

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, March 28, 2012 at the 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 Brad Packard, Town Attorney Lawrence Meckler, Town Engineer Timothy Lavocat, Confidential Secretary to the Supervisor Karen Jurek, Senior Building Inspector David Metzger and Town Assessor Christine Fusco.

Director of Community Development James Callahan

Formal Agenda items:

Annual renewal of existing Temporary Conditional Permits:

1. ANNUAL RENEWAL OF EXISTING TEMPORARY CONDITIONAL PERMITS

- a. Hoemann Auto, 8310 Goodrich Road, Automotive Service
- b. Towne Mini, 8200-8230 Main Street, Automotive Display
- c. Autobahn Collision, 8200 Main Street, Automotive Collision
- d. Miranda Automotive, 8925 Sheridan Drive, Automotive Service
- e. K&A landscaping, 8925 Sheridan Drive, Outdoor Storage
- f. William Richer III, 9855 Martin Road (County Road), Roadside Stand
- g. Rocco's Pizza, 5433 Transit Road, Outside Dining
- h. Calhoun Automotive Detail, 8145 Sheridan Drive, Automotive Detail Shop
- i. Louie's Car Clinic, 9393 Main Street, Automotive Sales
- j. GC Supply Inc., 9992 Main Street, Outside Display
- k. Sweet Melody's, 8485 Transit Road, Outside Dining
- l. At Your Service Car Care, 9620 County Road, Automotive Service
- m. Gianni Mazias, 10325 Main Street, Outside Dining

There have been no formal complaints on any of the mentioned Temporary Conditional Permits.

Metzger Civil Engineering 10976 Stage Road

Applicant requests Preliminary Concept Review of proposed Open Development Area at 10976 Stage Road. The proposed site is located on the south side of Stage Road, east of Schurr Road on existing vacant property consisting of 39+/- acres in the Residential Single-Family Zone. Per the Subdivision Law, the Town Board provides initial direction prior to initiating a formal review process through the Planning Board. There exists a considerable amount of wetlands on the property. There is no sewer district at this location. Referral to the Planning Board would initiate formal review and attempt to address concerns from adjoining property owners.

Work Session items for consideration April 11, 2012:

Towne Mini 8230-8240 Main Street

Applicant is seeking approval to develop an automotive sales/service operation on existing vacant property located on the northwest corner of Main Street and Westwood Drive in the TND and Commercial Zones. This action will require a Special Exception Use Permit from the Town Board. Per the Zoning Law, the Town Board has authority to issue Special Exception Use Permits for automotive uses. Referral to the Planning Board will initiate a formal review on the project.

Joe Voelkl 6041 Transit Road

Applicant is proposing to develop an office park on existing vacant land containing 9+/- acres. The proposed site is located on the east side of Transit Road, north of Clarence Center Road in the Commercial and Residential Single Family Zones. Approvals required include a zoning change in conformance with previously adopted MP2015 Amendments and a Special Exception Use Permit for building size and cumulative size of structures exceeding 30,000 square feet. Per the Zoning Law, the Town Board has final authority to approve zoning changes and Special Exception Use Permits. A public hearing will be required for both the formal rezoning and the Special Exception Use Permit. These public hearings should be advertised and heard separately.

Rock the Barn 9015 Main Street

Applicant is proposing to conduct an annual Special Event scheduled for July 20 and July 21, 2012. The event will be held on existing vacant land/barn located on the south side of Main Street, east of Shimerville Road in the Commercial and Restricted Business Zones. Per the Special Event Law, the Town Board has authority to issue permits for town wide events and place conditions as needed. A resident from Barton Road registered a formal complaint about the late night noise (after 11:00 PM on both evenings). Councilman Kolber suggested the resident be invited to the next Board meeting to address his concerns regarding this event.

Spaulding Greens – Dominic Piestrak

Applicant is seeking a Topsoil Removal Permit for approximately 2000 cubic yards of topsoil on-site at Spaulding Greens.

The Hollow Bistro and Brew/Katie Yu – 10641 Main Street

Applicant is requesting approval for Outside Dining at 10641 Main Street.

Motion by Councilman Kolber, seconded by Councilman Geiger to set a Public Hearing for April 25, 2012 at 7:50 PM to consider outside dining at The Hollow Bistro and Brew 10641 Main Street. Upon roll calls- Ayes: All; Noes: None. Motion carried.

Supervisor David Hartzell

Upon recommendation of Highway Superintendent Theodore Donner Supervisor Hartzell will award the bid for purchase of a 2011 Johnson Street Sweeper to Cyncon Equipment.

Highway Superintendent Donner is recommending the bid for two 2012 Ford Escapes and a 2012 Ford Fusion be awarded to Delacy Ford. The bid for a 2012 3/4T Cargo Van will be awarded to Shults Ford of Jamestown, NY.

Supervisor Hartzell forwarded to the Town Board Section 485-b of the Real Property Tax Law which authorizes a partial exemption from real property taxation for commercial, business or industrial property constructed, altered or improved subsequent to July 1, 1976. The cost of such construction, alteration must exceed \$10,000, not to exceed \$50,000 as may be provided in local law or resolution. Municipalities may limit the exemption to specific geographic areas. While Supervisor Hartzell felt that random tax breaks are a mistake but instead of eliminating the entire program he suggested limiting it to Clarence Hollow and see if we can help the Hollow through this program. Town Attorney Meckler will review and see what has to be done to make the changes legally. Supervisor Hartzell asked the board to review the material for the next Town Board meeting.

Councilman Bernard Kolber

Time Warner Cable contract renews in 2015, they are looking for a fifteen year extension. Councilman Kolber felt that we would have better negotiating power if we could get all the towns and village municipalities that contract with Time Warner on a uniform terminus date for contracts. If everyone came due in 2020 we would have better leverage in negotiating and even attract an outside vendor. Councilman Kolber suggested the Supervisor or Councilman Geiger (liaison to the Cable Committee) write a letter to see if there is any interest from other municipalities in pursuing this.

Councilman Patrick Casilio

Councilman Casilio is working on street light problems in the Harris Hill area.

Councilman Peter DiCostanzo

Councilman DiCostanzo will make several announcements relative to upcoming events at the Youth Bureau and Recreation Department.

Seven people still have not submitted their Ethics Disclosure forms.

Councilman DiCostanzo will have one Attorney-Client item to discuss.

Councilman Robert Geiger

Erie County is proposing the formation of the state's first land bank pending state approval. The land bank "simplifies the process of municipalities getting title to vacant land and then being able to dispose of it more efficiently. A land bank would have the power to obtain a property that is deemed vacant or abandoned or that is going through or has gone through the tax foreclosure process."

Clarence Hollow is splitting away from Clarence Merchants Association. Clarence Merchants Association will run the Farmers Market separate from Clarence Hollow Association, John Leamer will be treasurer. Jean O'Connell will run Clarence Hollow Association.

Animal Control Officer Jerome Schuler will schedule an Open House for the new animal shelter sometime in May.

Town Attorney Lawrence Meckler

There is an IRS ruling with respect to cell phone utilization. Previously, any cell phone provided to an employee was considered an addition to their wages and they were being taxed on it. The ruling has been reversed and it is no longer the case.

Town Engineer Timothy Lavocat

Engineer Michael Metzger who is representing John and Flora Leamer project in Clarence Center sent an e-mail to Town Engineer Lavocat and the Planning/Zoning Department requesting a meeting to discuss a way in which his project can move forward while the town is addressing the issues in Sewer District #2. Town Engineer Lavocat responded to Mr. Metzger's e-mail that he should begin with the DEC because they are the entity that is in control of the situation in SD#2.

Town Engineer Lavocat stated that Erie County will be doing inspections in Sewer District #2; letters will be mailed to 300 parcels very soon. Representatives will be able to do inside inspections and will report back to Building and Engineering on a weekly basis with addresses of anyone in violation. Any one in violation will then be required to obtain a plumbing permit; the plumbing inspector will follow through with the permit and do an inspection to make sure the repairs are made. If a resident does not allow the County access to their premises they will be required to go before the Erie County Board of Managers and a search warrant will be obtained.

EnerPath Services Inc.

EnerPath Services represent NYSEG; they have a program called the Small Business Energy Efficiency Program which the Town qualifies for even though we are a municipality. A small business is defined as one that uses 100 KW hours or less of power per month. You can come in and out of the program however, once you are in you are in it.

EnerPath Services go out and assess a building with regards to their lighting only. They take the existing lights that you have in a building operating on a magnetic ballast and the T12 bulb (which as of July 1st will not be manufactured or available for purchase any longer) and tell you the number of lights you have and what the cost is to change them out using the more energy efficient lights. EnerPath Services pays 70% of the change out costs. If it costs \$1,000 for material, labor, the warranty/guarantee on the workmanship and materials and the disposal of hazardous waste, EnerPath would pay \$700, the Town would be responsible for the remaining \$300. The 70% is paid for by the consumer, as a line item on your monthly bill (SBC Charge – Systems Benefit Charge). The Public Service Commission comes out every three years with a mandate with regards to energy efficient programs. They basically dictate to the utilities what they need to do. Utilities then contract with contractors such as EnerPath Services, Inc. to administer the program. The payback is two years or less on the program. The total cost to the town (with prevailing wage) in all fifteen buildings would be \$67,000 if the town did the work. Which the town would have to do anyway because we can no longer purchase the bulbs after July 1st.

The towns total cost with prevailing wages on \$67,000 would be \$26,505.08. All materials are purchased from General Electric. EnerPath Services is the only contractor that administers the NYSEG program. The program will expire April 30th for the 70% and new program comes out May 1st. The Town will be billed when the job is complete, there is interest free financing available as well.

Supervisor Hartzell stated that the Town Board meets in two weeks. This is an interesting program and something the Town should consider.

Town Assessor – Christine Fusco

The 485-b Program is a state exemption that is afforded to commercial properties for improvements. It is typically for smaller projects that would not qualify for an IDA. It is a sliding scale ten year program starting at 50% and goes down to 5%. Generally the amount of the exemption in the first year is 50% of the increase in the assessed value attributable to the improvement. The exemption amount then decreases by 5% each of the next nine years.

This is a state program that has been in existence since 1976, towns are automatically in the program unless you opt out. You can control/limit the exemption to specific areas of the town.

Supervisor Hartzell stated that he likes the program however it should be limited to specific areas of the town such as Clarence Hollow. Currently anyone can apply for this exemption if you come into Clarence and are building a project over \$10,000 you are entitled to this exemption by applying in the Assessor's office, there is no oversight. The program is good however there should be some control over it whether you have a citizen's board reviewing every project or a councilman reviewing them. Random tax breaks are never good; there should be some sort of control over who gets them.

Councilman Kolber stated that we are trying to encourage businesses to come in and make an investment in the Town and this seems to be an ideal way for them to come in and not have to worry about making an improvement because it will increase their assessment.

Town Assessor Fusco stated that this exemption can be limited to certain types of businesses or the limit can be raised. Instead of \$10,000 you could raise the limit to \$20,000. (not to exceed \$50,000), you could limit the exemption to specific geographic areas.

Supervisor Hartzell stated that this is something that needs further review. Town Assessor Fusco stated that she is working with Town Attorney Meckler and researching legal opinions from Office of Real Property Service.

Clarence-Lancaster Shared Service Agreement

Councilman Peter DiCostanzo will make a motion authorizing Supervisor Hartzell to sign a Municipal Cooperation Agreement between the Town of Clarence and the Town of Lancaster regarding the shared use of Clarence Assessor Christine Fusco.

Town Attorney Meckler stated that Christine Fusco will divide her time between the Town of Clarence and the Town of Lancaster. Two days at Clarence, two days at Lancaster and she will alternate the fifth day – it is an absolute 50/50 split between the Towns. The Town of Lancaster will pay Christine \$65,000 saving the Town of Clarence approximately \$35,000. The terms of the contract are until December 31, 2013 however, December 31, 2012 either party could terminate the agreement on sixty days notice if it does not work out.

Councilman Kolber stated that he did not want to have to hire additional employees to replace the hours that Christine will be in the Town of Lancaster. Town Assessor Fusco stated that if that were the case she would come back to the Town Board and say this arrangement is not working out. There is a sixty day opt out, it is not a long term commitment. Christine will use her own vehicle to get to and from the Town of Lancaster. The Town of Lancaster will vote on this April 2, 2012.

Motion by Councilman Kolber, seconded by Councilman Casilio to enter into Executive Session pursuant to § 105(1) A of the Open Meetings Law to discuss matters which will imperil the public safety if disclosed; 105(1) H the proposed acquisition of real property. Upon roll call Ayes: All; Noes: None. Motion carried.

There being no further business, the Work Session adjourned at 7:12 PM.

Darcy A. Snyder
Deputy Town Clerk

Motion by Councilman Kolber, seconded by Councilman Geiger to adjourn the Executive Session at 7:25 PM. Upon roll call – Ayes: All; Noes: None. Motion carried. No action taken.

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, March 28, 2012 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 Peter DiCostanzo. Prayer was given by Rev. David Kofahal of Clarence United Methodist Church.

Members of the Town Board present were Councilmembers Bernard Kolber, Patrick Casilio, Peter DiCostanzo, Robert Geiger and Supervisor Hartzell. Other Town officials present were Director of Community Development James Callahan, Town Attorney Lawrence Meckler, Town Engineer Timothy Lavocat, Asst. Planner Brad Packard, and Sr. Building Inspector David Metzger.

Motion by Councilman Casilio, seconded by Councilman Kolber to accept the minutes of the previous meeting held March 14, 2012. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Casilio that, upon the recommendation of Highway Superintendent, Theodore Donner, the bid for a 2011 - Johnston Street Sweeper be awarded to Cyncon Equipment of Rush, NY for an amount not to exceed \$217,988.00. On the question, Supervisor Hartzell said that Cyncon was not the low bidder; however, they fully met the Town's specifications outlined in the bid documents. The actual low bid did not meet many of the specifications. Cyncon is giving \$68,000.00 for trade in of our used 2005 Sweeper. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Casilio that, upon the recommendation of Highway Superintendent, Theodore Donner, the low bid for two (2) - 2012 Ford Escapes be awarded to DeLacy Ford for an amount not to exceed \$23,244.00 per vehicle, subject to Town Attorney approval. On the question, Councilman Kolber said we were going to make this motion subject to Town Attorney approval. Supervisor Hartzell said with this purchase, DeLacy is giving a total of \$30,988.00 for the trade in of the following used vehicles: T-18 - 2008 Ford F-150 Pick-up and T-23 - 2003 Ford Expedition. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Kolber that, upon the recommendation of Highway Superintendent, Theodore Donner, the low bid for a 2012 Ford Fusion be awarded to DeLacy Ford for an amount not to exceed \$15,262.00. On the question, Supervisor Hartzell said with this purchase, DeLacy is giving \$8,000.00 for the trade in of our 2009 Ford Focus. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded Councilman Casilio that, upon the recommendation of Highway Superintendent, Theodore Donner, the low bid for a 2012 – ¾ Ton Cargo Van be awarded to Shults Ford of Jamestown, NY, for an amount not to exceed \$17,894.08.00. On the question, Supervisor Hartzell said with this purchase, Shults is giving \$10,289.00 for the trade in of a 2009 Ford Van. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Kolber said Erie County is starting to do some roadway enhancements to improve the intersection of Greiner Road and Shimerville Road. They will be installing a traffic control signal.

Councilman Casilio said he is working on some lights still out in Harris Hill.

Councilman DiCostanzo announced that the Fishing Derby will be held on April 14th from 9:00 am to Noon at the Main Street Town Park with registration beginning at 8:30 am.

The Youth Bureau is presenting a speaker on April 23rd at 7:00 pm at the Town Hall. The guest speaker will be addressing "Keeping Your Child Safe in a Cyber World". The session is for adults only.

Councilman DiCostanzo said there is still an opening on the Youth Board. The Recreation Department is also accepting applications for summer help.

Councilman DiCostanzo thanked Bob Lenz for his help in organizing the Jaycees Antique Show held this past weekend.

Councilman DiCostanzo announced that the Clarence Rotary will be holding the Annual LobsterFest to be held June 2nd. The price for tickets is \$59 if purchased by the end of April.

Motion by Councilman DiCostanzo, seconded by Councilman Casilio to authorize the Supervisor to sign a Municipal Cooperation Agreement between the Town of Clarence and the Town of Lancaster regarding the shared use of the Clarence Assessor. The Assessor's salary will increase from \$70,000 to \$90,000 to commence on the contract date. On the question, Councilman Kolber said Lancaster is paying us well. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Geiger announced that the separation of the Clarence Hollow Association and the Farmer's Market has taken place. More news on that will be coming out.

Councilman Geiger said the Erie County land bank is happening. They have supplied us a list of taxes that are behind in the Town of Clarence. The County does make good on the taxes to the Town, so we are not out any money. Land banking will be a real help to the city. It is going to the County Legislature to be approved.

Councilman Geiger explained that the County would take over the properties and we would have our choice on particular properties adjoining green areas. We could go in and obtain it at a favorable price.

Motion by Councilman Geiger, seconded by Councilman Casilio to authorize the Supervisor to sign the Annual – Planned Maintenance Renewal Agreement with Cummins Northeast Inc. for the Town Hall generator to run from May 1, 2012 to April 30, 2013, subject to review and approval by the Town Attorney. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Geiger said Jerry Schuler, our dog control officer will be holding an open house at the kennel sometime in May.

Public Participation

Jan Ansell said the agenda does not say that the meeting is called to order by Supervisor Hartzell.

Ms. Ansell said she never heard of any complaints about the Shimerville and Greiner intersection and wonders if it is really necessary to put a light up there.

Supervisor Hartzell said the County identified "hot" spots in the Town of Clarence and many are along Greiner Road. This location has been the scene of many accidents over the years and this is an attempt by the County to slow the traffic down and make it safer. They made an attempt to install a roundabout, but it was not received well.

Councilman Kolber said the Town did not have any input in their decision.

Councilman Casilio said when they did the presentation regarding the roundabout, it included ideas about a traffic signal. The County decided to move forward with a traffic light.

Steve Dale said in regard to the land bank, property would be taken by the County for failure to pay the taxes.

Councilman Geiger said the Town is not out on the taxes. Some of these properties go back to 1982.

Councilman Kolber said the County holds sales auctions.

Councilman Geiger said many of these are odd pieces of land, but there were about 150 properties on the list. Many of the properties on the list were from 2010 and 2011, so they are not that far behind in taxes.

Town Clerk Nancy Metzger added that at the recent Erie County Auction, two properties in Clarence were sold, one on Gunnville Road and another on Transit Road.

Item 11 is to set a Public Hearing to consider renewal of existing Temporary Conditional Permits. James Callahan said the Town Board considers certain uses on a termed basis and sets conditions to allow such uses according to the Zoning Law. Temporary Conditional Permits are initially issued for one year to ensure compatibility and compliance. They can be renewed for up to five years. The permits up for renewal are listed on the agenda as a – m. The Planning and Zoning Department has not received any formal complaints on any of those listed.

Motion by Councilman Geiger, seconded by Councilman Casilio to set a Public Hearing for April 25, 2012 at 7:45 p.m. to consider the Annual Renewal of existing Temporary Conditional Permits as follows:

- a. Hoemann Auto, 8310 Goodrich Road, Automotive Service
- b. Towne Mini, 8200-8230 Main Street, Automotive Display
- c. Autobahn Collision, 8200 Main Street, Automotive Collision
- d. Miranda Automotive, 8925 Sheridan Drive, Automotive Service
- e. K&A landscaping, 8925 Sheridan Drive, Outdoor Storage
- f. William Richer III, 9855 Martin Road (County Road), Roadside Stand
- g. Rocco's Pizza, 5433 Transit Road, Outside Dining
- h. Calhoun Automotive Detail, 8145 Sheridan Drive, Automotive Detail Shop
- i. Louie's Car Clinic, 9393 Main Street, Automotive Sales
- j. GC Supply Inc., 9992 Main Street, Outside Display
- k. Sweet Melody's, 8485 Transit Road, Outside Dining
- l. At Your Service Car Care, 9620 County Road, Automotive Service
- m. Gianni Mazias, 10325 Main Street, Outside Dining

On the question, Councilman DiCostanzo asked if Mr. Callahan could check the conditions of item i. regarding the number of vehicles allowed before the hearing. It looks like every inch of that property is filled.

James Callahan said this location has a Special Exception Use for the service center. The Temporary Conditional Permit is for the sales portion. He has called him when he noticed the big rigs for sale. The Town Board stated last year that they wanted the larger vehicles out of the front of the lot. The large vehicles have been eliminated for now.

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

Metzger Civil Engineering requests Preliminary Concept Review of proposed Open Development Area at 10976 Stage Road. James Callahan said the location is on the northeast corner of Stage Road and Schurr Road consisting of approximately 49 acres of vacant land in the Residential Single Family Zone. The applicant is proposing a four-lot open development area.

Michael Metzger said his client is proposing to use 8.4 acres of the 49 acre parcel that he owns. The portion of the property where the development would be is not encumbered by any wetlands. All of the zoning and subdivision requirements for the lots would be met or exceeded. He respectfully requests to be referred to the Planning Board.

Councilman Kolber said there would be no access to the rest of the land.

Mr. Metzger said his client owns property next to this which would have access. The property is at the town line with Newstead. He has no desire to do anything with the land at this time.

Motion by Councilman Kolber, seconded by Councilman Casilio to refer the request for Preliminary Concept Review of proposed Open Development Area at 10976 Stage Road to the Planning Board. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to approve the following: Clubhouse Applications - A. Kiwanis Club – March 31, 2012; B. Clarence Baseball Association – April 22, 2012; C. Clarence Youth Bureau – May 25, 2012; Legion Hall Applications – A. Hai Family – April 20, 2012; B. Maria Bassig – May 4, 2012; C. Dhana LaVere – May 18, 2012; D. Donna Allan – May 27, 2012; Pavilion Special Requests – A. Day in the Park Committee – June 29 & 30; July 1, 2012; Nature Center Lodge – A. Clarence Rotary Club – March 30, 2012; and B. Clarence Women's Club – April 2, 2012. 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 29, 2012 are approved for payment: General Fund - \$60,638.61; Highway Fund - \$30,604.11; Water District - \$466.00; Sewer Districts - \$265,234.19; Capital Fund - \$20,830.65; Trust and Agency 202 - \$11,978.16 and Trust and Agency 205 - \$359.50 for a total amount of \$390,111.22. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, Supervisor Hartzell adjourned the meeting at 7:55 p.m. in memory of Thelma Keister, who served as a former Deputy Town Clerk for many years.

Nancy C. Metzger
Town Clerk