environmental Impact Statement with the Planning Board recommending acceptance of the amended document. The Town Board has authority to accept the document.

Jeff Palumbo, attorney and Fred Cimato, applicant were present. Mr. Palumbo said they have spent a lot of time discussing this with the Planning Board and have made many revisions to the original document. Acceptance of this document will allow them to move on to the next phase of the SEQRA review.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber that upon the recommendation of the Planning Board, the Clarence Town Board accepts the Draft Supplemental Environmental Impact Statement (DSEIS) as complete and makes the document available for public comment and review and to authorize the Planning Board to proceed with a public hearing on the DSEIS.

The formal acceptance is conditioned upon the Lead Agency's receipt of proof as to ownership of the unallocated E.D.U.'s pursuant to the Clarence Hollow Pollution Abatement Project Final Findings Statement dated August 21, 2001 and the Heise Brookhaven Sewage Works Corporation agreements dated December 10, 2001 and December 19, 2001.

On the question, Councilman DiCostanzo said copies of the completed DSEIS will be available in the public library and the Planning and Zoning Office.

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

Gabe's Collision requests a Public Hearing to consider a Special Exception Use Permit for a collision shop, automotive sales and rental facility at 5817 Transit Road. James Callahan said the location is the east side of Transit Road, north of Highland Farms Drive consisting of vacant land in the Major Arterial Zone. The Planning Board has forwarded a recommendation to deny issuance of a Special Exception Use Permit for the proposed facility.

Jeff Palumbo, attorney and the applicant Jeff Muccerelli were present. Mr. Palumbo said it has been a year and the request tonight is for a public hearing to consider a Special Exception Use Permit. The project would consist of three separate entities including auto sales, auto rental and a collision shop. The Planning Board says that the automotive center is not a permitted use in the Major Arterial Zone.

Mr. Palumbo referred to the Zoning Law, in which he believes that it says it is up to the Director of Community Development to review plans prior to submission to the Planning Board and the Town Board to determine completeness and compliance with the Zoning Law. If he feels a proposal is in compliance, he can place the request on the agenda of the Town Board. In this case, the project was moved forward to an agenda. It goes on to say that the initial review of the Town Board is to determine if the project is consistent with the adopted Master Plan and that the design is generally acceptable.

Mr. Palumbo said that is what he did in March 2011. He presented the plan from his client to Mr. Callahan. He met again in January of 2012 with more of an idea of what they were proposing. Mr. Callahan told them that a Special Exception Use Permit would be required. The item was placed on the Town Board work session agenda in February 2012. Mr. Palumbo read from the minutes of the work session held February 22, 2012. The proposal was referred to the Planning Board at the regular meeting of February 22, 2012 with concerns for adequate buffering and concern for adjoining property owners. The Supervisor stated in that motion that it was not

an approval of the project as the Town Board will have final approval or denial of a Special Exception Use Permit. If the use was not permitted, Mr. Palumbo would like to know why the referral was made at that time. There was no discussion that it was not a permitted use and the referral to the Planning Board did not specifically ask them to determine if it was permitted.

Mr. Palumbo said they met with the Planning Board several times and discussed design, buffering, landscaping, air quality, noise and just about everything. In August 2012, the Planning Board did not make a formal recommendation to the Town Board, except to say that automotive uses were not permitted uses, specifically the collision shop. They met with the Town Board on September 26, 2012 and were referred back to the Planning Board once again to recommend action under SEQRA. There was no further direction. If there was an issue with the permitted use, it would have been included for review. They went back to the Planning Board from October 2012 through February 2013 and discussed more redesign, more re-submittals, and any detailed information they requested. The Planning Board recommended that the Town Board not issue the Special Exception Use Permit because they felt it was not a permitted use. He asked why the Town would allow someone to go through such an exhaustive expensive review if you thought it was not a permitted use.

Mr. Palumbo said one of the issues the Planning Board relied on was the air quality. If they have the public hearing, they will demonstrate that this is not an issue. They are filtering over 99% of the air. The DEC regulates the air quality. They are substantially lower than what New York State allows. They ask that the Town Board grant them the public hearing. It is not fair to the applicant to have a decision made without it.

Councilman Casilio said he feels bad if the applicant has been misled by the Town or by Mr. Palumbo, but these processes take a long time. He asked if he was saying that the Town Board did not do their job by referring them to the Planning Board.

Mr. Palumbo said he believes they did their job in making a determination that this was an appropriate use by referring it to the Planning Board. He is saying that once Mr. Callahan determines that the plan in front of him is compliant and sent to the Town Board, and then the next step of referral to the Planning Board then the Town Board has determined that it is an appropriate use.

Councilman Casilio said that is his fear tonight that if a public hearing is granted, Mr. Palumbo will assume that it is an automatic granting of the project.

Mr. Palumbo said he knows they need four votes, but that is the democratic process.

Councilman Casilio said he thinks it is disingenuous to say that this project has gone to the Planning Board twice and presented to the Town that it was not given due process. He asked Mr. Callahan to comment.

James Callahan said, as with any project, they review an application for completeness. He did identify to Mr. Palumbo that a Special Exception Use Permit would be required for this use and placed it on a Town Board agenda for review. The Planning Board approached him and identified the fact that it is not an enumerated use. A collision shop is not specifically enumerated within a Commercial or Major Arterial zoning classification. He generally identified that automotive uses will require a Special Exception Use Permit or a Temporary Conditional Permit issued by the Town Board. As the Planning Board took a harder look, it is not specifically enumerated in those zones. Collision shops are permitted in the Industrial Zone. If it is his mistake, he will take full blame for it. A completed application was submitted and they placed it on the Town Board agenda.

Councilman Kolber said we would have been better off cutting it off from day one and not giving your client the time to pursue this. You have parts of the project that are permitted and a part being the collision shop that is not. He thinks that in fairness, you are entitled to a public hearing.

Councilman Geiger asked Mr. Palumbo if it is their request for a public hearing. Mr. Palumbo said yes it is.

Motion by Councilman Kolber, seconded by Supervisor Hartzell to set a Public Hearing for April 10, 2013 at 7:50 p.m. to consider a Special Exception Use Permit for a collision shop, automotive sales and rental facility at 5817 Transit Road at the request of the applicant. On the question, Councilman Kolber said he would like to make it absolutely clear that this is being done at the request of the applicant, that there is no condition or guarantee that there will be a positive action and it will be put to a vote if a motion is made. Town Attorney Lawrence Meckler stated that the scheduling of the public hearing should not be construed as concurrence of the Town Board of the applicants request for a Special Exception Use Permit. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Supervisor Hartzell to approve the following: Clubhouse Applications - A. Clarence Citizens for Veterans – March 20, 2013; B. Clarence Girl Scouts – April 14, 2013; Legion Hall Applications – A. Mary Trautwein – Dec. 6, 2013; B. Barbara Gill – Dec. 7, 2013; C. Mark Francisco – Dec. 13, 2013; D. John Schlagenhauf – Dec. 14, 2013; Pavilion Special Events – A. Rotary Club of Clarence – May 11, 2013; B. Clarence Hollow Association – May 27, 2013; and C. Day in the Park Committee – June 28, 29 & 30, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio that after proper audit and review by the Town Board, the following bills of March 14, 2013 are approved for payment: General Fund - \$189,660.10; Highway Fund - \$37,894.25; Water District - \$35,572.36; Lighting Districts - \$683.92; Sewer Districts - \$478,623.25; and Capital Fund - \$13,359.75 for a total amount of \$755,793.63. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, Supervisor Hartzell adjourned the meeting at 8:22 p.m.

Nancy C. Metzger
Town Clerk