

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, April 10, 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, Confidential Secretary to the Supervisor Karen Jurek, Senior Building Inspector David Metzger, Deputy Town Attorney Steven Bengart and several Planning Board Members.

Supervisor David Hartzell

- Re-appoint Michael Greis to the position of Assistant Mechanic in the Highway Department.
- Set a bid date for sale of surplus office equipment

Councilman Bernard Kolber – no report

Councilman Patrick Casilio

- Set a bid date for the Library Repairs Project 2013
- Award the bid for Brookhaven Drive Sanitary Sewer Project
- Award the bid for grass and weed cutting services for 2013
- Award the bid for Main Town Park Pool concrete deck improvements project
- Award the proposal for telephone service to Time Warner Cable

Councilman Peter DiCostanzo

- Set a Public Hearing to consider purchase of vacant land on Sheridan Drive
- Issue a Negative Declaration on the proposed Spaulding Green Concept Plan Amendment
- Issue a Negative Declaration on the proposed mixed use project located at 8825 Sheridan Drive
- Seek Lead Agency Status for Spaulding Lake Sewer District
- Seek Lead Agency Status for Jerry Ritch mixed use project 6449 Transit Road
- Post the position of Youth Activities Leader PT-Temporary for the Youth Bureau
- Appoint Caroline Woodward to Clarence Youth Board
- Appoint Deanna Brace as Youth Activities Leader RPT-Provisional
- Appoint Ronald C. Daigler to position of Auto Mechanic for Parks Department

The annual Fishing Derby will be held April 13th from 9AM – Noon at Clarence Town Park on Marin Street.

Several people still have not submitted their Ethics Disclosure forms, letters have been mailed and they will have until May 1st to respond.

In two weeks, Councilman DiCostanzo will appoint an alternate to the Zoning Board of Appeals.

Councilman Robert Geiger

Councilman Geiger will make a motion to authorize the Supervisor to sign the annual renewal leases with Kreher's Poultry Farm, John Kelkenberg and Anchor Farms for agricultural purposes.

Director of Community Development – James Callahan

Public Hearings:

Purchase of vacant land along Goodrich and Herr Road

The Town is considering the purchase of property located on the east side of Goodrich Road, west side of Herr Road between Clarence Center Road and Keller Road. The existing vacant land is contained within (2) parcels totaling 77+ acres in the Residential Single Family Zone and within Clarence Sewer District #2. The Town Board has final approval authority for the purchase of real property. The public hearing has been advertised and neighbors within 500' of the property have been notified.

Gabes Collision 5817 Transit Road

Applicant is seeking Town Board approval of a Special Exception Use Permit to allow for a collision shop/car rental/used car showroom facility to be developed 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 on the request. The Town Board has final authority to approve Special Exception Use Permits after a required Public Hearing. An action under SEQRA will be required before taking a positive action on the item. Mr. Jeffrey Palumbo stated that his client has relocated parking from the rear to the north side of the building. It is their intention to plant 15-18/10' evergreen trees to provide as much green space and buffering as they can fit in.

Formal Agenda items:

Douglas Klotzbach – Victoria Park 10225 Main Street

Applicant is proposing to build the third commercial building at the northeast corner of the property. The proposed new structure will include 8,700+/- square feet of space, bringing the total build-out to 33,750 square feet. The proposed site is located on the southwest corner of Main Street and Shisler Road in existing commercial plaza located in the Clarence Hollow TND. The overall site plan was originally approved in concept to include 3 buildings and 35,000+/- square feet of space. The project was originally built with just 2 buildings and a total of 25,050 square feet of space. Per the Zoning Law, cumulative structures greater than 30,000 square feet within the TND will require a Special Exception Use Permit as issued by the Town Board. In addition, the Town Board has final approval authority for the architectural style within the TND. The Planning Board has forwarded a recommendation to allow the Special Exception Use Permit. A Negative Declaration under SEQRA was previously issued by the Town Board on the project.

Work Session items for consideration April 24, 2013:

Spaulding Greens Open Space Design Subdivision

Applicant is seeking an amendment to the original concept to place a hold on previously approved Phases 9 and 10 of the project and prioritize a new Phase 11 consisting of 33+/- patio home lots. The previously approved Open Space Design Development consisting of 380+/- lots and 50% open space is located generally east of Goodrich Road and north of Greiner Road. Per the Zoning Law, the Town Board has final approval authority for Open Space Design Subdivision. The Planning Board has forwarded a recommendation to issue a Negative Declaration on the amended concept as well as a recommendation to approve the amended concept. Councilman Kolber wants to be sure we get all the certificates for every lot that is part of Heise Brookhaven so the Town is not caught in the middle down the road. He wants a hard determination of where the sewer taps are going and the number of certificates available.

Dave Sutton 8825 Sheridan 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 proposed 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 the item to the Planning Board for a comprehensive review.

Referral to the Planning Board would initiate a comprehensive review. As the project includes two new residential units plus the existing single family home, it is considered a multiple family use which is allowed with a Special Exception Use Permit. A public hearing will be required to consider the use.

Eastern Hills Mall

Applicant is requesting a Special Event at Eastern Hills Mall for a used vehicle sale sponsored by Transitown USA from June 2 – June 11, 2013.

Planning Board – Multi-Family Housing

November 2012, the Planning Board sent a recommendation to the Town Board regarding Multi-Family Housing, March 2013 there was further discussion and some changes were made to the original document.

Director of Community Development James Callahan stated the Planning Board submitted a recommendation; there have been several Town Board meetings to discuss the pros and cons of that recommendation. The base law has been amended numerous times which has brought us up to date with the current draft. They identified that Multiple Family Housing would be allowed with a floating over-lay district in the Commercial Restricted Business and Traditional Neighborhood Districts. It would eliminate; multiple family housing from the Major Arterial Zone. The over-riding tenant that would drive this is the very limited space available for commercial development in the town. There is an extreme amount of residential growth which we need to balance with the appropriate amount of commercial development. To give commercial zoned lands away to residential or multi-family is going to be a long term problem which is why we need to protect the commercial zones for long term commercial use. The Planning Board is concerned with large scale stand-alone residential multi-family projects.

The Town Board had discussed the concept of a cap on the total number that would be allowed in any one particular project. The Planning Board worked on roughly a five unit per acre concept that would limit it at a maximum amount of residential development by adjusting the percentage of commercial requirement on any particular piece – example: a twenty acre parcel would require 50% commercial limiting to 10 acres for multi-family at five units per acre (50 units). On a twenty acre parcel you could have a lot of commercial development but a maximum of 50 residential units in a mixed use concept. Going higher with more land use, you increase the amount of commercial required so that you would maintain the 50 or ten units of multi-family as the cap. The larger the piece of land, the more commercial requirement – 50 units maximum. Lesser land - five units per acre but reducing the commercial requirements to a certain extent. This is the basic concept for the sewerred areas of commercial and restricted business. In addition, Traditional Neighborhood District with sewers, the maximum of sixteen units, eight units per acre with a maximum cap of sixteen units. There are also provisions for smaller property sizes which is what you have in a TND (with sewers), this would allow for a mixed use with a maximum residential density of four units per acre.

The original Planning Board recommendation with no exceptions – no sewers, no multifamily. This has been debated back and forth and included in the Multifamily Final Draft – The

maximum on-site waste treatment allowance determination shall be consistent with regulatory agency and Town Engineer approvals, including residential and projected commercial waste. The maximum number of units that can be developed on an unsewered lot in the Commercial Zone shall be 4 units per acre in a mixed use format with a maximum total number of multiple family residential units capped at 16 units with a build-out limited to 4 units every (3) years.

Multi-family would not be allowed in Restricted Business Zones without sewers.

Councilman Kolber said that Clarence prides itself on slow, stable growth. We have a single family residential building cap of 240 homes (170 inside a subdivision and 70 outside of subdivisions) in order to maintain that slow growth. Clarence is different from surrounding towns in that we do not have heavy roadway infrastructure and no police department. We limit single family residential but allow multifamily to go unabated. You do not get tax revenue from multifamily yet you get the demands on all the services. Another issue is protecting the limited amount of commercial property so that we can maintain a balance between residential and commercial. The decisions made today are permanent.

Director of Community Development James Callahan stated that the back-end building cap is a policy of the Town of Clarence it is not a law. He did not feel it was something that you want to put into a Local Law. "This is why a "front-end" cap was discussed so the town can limit what can be approved going forward as opposed to controlling on the backend." This is a separate policy than the Multi-Family Law. Mr. Callahan referenced a memo that he and former Planning Board Chairman Albert Schultz worked on and sent to the Town Board six months ago about a policy amendment to include multi-family.

Planning Board member Wendy Weber-Salvati stated that you can easily change a policy however; you have to go through the legislature to change a law. A policy is enforceable; this policy is based on the Master Plan.

Planning Board Chairman Robert Sackett stated that the proposals brought forward, are to allow some commercial project development with housing to support the financial bases for the commercial endeavor.

Councilman Kolber stated he is having a hard time understanding the "over-lay concept" vs. looking at individual pieces of property. The over-lay could act as a guideline but he would like to see a parcel rezoned for a particular purpose on a case by case basis. It slows things down and you look at each piece rationally. Planning Board member Paul Shear said that causes "spot zoning" which is something the town has tried to get away from historically. Without getting into specifics, Councilman Kolber felt there were some areas in town that could handle a large multi-family residential development.

Planning Board member Wendy Weber-Salvati stated that the areas they are talking about allowing multifamily housing in is already allowed in those areas by Special Exception Use Permit. All the Planning Board is saying is that now if you build in those areas you are going to do it by virtue of placing an over-lay over those parcels that allow the multifamily. It is not very different than already having the Special Exception Use Permit. Currently if an applicant wants to develop a multifamily on a parcel of land, he comes to the Board asking for a Special Use Permit to do that which is essentially what we currently do but now we will apply or over-lay certain zoning requirements.

Ms. Weber-Salvati questioned whether an over-lay was even necessary. The Town currently has Special Exception Use Permit conditions in the law that says if someone wants to build a multi-family in a Commercial Zone, TND or Major Arterial they have to come before the Town Board if it is above and beyond a certain building size - 10,000 feet in a TND, 30,000 feet in a Commercial Zone and 50,000 feet in Major Arterial – if a project exceeds that size limit then the applicant has to come to the Town Board for a Special Exception Use Permit. Ms. Weber-Salvati suggested changing the structure of the law and add some additional conditions.

Planning Board Chairman Sackett stated that he is hearing the need for flexibility, because different tracks of land require different thinking. A Special Exception Use Permit would require four votes from the Town Board; the over-lay would require three votes. If the Town Board is looking for a way to allow some projects to go forth and be developed in the right location, then you are looking for less restrictions and more flexibility. The Town Board needs to give the Planning Department guidance as to what they are looking for.

It was suggested the Planning Department modify the current law as it exists, possibly incorporating some of the guidelines from the over-lay – this will still give the Town Board the final say as to whether or not a project is approved. Director of Community Development James Callahan will solidify what was discussed today as an amendment to the current law.

Wendy Weber-Salvati stated that the purpose of the Special Use Permit gives the Board control over a project. “In order to ensure that the comfort, safety, welfare and property rights of the residents of the Town of Clarence are protected, the Town Board may authorize and direct the issuance of a special exception use permit for uses that require certain mitigating conditions specific to their design and/or operation.” This gives the Board the ability to place conditions. By taking the overlay and feeding that into the Special Exception section that already exists, the Board is strengthen their ability to set conditions or requirements to make a project more of what you want it to be.

Planning Board Chairman suggested James Callahan come up with a new draft to include some items from the over-lay.

The Town Board met for an Attorney-Client item.

There being no further business, the Work Session adjourned at 7:15PM.

Darcy A. Snyder
Deputy Town Clerk

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, April 10, 2013 at the Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor David Hartzell, Jr. called the meeting to order at 7:31 p.m. Pledge to the flag was led by Councilman Patrick Casilio; followed by singing of the National Anthem by Katie Fleming from Clarence Middle School. A prayer was given by Father Yetter of St. Mary's Catholic Church.

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 March 27, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Geiger to accept the minutes of the previous work session held April 3, 2013. On the question, Councilman DiCostanzo and Councilman Casilio were not present at that meeting, so they will abstain from voting. Upon roll call – Ayes: Councilmembers Geiger, Kolber and Supervisor Hartzell; Abstain: Councilmembers DiCostanzo and Casilio. Noes: None. Motion carried.

Supervisor Hartzell recognized Jim Bennett from the Chamber of Commerce who was present.

Motion by Supervisor Hartzell, seconded by Councilman DiCostanzo to re-appoint Michael Greis to the position of Assistant Mechanic in the Highway Department at Step 2 of the Blue Collar Union Contract Salary Schedule effective April 15, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to set a closed bid date for April 22, 2013 at 10:00 AM for the sale of the following machines declared as surplus office equipment: 1 – E Studio 450-Toshiba Copier, Model No. DP-4520, Serial No. CVB524556; Minimum Bid -\$350.00; and 1 – E Studio Toshiba 350 Copier, Model No. DP-3520, Serial No. CPC537418; Minimum Bid-\$300.00. On the question, Supervisor Hartzell said we have these copiers available because we bought new ones with grant money. They are in good condition. If anyone is interested, they can come to the Town Hall and look at them. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Kolber said that they met with the Planning Board during the work session to discuss guidelines for multi-family housing to fit in with the character of Clarence. He believes that they have made tremendous headway on this arduous task. He thanked them for coming out tonight to meet.

Motion by Councilman Kolber seconded by Councilman Casilio to approve the request for Court Clerk's Marilyn Taton and Mary Zimmerman to attend the Town & Village Court Clerk's Training Seminar on Friday, April 26, 2013 with all reasonable and necessary expenses to be paid by the Town. On the question, Councilman Kolber said the Training Seminar is given by the NYS Unified Court System and will be held at the Ceremonial Courtroom at 92 Franklin Street, Buffalo, NY. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Casilio said there are still lighting projects that need to be finished in the Harris Hill Gardens area. We are hoping to have the remainder of the street lights in service by summer.

Motion by Councilman Casilio, seconded by Councilman Kolber to set a bid date for the Library Repairs Project 2013 for May 16, 2013 at 10:00 a.m. in the Office of the Town Clerk. On the question, Councilman Casilio said the bid documents will be available in the Office of the Town Clerk on April 17, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

RESOLVED, that after holding an open competitive bid, the Town Board awards the Brookhaven Drive Sanitary Sewer Project to Yarussi Construction, Inc. of Niagara Falls, New York as they were the lowest responsible bidder for the bid amount of \$338,489.00; and be it further

RESOLVED, that the Supervisor is authorized to sign and enter into a contract with Yarussi Construction, Inc. subject to the review and approval of the Town Attorney's Office.

On the question, Councilman Casilio said this project is to be funded from Capital Project 55.

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

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

RESOLVED, that the Town Board awards the following construction phase services to Nussbaumer and Clarke, Inc. for the Brookhaven Drive Sanitary Sewer Project: General Services during construction in the amount of \$5,300.00; and Resident Inspection Services in an amount, hourly, not to exceed \$36,700.00, both in accordance with their proposal dated March 27, 2013.

On the question, Councilman Casilio said this project is to be funded from Capital Project 55.

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

Motion by Councilman Casilio, seconded by Councilman Kolber to award the Grass and Weed Cutting Services for 2013 to Braunscheidel LGS Property Services, Inc of Clarence, New York per the submitted price proposal.

On the question, Councilman Casilio said Braunscheidel LGS Property Services was the lowest of three (3) proposals received. Grass and Weed Cutting Services will be on an as needed basis for 2013 to enforce the Town of Clarence Code Chapter 155 - Property Maintenance.

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

Motion by Councilman Casilio, seconded by Councilman Kolber to award the Clarence Main Town Park Pool Concrete Deck Improvements Project to E.J. Millitello Concrete, Inc. of Clarence, New York in the amount of \$8,538.00 in accordance with their proposal dated April 2, 2013.

On the question, Councilman Casilio said this project to be funded from the Pool Equipment Account. He added that we are re-lining the pool this year and the concrete deck improvements is part of that project.

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

Motion by Councilman Casilio, seconded by Councilman Geiger that upon the recommendation of HPA Consulting Group, Inc. the Clarence Town Board awards the telephone service contract to Time Warner Cable based on the proposal provided by One Connect, Inc. in accordance with their proposal dated February 25, 2013 for a 3-year term subject to the review and approval of the contract by the Town Attorney. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman DiCostanzo announced that the Fishing Derby is this Saturday, April 13th at 9:00 a.m. at the Main Street Park. It will happen rain or shine, but is a great time for the kids with prizes and trophies.

Motion by Councilman DiCostanzo, seconded by Councilman Casilio to set a public hearing for May 8, 2013 at 7:45 p.m. to consider the purchase by the Town of Clarence of approximately 27.53 +/- acres of vacant land located on Sheridan Drive in the Town of Clarence Erie County, New York SBL Nos. 70.11-3-1.1 (20.53+/- A) and 70.11-2-12 (7.0+/- A) at a purchase price not to exceed \$298,000.00 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 Geiger that pursuant to Article 8 of the Environmental Conservation Law, the Town Board issues a Negative Declaration on the proposed Spaulding Green Concept Plan Amendment. This Unlisted Action involves an amendment to the original concept plan for Spaulding Green Open Space Design Development by placing a hold on previously approved Phases 9 and 10 and identifying a new Phase 11 that will include 33 +/- patio homes. After thorough review of the submitted Environmental Assessment Form (EAF) and site plan and after a coordinated review among involved agencies it is determined that the proposed action will not have a significant negative impact upon the environment.

On the question, Councilman Kolber said all patio home developments are paying greatly reduced tax rates that are being subsidized, in his opinion, by other properties in Town.

Supervisor Hartzell said that is not a function of the Town, but it is the State of New York. If we could change it, we would.

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

Motion by Councilman DiCostanzo, seconded by Councilman Kolber that pursuant to Article 8 of the Environmental Conservation Law and upon the recommendation of the Planning Board, the Clarence Town Board issues a Negative Declaration on the proposed Mixed Use Project located at 8825 Sheridan Drive. This Unlisted action involves the renovation of an existing mixed use property in the Restricted Business Zone. After thorough review of the submitted site plan and Environmental Assessment Form (EAF) it is determined that the proposed action will not have a significant negative impact upon the environment. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger that pursuant to Article 8 of the Environmental Conservation Law and upon the recommendation of the Planning Board, the Clarence Town Board seeks Lead Agency status and commences a coordinated review among involved agencies on the proposed Spaulding Lake Sewer District. This Type I Action involves the creation of a Town Sewer District to service the existing and proposed 274+/- residential homes within the Spaulding Lake Subdivision and the creation of necessary sewer capacity within the downstream system to allow for connection to the Town of Amherst Sewer Treatment Facility. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Casilio that pursuant to Article 8 of the Environmental Conservation Law and upon the recommendation of the Planning Board, the Clarence Town Board seeks Lead Agency status and commences a coordinated review among involved agencies on the proposed Jerry Rich Mixed Use Project located at 6449 Transit Road. This Type I Action involves the demolition of a structure built prior to 1950 and the construction of a new mixed use building with residential apartments above retail storefronts. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to post the position of Youth Activities Leader - PT at the rate of \$9.79 per hour. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger that upon the recommendation of the Clarence Youth Board, Caroline Woodward is appointed to the Clarence Youth Board effective April 11, 2013 and ending on June 30, 2013. On the question, Councilman DiCostanzo said Ms. Woodward is being appointed to fill the seat left vacant by Brandon Johnson and will finish his term. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber that upon the recommendation of Dawn Kinney, Director of the Clarence Youth Bureau, Deanna Brace is appointed to the position of Youth Activities Leader RPT-Provisional, effective, April 13, 2013 at the rate of pay of \$10.77 per hour subject to receipt of all pre-employment paperwork and pre-employment requirements for the position being met. On the question, Councilman DiCostanzo said Deanna Brace's title is presently Youth Activities Leader PT and her hourly rate is \$9.79. Her appointment is to fill one opening for Youth Activities Leader RPT-Provisional in the Youth Bureau. Supervisor Hartzell added that Deanna has worked for the Youth Bureau for some time and has an excellent record. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Casilio to appoint Ronald C. Daigler to the position of Auto Mechanic in the Parks Department at Step 1 of the Blue Collar Union Contract Salary Schedule effective April 15, 2013. On the question, Councilman DiCostanzo said this appointment is being made to fill the auto mechanic position formerly filled by Michael Greis. Mr. Greis will be returning to his former position in the Highway Department as assistant mechanic. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Geiger, seconded by Councilman Kolber to authorize the Supervisor to sign the annual renewal leases for agriculture purposes to continue to farm Town owned property as follows: Kreher's Poultry Farm for property located on Salt and Greiner Roads; Anchor Farms for the property located on Salt Road (bordered by Clarence Center Road and Howe Road.) and John Kelkenberg for the property located on Keller Road.

On the question, Councilman Geiger said the leases are for a period of one year from April 1 through March 30, 2014. The leases are subject to review and approval of the Town Attorney.

Councilman Kolber asked if this was put out for proposals this year. Town Attorney Lawrence Meckler said we did not, but we can in the future.

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

Councilman Geiger said as a reminder, there is an active shooter drill at the Clarence High School a week from today. We want people to be aware of the activity there so that they are not concerned. The State Police and the Disaster Coordinator are involved.

Councilman Geiger said 23 students from the Senior Environmental Studies class built bluebird houses to be placed along the nature trail at the Nature Center and at Beeman Creek Park. The wood was cut up by prisoners at Attica and assembled by the students at the Nature Center. This project was sponsored by the Lions Club. He also showed a book about the Nature Center that was put together by the volunteers at the Nature Center.

Councilman Geiger said a letter was received from the State of New York Dept. of Transportation dated December 14, 2012 stating that they completed the traffic engineering investigation on Main Street in the Hollow. It was determined that they will not reduce the existing 40 MPH speed limit at this time.

They also reviewed the request for addition of bicycle lanes on Main Street in the Hollow and determined that it would require eliminating either the center tow-way left-turn lane or parking. They felt it was not reasonable to do either in that area.

Department Reports

Mark Woodward, Town Historian said the Clarence Historic Preservation Commission designated the Town Park Clubhouse as a local historic landmark. They submitted and received State historic landmark designation and then it was forwarded to the national level. It has now received National Historic Landmark status. There will be a celebration on May 4, 2013 from 6 to 8 p.m. at the Clubhouse.

A Public Hearing was held 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 and approximately 57.06 +/- acres of vacant land located on the west side of Herr Road at a purchase price not to exceed \$1,000,000.00. James Callahan said this property consists of two large parcels between the Peanut Line bike path and Keller Road in the Residential Single Family Zone.

Speaking to the subject:

Councilman Casilio said he believes that this is a wise purchase for our program.

Supervisor Hartzell said he thinks this is a good deal for the Town. This is right in the middle of Clarence Center. It could be full of apartments and homes. He thanks all the members of the Recreation Advisory Committee for all of their work on this purchase.

Peter Wolfe, chairman of the Recreation Advisory Committee said they have worked long and hard on this. They believe it is an excellent opportunity to purchase this property.

Councilman Casilio said many people have been trying to buy this for a long time. It is a great spot for the greenprint expansion.

Supervisor Hartzell said this committee is made up of all volunteers who work many hours on behalf of the Town of Clarence.

Dan Singer said he owns Big Sings, which is adjacent to this property. He asked what the Town's intention is for this property.

Councilman Kolber said we do not know at this time.

Supervisor Hartzell said he was approached by a developer who wanted to build a mix of 200 apartments and single family homes. We really do not know at this time, but it could be used for Highway or Parks Department expansions. It could be ball fields or simply greenspace.

Councilman Kolber said sometimes you have to cease an opportunity because you will not get it again.

Dan Singer said as a businessman, he may not want to see 200 apartments, but those are the things that the Town Board can regulate. From a businessman's point of view, another Pine Breeze would not be such a bad thing. He does not believe that there are any other large parcels in Clarence Center that are in a sewer district. It kind of eliminates any future projects. When that happens, the surrounding businesses get capped. He is not opposing it; he just wanted to know what the intentions are for the future.

Ken Litfin said he is very much in support of this area remaining as greenspace. The concern he has is that if the Town does purchase it, that the drainage issues are addressed. He lives on Mayfair Drive and they are the recipients of the drainage coming from this property.

Sandy Baker said she owns the barbershop and salon and her biggest concern is the drainage in this area. That is the only problem she can see.

With no one else speaking to the subject, motion was made by Councilman Casilio, seconded by Councilman Kolber to close the Public Hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

RESOLVED, that after a public hearing duly held on April 10, 2013, and after all interested parties having been heard, the Clarence Town Board approves 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, if any. Funds may be allocated from the open space bond act resolution, the general fund, and/or funds generated from recreation fees.

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

A Public Hearing was held 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 north of Highland Farms Drive consisting of approximately 2 ½ acres in the Major Arterial Zone.

Jeff Palumbo, attorney was present with the petitioner Jeff Mucciarelli. Mr. Palumbo said in his opinion the Zoning Ordinance is open to interpretation. The uses allowed in Commercial and Major Arterial according to the Zoning Law includes motor vehicle, equipment & implement sales, commercial garages and service stations which can include a lot of different things. A commercial garage could be a collision shop.

Mr. Palumbo said the plan being presented is the latest that has been developed. The difference is the green area behind the building has been increased by 13 ft. They also added more 10 ft. evergreens and will have as many as will fit there. There is a bermed area that they will also add to which will eliminate the ability to see the building. The parking has been relocated to the side and front of the building. They have tried to come up with a plan that meets the goals of this Board.

Mr. Palumbo said this is not going to be the type of facility that has banged up cars sitting around everywhere. They will not have damaged vehicles parked outside. He believes that is

very important. The proposed building would be approximately 32,000 sq. ft. with 75 parking spaces. Mr. Mucciarelli is going to have expert technology that has not been seen in a facility of this kind in the Town. This equipment will filter 99% of the particles. They will exceed the regulations required by New York State.

This project will bring approximately 50 new jobs to the Town which will benefit other businesses. It will add to the tax base. They know the neighbors have concerns and they have addressed those concerns. It has been moved off the rear property line as far as possible. This is Transit Road and there are many other permitted uses that could be more of a nuisance to the neighbors than this project. This is a businessman with an impeccable reputation. They have submitted letters of support from people who have dealt with Mr. Mucciarelli. He has not had any problems with his other locations. This business will not be a high traffic generator. They also have the expert on emissions here tonight who can answer those types of questions.

Jeff Mucciarelli said the berm will be 6 to 8 feet with pines and brush on top of it on the east side. He has no plans for the north side of the property, but the berm continues along that side. There is another vacant lot beyond to the north that he does not own.

Councilman Casilio said his concern is that if he did receive approval for his facility that he would be back to expand the parking lot for a car storage area.

Mr. Mucciarelli said he would not do that. This facility is adequate for his needs.

Mr. Palumbo said they will stipulate to that, as well as the buffer all the way around and the remainder of the property would not be used for automotive purposes.

Councilman Casilio said Mr. Palumbo stated that the Planning Board was not given the proper direction for their review. He also has a problem going against the Planning Board when they say it is not zoned properly for a collision shop. It is a great looking project, but he questions the zoning, the proximity to houses, and the emissions from the clear coat.

Supervisor Hartzell suggested referring it back to the Planning Board to finish the environmental review.

Councilman Casilio said the site visits to his other locations did not go that well.

Mr. Muccerlli said the Genesee Street store was getting new equipment and the old was behind the building waiting for pickup. The Sheridan store is in the middle of a 6,000 sq. ft. addition.

Councilman Kolber said there was an issue at the last meeting when the Board tried to send it to the Planning Board. The Planning Board states that it is not a permitted use in that zoning district. If the Town Board approves it, that would change the permitted uses of that particular district.

Jeff Palumbo said there are already a number of collision shops in the commercial and major arterial districts. They have no objection to going back to the Planning Board because the project would need a negative declaration before it is approved.

Councilman DiCostanzo asked what could go to the north of this site.

James Callahan said it is zoned Major Arterial, so any of the permitted uses in the Zoning Law would be allowed. The lot is a minimum lot size, but as long as they met the proper setback requirements, any of those uses could go in there.

Mr. Palumbo said Patrick Martin is present and could answer questions regarding the clear coating process.

Supervisor Hartzell said he may want to present that to the Planning Board.

Speaking to the subject:

Paul Cunningham said he lives right behind this site. There are 35 units in the development and 12 of the residents are not in Town at this time. He has talked to many people including Mr. Mucciarelli. He asked who is going to police the business if it were approved. He moved here because he felt that the Town protected their residents and now he feels as though he has to defend himself. They realize that they are close to Transit Road, but they did their homework about what could go in behind them. They were told it would be clean commercial businesses, not industrial type businesses. The current Planning Board worked diligently to investigate everything and now they have to go back again. He is very concerned about the value of his property. He does not understand why the Town Board does not go along with what the Planning Board has recommended on two occasions. He does not want to hurt the business, but it will hurt him and his neighbors.

Nancy Robinson said she was so impressed by the way Clarence does things and that is why they bought their home here. She read the Master Plan and it clearly states that municipalities must plan ahead so as not to put themselves in a reactive mode. The Town did that with the zoning in this area. She felt safe buying the property. The amendments in 2007 mention better buffering to residential areas and a collision shop does not do that. The Planning Board did an enormous amount of work to study the issues and recommended twice against this proposal. She believes that everything that has been done to this point is to keep the commercial zoning and have consideration of the residents. She does not understand why the Board would consider changing that now.

Philip Gullo said he does not understand changing the zoning now, after all of the homes were built. He knows that the other locations participated in clunkers for dollars program. Many old clunkers were towed into their sites. How do we know that that would not happen here? The Planning Board has said it is not the right business for this property.

Martin Robinson said the other permitted uses do not have highly toxic chemicals or loud air dryers of the paint coats like you do for this particular project. They have alluded to the strict California codes, but codes are what you strive for. It does not mean that you do not have highly toxic chemical emissions right in the area of a school, nursery schools and residential homes.

Debra Navarro said she believes this not only affects their development, but the entire town. This business is the conversion of three different businesses. She believes it could have activity going on all hours of the day and night. It was mentioned that this is a \$4.5 million business and an awful lot of work would have to be done to pay for it. She wonders if they will buy additional land to expand in order to support the businesses.

Pattie Gamin said she does not live near this location, but has three major concerns. One is why spend so much time and money to create a master plan and then allow a special exemption permit to change it all. The people did not purchase these beautiful homes and expect to have paint smells and repair parts in their backyards. There could be a danger to the children in the nearby schools if there is a chemical spill or fumes from the paint. She asked that the Town Board follow our master plan.

Todd Staples said his property in Highland Farms backs up to this property and there already is a 6 ft. berm. He has lived there for ten years and most of his neighborhood is small children who will attend Transit Middle School. The traffic is so bad that they have to take a bus. The direction of the winds is generally from the location of this proposed facility toward Highland Farms. He hopes that the Town Board votes no.

Councilman DiCostanzo asked if someone came in with a proposal for an automotive sales operation, how would we proceed.

James Callahan said it would require a special exception use permit which requires a supermajority vote in favor. A collision shop is allowed in an Industrial Business Zone with issuance of a special exception use permit.

Councilman Kolber said one of his offices is 30 ft. from a collision shop that is not as state-of-the-art as Gabe's and he does not even know it is there. The Town Code lists collision shops as a permitted use in the Industrial Business Park Zone, but not in the Major Arterial Zone. His concern is that changing the zoning could open a floodgate that we do not intend to do.

Chris Dibble said Councilman Kolber mentioned an office near a collision shop, which is different from your home. She takes offense that it is the same situation. People who work in that environment choose to, they have not. She does not know why we do not err on the side of caution. She also does not know why this issue keeps going back and forth. It appears that someone is afraid to make the decision to say no. They may come back with more trees, but it is for the same use.

Councilman Casilio said their attorney said the Planning Board stepped out of the assignment from the Town Board on a decision they made. That is why we are going through this again.

Chris Dibble asked if the Planning Board votes this down again and it comes back to the Town Board for a final vote, is it resolved.

Supervisor Hartzell said he likes the fact that the Town does not just say no to a project. It is a give and take discussion between the Town Board and the Planning Board. They look at

the site and talk to people. He believes that eventually they arrive at pretty good decisions, but it is not always quick.

Town Attorney Lawrence Meckler said the applicant requested this public hearing today. It is the first public hearing on this matter.

Chris Dibble said that she appreciates that, however, they have attended all of the meetings on this subject and have been heard all along the way. She hopes that the right decision is made.

Councilman Casilio said something is going to go there. He would rather have a commercial building than a three-story apartment building staring down or a restaurant.

Dan Singer said he understands everyone's concerns. The Boards function is to look out for the residents, but also for what is best for the entire Town and all of the residents. He asked if the people were concerned about the fertilizers or other chemicals that were used on the farming operation when they moved there. He has heard nothing but good about Mr. Mucciarelli's operation. He believes when someone is willing to come in with a financial commitment to try to do the right thing and try to come in with a good land usage, it should be considered.

Mr. Singer said what would you think would be there living that close to Transit Road. There are so many possible uses that would not be as accommodating. He thinks we should applaud him for trying to make the residents happy. He would rather have all of these people reviewing a project than just five people saying no. The Master Plan and the Town Codes do not address all of the possible scenarios that could come up. He understands the concerns, but a former chairman of the Planning Board said if there are that many opposed to a land proposal, they should chip in and buy the property.

Patrick Spoth said his family owns the property in question and something commercial is going to go in there. A number of other uses that were mentioned do not require a special exception use permit.

Councilman Casilio said some of them may, but the question here, is a collision shop a permitted use in this zone.

Councilman Kolber read the uses from the Town Code.

Patrick Spoth said Gabe's has made a lot of revisions to their plan to please the Town and the residents. What could come next and would they be willing to make all the revisions.

Councilman Casilio said if Gabe's removed the collision portion of the business, it could be approved right now.

Patrick Spoth said he thinks they have done a good job with this project. He thinks a 9 to 5 business would be better to live next to than a restaurant that is open until 2:00 a.m. He said you should be careful of what you wish for. He added that they went through this same type of process because the neighbors in that area did not want Highland Farms or Laurel Park there after the farm was gone. They are still farming in Clarence at a different location.

Jeff Palumbo said the whole issue is whether this is a permitted use or not. He believes that if it is not specifically excluded, the Town Board has the ability to approve it.

Councilman Casilio said he disagrees, since the use is specifically listed in the Industrial Business Park Zone.

Mr. Palumbo said according to NYS Law, it has to be excluded.

Councilman Casilio said if that is the case, could we put a collision shop in a residential neighborhood.

Mr. Palumbo said NYS Law allows you to set permitted uses and exclusions. The argument is that there are other automotive uses in the Major Arterial Zone. The Town may not agree with his interpretation, but he is saying that they are not prohibited based on the permitted uses. If the Town Board disagrees with him tonight, his options are probably a law suit.

Mr. Palumbo said a collision shop evokes a certain thought in everyone's mind. It is as if they are emitting dangerous toxins into the air that are going to kill everyone in the area. He had a case in Amherst where a daycare facility sued the collision shop. They won because the DEC determined that there was no problem because they were well below the guidelines set to regulate these businesses.

Councilman Casilio said they can make a decision based on how it would affect the character of the neighborhood.

Mr. Palumbo said how can it affect the character of the neighborhood? What are the impacts of a collision shop? It is not the emissions, the traffic, or the hours of operation. He does not understand what they are. He believes the impact will be 50 new jobs and people

spending their money in the Town of Clarence. He would like their expert to come in and talk about the clear coating.

With no one else speaking to the subject, motion was made by Councilman Casilio, seconded by Supervisor Hartzell to close the Public Hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Casilio, seconded by Councilman Geiger to refer the request for a Special Exception Use Permit for a collision shop, automotive sales and rental facility at 5817 Transit Road to the Planning Board for review of the following:

1. Interpretation of the zoning of the property for the uses submitted.
2. Carcinogens that may be emitted from the collision shop.
3. Testing of the carcinogens for toxicity for the collision shop in proximity to the homes, which may include sanding or other processes that may go on.
4. Noises that could be emitted from the machines for the collision business.

On the question, Councilman Kolber said in regard to a comment made earlier, the business is not open 24 hours a day. They are open 8 or 9 hours, the same as his office. He is also 300 ft. from a crematorium and that is much worse than the collision shop.

Councilman Casilio said the applicant has made revisions to make it acceptable, but he still has a problem with the zoning issue and the previous recommendations from the Planning Board.

Councilman DiCostanzo said he appreciates what the Planning Board does. We send things to them for review and recommendation and he is not inclined to go against that. He applauds the applicant that he wants to invest in the Town, but it does not seem like the right spot. One speaker said it seems like we are afraid to say no to someone. He is going to vote no to send it to the Planning Board.

Councilman Geiger said there has been a lot invested here by all parties so far and he thinks we should see it through to the end.

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

Victoria Park requests a Public Hearing to consider a Special Exception Use Permit for a commercial plaza in excess of 30,000 sq. ft. in the Traditional Neighborhood District at 10225 Main Street. James Callahan said the location is the southwest corner of Main Street and Shisler Road consisting of an existing commercial plaza. Per the Zoning Law, the Town Board has final approval authority on the special exception use permit for the accumulative size of the plaza exceeding 30,000 sq. ft.

Douglas Klotzbach said the intended use of the building is mostly office space as it is now. Currently there is no retail and he assumes it would continue that way. The next step is to have a public hearing.

Motion by Councilman Casilio, seconded by Councilman Geiger to set a Public Hearing for May 8, 2013 at 7:50 p.m. to consider a Special Exception Use Permit for a commercial plaza in excess of 30,000 sq. ft. at 10225 Main Street. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to approve the following: Clubhouse Applications - A. Flight 3407 Memorial Committee – April 23, 2013; B. Clarence Chamber of Commerce – Apr 12, Jun 14 & 21, Jul 12 & 19, 2013; C. Clarence Contemporary Club – Oct. 4, 2013; Legion Hall Applications – A. Mandana Waseh – April 27, 2013; B. Patrick Brauen – June 23, 2013 and Nature Center Lodge – A. Clarence Chamber of Commerce – May 7, 2013. On the question, Councilman DiCostanzo said we have discussed the Nature Center Lodge and will be taking it up in the future. The educational component to this application is to introduce some business leaders in the Town to the Nature Center. As discussed, they do not want the Lodge to become a place where people are going to have a party. Councilman Geiger said it is already being discussed by several parties involved and once they

come up with a resolution he will bring it to the Town Board. 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 April 11, 2013 are approved for payment: General Fund - \$66,894.95; Highway Fund - \$63,762.53; Water District - \$34,848.79; and Capital Fund - \$16,864.29 for a total amount of \$182,370.56. Upon roll call – Ayes: All; Noes: None. Motion carried.

“For the Good of the Town”

Bob Shaw, assistant scout master of Troop 93 said they held their spaghetti dinner this past week at the Clubhouse and he thanked the Town for the use of the building and Councilman Casilio for his placemat ad.

Gary Wright said he wanted to bring a public safety issue to the Town Board’s attention. It is the dead tree limbs hanging over the roads throughout the Town. He knows some of the roads are in other jurisdictions, but something should be done.

Supervisor Hartzell said he receives several phone calls about that and Erie County has been pretty good about coming out and taking care of them. He said to call him or the County to report any that he sees. He will also talk to Ted Donner about it.

Councilman Kolber said there should be a notification about the drill being held at the high school next week, so people do not panic when they see the activity.

Councilman Casilio said that is being done by the school district.

There being no further business, Supervisor Hartzell adjourned the meeting at 9:31 p.m.

Nancy C. Metzger
Town Clerk