

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, March 27, 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 Cuvillo, Confidential Secretary to the Supervisor Karen Jurek, Senior Building Inspector David Metzger and Planning Board 2nd Vice-Chairman Paul Shear.

HPA Consulting – Thomas Phelps and Karen Jurek, Secretary to the Supervisor

Currently, services are provided by Level 3, the contract expires in July. There have been issues with their services regarding billing, high fees and surcharges as well as issues with the circuits; they are on old Verizon copper cabling. The current arrangement allows the Town of Clarence to call MacSource (telephone equipment vendor) for any issues and if the issue is with Level 3, MacSource will get it fixed.

RFP responses were submitted by TW Telecom, Windstream and Time Warner Cable (One Connect, Government Group, Channel Group).

Currently the Town has 3MB bandwidth to the internet, with this proposal that would increase to 20MB. This data network in the outer offices would increase as well and will work much better. Fiber will be installed to all five locations. Future bandwidth increases will not require addition of cabling to each building. Local calling and Long Distance calling is included in the proposal. There are some limits based on 5000 minutes, but the town usage is under 1000 Long Distance minutes. Based on the town's current volume all Long Distance would be included.

The best option is with Time Warner – One Connect for an annual savings of \$13,428. One Connect is associated with MacSource so if there is a problem, Karen would call MacSource and they will fix the problem whether it is in their equipment or Time Warner Cable. There is a \$1,250. installation charge. One Connect is familiar with the Town of Clarence network which should make the implementation go smoothly. The current data routers will not handle the increased bandwidth, Karen is currently obtaining prices.

Director of Community Development – James Callahan

Public Hearing:

A Public Hearing is scheduled for 7:45PM to consider renewal of the Hydrant Rental contract between the Town of Clarence and the Town of Lancaster on behalf of Harris Hill Fire Protection District for fire hydrants along the southerly line of Wehrle Drive.

Alex Peters/Kraftmaschine 9265 Main Street

A Public Hearing is scheduled for 7:50PM to consider a Temporary Conditional Permit for an automotive service operation at 9265 Main Street. Applicant is proposing to utilize the rear of the existing commercial building to operate a high end automotive service use. The proposed site is located on the south side of Main Street, east of Thompson Road on existing commercial structure located in the Commercial Zone. Per the Zoning Law, an automotive service use within the Commercial Zone may be approved with a Temporary Conditional Permit. The use is proposed within the rear of the existing commercial space. Limited and small scale operation will not require a large amount of outdoor storage-use almost exclusively inside the garage area.

Formal Agenda items:

Harris Hill Commons Open Space Design Subdivision

Applicant is seeking a final action under SEQRA and concept approval for a 66-lot Open Space Design Subdivision including the creation 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 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.

Annual Renewal of Temporary Conditional Permits:

Previous 1 Year Permit Renewals

- Edward Strickland - Welding and Fabricating, Inc. 5880 Salt Road
- David Delagrangé – Sturdi Sheds 4545 Transit Road
- Christopher Morgan – CAM Services 10165 Main Street
- Gene Metzinger – EA Metzinger Trucking, Inc. 8325 Transit Road
- Brian Thomas – McDuffie’s Bakery 9920 Main Street
- Sheila Bailey – Zoe’s Restaurant 5701 Transit Road

Previous 5-Year Permit Renewals

- Larry Engasser – Seitz Paving 8346 County Road
- Gregory Ribbeck – GCR Landscaping 5750 Shimerville Road
- Rose Parlato – Café Espresso 4401 Transit Road
- David Burghardt – Burghardt Landscaping 8694 Lapp Road

Zoe’s Restaurant 5701 Transit Road has not installed the landscaping that was originally required with their approval. Councilman Kolber suggested deferring approval of their TCP for outside dining until the required work has been completed. Senior Building Inspector David Metzger stated that in order for Zoe’s Restaurant to improve the landscaping in the front, he will have to build a parking lot in the back of the building. A letter will be sent to the applicant.

Lavocat Family Nursery 8441 County Road

Applicant is proposing to construct a nursery/greenhouse operation including a parking area for customers in the Agricultural Zone. The use is identified as a permitted use in the Agriculture Rural Residential Zone. The proposed site is located on the south side of County Road, east of Westminster Drive on existing vacant land located in the Agriculture Rural Residential Zone. The Town Board has asked to review this project which has been identified as a permitted use in this zone. Neighbors have forwarded concerns associated with a commercial use at this location. NYS Agriculture and Markets has identified that the operator has legal right to sell products grown/produced on the property as a retail operation.

Work Session items for consideration on April 10, 2013:

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. 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

Supervisor David Hartzell

- Approval of several Special Events requests for Rotary Club of Clarence, American Legion Post 838, St. Mary’s Church and Zion Church
- Appoint Lorraine V. Hunt – P/T School Crossing Guard
- Resolution – opposition to Governor Cuomo’s proposal to impose limitations on the plea bargaining process relative to speeding tickets.

Councilman Bernard Kolber

Councilman Kolber noticed that several town vehicles still do not have identifying decals on them. He was under the impression that this was being taken care of.

Councilman Kolber will announce several upcoming events sponsored by the Library.

Councilman Patrick Casilio

- Transfer of funds – Public Safety/Emergency Services
- Grant approval for Joseph Meacham and Anthony Haas to participate in an active shooter drill at Clarence High School
- Request ECWA install a hydrant at 8175 Sheridan Drive
- Award the Bid for Main Town Park pool improvements
- Award Harris Hill Pollution Abatement Project and cost analysis to Greenmen Pedersen, Inc.
- Annual maintenance fee for (1) fire hydrant within Spaulding Green Subdivision Phase II on Ferncrest Court
- Annual maintenance fee for (2) fire hydrants within Spaulding Green Subdivision Phase IID on Golden Aster Court and Silver Birch Court

A LOSAP meeting is scheduled for April 3rd. The Town of Amherst has been invited to the Work Session as well since two fire departments service both Clarence and Amherst.

Councilman Casilio has one Attorney-Client item to discuss.

Councilman Peter DiCostanzo

- Appoint Michael Hutchinson as Junior Planner Provisional – Planning & Zoning Department
- Set Public Hearing to consider purchase of vacant land on Clarence Center Road
- Appoint Michael Greis to the position of Auto Mechanic – Parks Department
- Appoint Recreation Specialist PT – Gabriel Gilmour
- Councilman DiCostanzo is having a difficult time scheduling a joint Planning Board/Town Board meeting. Depending on what projects the Town Board forwards to the Planning Board will determine their schedule.

Councilman DiCostanzo distributed a list of Committee/Board members who still have not submitted their Annual Disclosure Forms. He requested that Town Board members contact those individuals listed either via e-mail or telephone.

Brandon Johnson has resigned his position on the Youth Bureau. Caroline Woodward will be appointed at the April 10th meeting.

There was a discussion regarding the use of the Nature Center. Since the Legion Hall is booked regularly, there have been numerous requests for use of the Nature Center for meetings. The primary use of the Nature Center is for the purpose of environmental education and it appears that the Center is being used for non-educational purposes.

Councilman Geiger stated that the Toast Masters had their meeting at the Nature Center and one of the requirements was that they try to tie nature into their speeches. Several Scout groups have been working at the Nature Center as well. The Rotary Club meets there once a year and gets an update from James Marshall and Ken Schnobrich who volunteer their time at the Nature Center giving speeches. The Town Clerk's office has been good about screening the application requests when they come in.

Councilman Kolber said that there is equipment and personal collections in the Nature Center that are used for teaching purposes that could get destroyed with unsupervised use. Councilman DiCostanzo will research this further.

Councilman DiCostanzo has one item to discuss in Executive Session regarding the employment history of an individual.

Councilman Robert Geiger

- Resolution in support of the proposed laws of the State of NY concerning contact information for vacant structures
- Information pertaining to the Chamber of Commerce golf outing
- Senior Center Basket Raffle

Clarence Hollow is doing a mural on the side of the Bistro and Clarence Farmers Market is doing a locomotive mural on the bowling alley.

A local car dealership is having problems with geese littering their front doorway. The proper authorities have been notified.

Motion by Supervisor Hartzell, seconded by Councilman DiCostanzo to enter into Executive Session pursuant to § 105 (1) F of the Open Meetings Law to discuss the employment history of a particular person; § 105(1) H the proposed acquisition of real property but only when publicity would substantially affect the value thereof. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, the Work Session adjourned at 6:40PM.

Darcy A. Snyder
Deputy Town Clerk

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, March 27, 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 James Blum; followed by a prayer read by Councilman Patrick Casilio.

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 Supervisor Hartzell to accept the minutes of the previous work session held March 6, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Supervisor Hartzell to accept the minutes of the previous work session and regular meetings held March 13, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to approve the following Special Events requests:

1. Rotary Club of Clarence - Walk for Celiac Awareness to be held May 11, 2013 from 8 a.m. to 6 p.m. in the Clarence Town Park. The walk route will begin and end at the Main Town Park per the submitted map. A current certificate of insurance has been provided.
2. American Legion Memorial Day Parade to be held on May 27, 2013 beginning at 11:00 a.m. The parade will begin at the Clarence High School and end at the Main Town Park.
3. St. Mary's Church 5K Chowder Chase Run - July 21, 2013 from 11 am to approximately 12:00 pm. This is in conjunction with their Annual Picnic. The Route will start at St. Mary's Church on Stahley Road and finish there as per the submitted map.
4. To grant a Special Events request from the Zion Lutheran Church for the "Miles for Haiti – 2 Mile Run" Fundraiser to be held September 29, 2013 from 1:00 p.m. until 3:00 p.m. subject to Town Attorney review and approval. A current certificate of insurance has been provided.

On the question, Supervisor Hartzell said all the appropriate agencies will be notified. Councilman Casilio said he is a member of Rotary, however this is ministerial and he will be voting. Councilman DiCostanzo and Councilman Geiger said they are both members also. Upon roll call – Ayes: All; Noes: None.

Motion by Supervisor Hartzell, seconded by Councilman Casilio to appoint Lorraine V. Hunt as School Crossing Guard P/T at the budgeted rate of pay of \$11.18/hour effective April 8, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

WHEREAS, the Governor has proposed, as part of his Executive Budget, a provision that would restrict the ability of local courts to plea bargain traffic tickets; and

WHEREAS, this provision would unduly infringe upon the discretion of local judges to adjudicate matters on a case-by-case basis; and

WHEREAS, without the ability to plea bargain traffic tickets, there will be an increase in the number of trials held in the local courts which will have the result of significantly increasing the cost to the municipality to run its courts system; and

WHEREAS, this provision will take away an important funding source that municipalities rely on to run their court systems; and

WHEREAS, the Governor has also proposed, as part of his Executive Budget, a provision that would add an eighty dollar (\$80.00) surcharge to all stopping/standing/parking violations, regardless of the circumstances behind the violations; and

WHEREAS, this would have the effect of creating a significant hardship on residents of this state who have been cited for relatively minor infractions.

NOW, THEREFORE, BE IT

RESOLVED, that the Clarence Town Board does hereby oppose these provisions of the Governor's Executive Budget; and be it further

RESOLVED, that the Town Clerk be directed to forward a certified copy of this resolution to Governor Andrew M. Cuomo; Dean Skelos, Senate Majority Leader; Andrea Stewart-Cousins, Senate Minority Leader; Sheldon Silver, Speaker of the Assembly; Joseph Morelle, Leader of the Assembly; Brian Kolb, Minority Leader of the Assembly and the Western New York Delegation to the State Legislature.

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

Councilman Kolber said the Library has some fundraising events coming up. One is the spring book sale to be held April 26th & 27th for the public. They are having a used bike sale. They refurbish old bikes and sell them. It has been very successful. The library also has a number of author events.

Councilman Kolber said he is still working on getting a revised brush pickup schedule in place. If you have any interest in helping, please call the Town Highway Superintendent. He hopes that we can get a grapple truck and get this going.

Supervisor Hartzell recognized Paul Shear, vice chairman of the Planning Board who was present tonight.

Councilman Casilio said we will be having the annual LOSAP meeting on April 3, 2013 at 9:00 a.m. during the Town Board work session. We have invited the Town of Amherst to attend that meeting. There will also be a meeting at 6:00 p.m. for all of the fire companies to review their program.

Motion by Councilman Casilio, seconded by Councilman Kolber to approve the transfer of funds from the 2013 Budget as follows: \$297.00 from account - 001-3989.0471 Training and Education to account - 001-3989.0250 Equipment. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Casilio, seconded by Councilman Kolber to grant permission for Joseph Meacham and Anthony Haas to participate in an Active Shooter Drill that is being coordinated by the FBI Planner, NYS State Troopers, Erie County Sheriff's Department, Clarence Central School District/Clarence High School, and the Town of Clarence Disaster Coordinator planned for April 17, 2013 at 8:00 a.m. at the Clarence High School.

On the question, Councilman Casilio said the Town Security Officers will be working under the direction of Disaster Coordinator David Bissonette for a period of approximately 5 hours to assist in various emergency management tasks.

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

Motion by Councilman Casilio, seconded by Councilman Kolber that the Town of Clarence requests the Erie County Water Authority to install a hydrant to be located near the property at 8175 Sheridan Drive for which the Town agrees to pay the annual fire hydrant maintenance fee. The Town will be reimbursed for said annual fee pursuant to the terms and conditions of an Agreement between the Town of Clarence and Rockledge Professional Park, LLC or such other owner of record of the property located at 8175 Sheridan Drive. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

RESOLVED, that after holding an open competitive bid the Town Board awards the Main Town Park Pool Improvements base bid and alternate item to Aquatic Renovation Systems, Inc. of Indianapolis, Indiana as they were the lowest responsible bidder for a total bid amount of \$74,600.00; and be it further

RESOLVED, that the Supervisor is authorized to sign and enter into a contract with Aquatic Renovation Systems, 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 by Capital Project 32. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

RESOLVED, that the Clarence Town Board awards the Harris Hill Pollution Abatement Project Cost Analysis and Study to Greenman Pedersen, Inc of Buffalo, New York in the amount of \$15,750 in accordance with their proposal dated March 07, 2013.

On the question, Councilman Casilio said this is to be funded by the Master Sewer Plan budget and Engineering Department Professional Services budget.

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

Motion by Councilman Casilio, seconded by Supervisor Hartzell that the Town of Clarence agrees to pay the annual fire hydrant maintenance fee to the Erie County Water Authority for one (1) fire hydrant within Spaulding Green Subdivision - Phase 2 on Ferncrest Court upon Final Plat approval and formal public infrastructure acceptance by the Town of Clarence. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Casilio, seconded by Councilman Kolber that the Town of Clarence agrees to pay the annual fire hydrant maintenance fee to the Erie County Water Authority for two (2) fire hydrants within Spaulding Green Subdivision Phase 2D, one (1) on Golden Aster Court and one (1) on Silver Birch Court upon Final Plat approval and formal public infrastructure acceptance by the Town of Clarence. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman DiCostanzo said one of the student members of the Youth Board resigned because he could not make the meetings. He will make the appointment of Caroline Woodward at the next Town Board meeting.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger that upon the recommendation of James Callahan, Director of Community Development, to appoint Michael Hutchinson to the position of Junior Planner – Provisional subject to a six month probationary period and Civil Service Exam, effective April 1, 2013, with a salary of 85% of \$42,500.00 which is \$36,125.00.

On the question, Councilman DiCostanzo said 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 Geiger to set a public hearing for April 24, 2013 at 7:45 p.m. to consider the purchase by the Town of Clarence of approximately 66+/- acres of vacant land located on the south side of Clarence Center Road in the Town of Clarence, Erie County, New York (SBL # 59.00-3-9.111) at a purchase price not to exceed \$465,000.00 plus any closing costs, processing costs, baseline studies, steward ship and any and all costs and disbursements for open space purposes. Funds to be allocated from 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 appoint Michael Greis to the position of Auto Mechanic in the Parks Department at Step 1 of the Blue Collar Union Contract Salary Schedule effective April 1, 2013. On the question, Councilman DiCostanzo said this appointment is being made to fill the open position due to the retirement of Raymond Somers. Mr. Greis is currently an employee in the Highway Department. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to appoint Gabriel Gilmour as Recreation Specialist PT at \$16.40 per hour effective April 1, 2013 subject to receipt of all pre-employment paperwork and pre-employment requirements being met. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman DiCostanzo congratulated Steve Dale, a member of the Planning Board and a regular attendee of the Town Board meetings, on his recent retirement.

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

WHEREAS, vacant, abandoned and foreclosed homes and structures have proliferated throughout New York State over the last five years; and

WHEREAS, vacant structures that are not maintained for months at a time, degrade and depreciate the value of the vacant structure as well as the value of surrounding properties; and

WHEREAS, lending institutions that hold mortgages on said vacant structures do not always provide the contact information of a responsible party; and

WHEREAS, Assembly Bill A.88 and Assembly Bill A.824, currently pending, would make it mandatory for lending institutions to provide contact information of a responsible parties regarding vacant structures and require good faith in obtaining a foreclosure; and

WHEREAS, the Clarence Town Board supports the passage of said Bills.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the Town of Clarence hereby supports the passage of said Bills and respectfully requests that the members of the State Senate and State Assembly that represent the residents of the Town of Clarence support the passage of said Bills; and be it further

RESOLVED, that the Town Clerk be directed to forward a copy of this resolution to Senator Michael Ranzenhofer and Assemblywoman Jane Corwin.

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

Councilman Geiger announced that the mural is going up on the Bistro building in the Hollow.

The Clarence Hollow Farmer's Market is working on a mural for the bowling alley. Fundraising is going on to support these two projects.

The Clarence Chamber of Commerce has announced their golf outing in June at the Westwood Country Club.

The Senior Center is holding their 5th annual basket raffle on Saturday, April 27th from 11:00 a.m. to 3:00 p.m.

Councilman Geiger said the goose squad is out trying to take care of issues. A car dealership on Transit had problems with geese making a mess and attacking their customers. They are looking into a way to further serve the residents who have these issues.

Department Reports

Town Clerk Nancy Metzger stated for the record that the annual reports of fees and taxes collected in 2012 were submitted to the Town Board on March 13, 2013. The total Town Clerk fees collected was \$633,055.22, up \$43,000 from the previous year due to building and related fees.

The total 2012 Town and County Tax collection was \$28,611,147.22, with approximately \$11.7 million going to the Town and the rest to Erie County.

The 2012-2013 School Tax Collection was \$42,837,337.35, which includes portions of Clarence, Williamsville and Akron school districts.

Public Participation

David Stengel said he lives approximately 150 ft. from the proposed garden center/greenhouse project. It appears to be a garden center for retail from what he has seen. He read from a letter received on March 10, 2013 from the Lavocats stating that they are proposing to have a high-end grower greenhouse and garden center. Mr. Lavocat also stated at the Zoning Board meeting of December 11th that the 550 ft. frontage would be used for the parking area. Their website says that they carry a line of hard goods and a whole list of landscaping type services provided. This is not a farm operation. They also mention that the property to the east will be used for future expansion.

Mr. Stengel said the pictures he has seen indicate to him that it is similar to a Niagara County Produce operation. He received a letter from the manager of the NYS Dept. of Agriculture & Markets stating various definitions of the State Law including that a garden business similar to Walmart, Home Depot or Lowe's is not considered a farm operation. He also read from the Town Zoning Codes adding that nowhere in the Agricultural Town Code does it state that retail sales are a permitted use. He believes that if this is to be a farm operation, they

can only sell what is grown on the property. They believe that the Town Code was intended for a farmer to raise his plants and sell them from a roadside stand. He asked why this is being camouflaged as a permitted use. If it is commercial retail operation then it does not belong there.

Mr. Stengel asked that consideration be given to the impact on the nearby property owners and direct this project to a commercially zoned area.

Ronald and Nancy Mohr live next door to the proposed greenhouse project. Everyone in the neighborhood keeps their property up nicely and this will be an eyesore. They believe that a business next to them will bring down the value of their property. They have concerns regarding privacy, traffic safety, storage of fertilizer chemicals and the runoff into drainage areas. There are wetlands behind them. Vehicles will be pulling in their driveways to turn around. It will be a mess with piles of topsoil, mulch and other materials, dumpsters that can attract rodents. He does not understand why they need a parking lot to hold 56 cars. Lighting for a parking lot that size would light up the whole neighborhood. Truck traffic would create dirt and dust flying around. They have pools in their yards that would be a mess. He believes this project would adversely affect their neighborhood.

Colleen Marshall said she currently lives in Amherst and is considering the purchase of a million dollar house off of County Road. She is looking for more land and privacy. She would be concerned about the noise and traffic. If this goes through, she will not do it.

Kathy Moriarty said the Lavocats helped run a plant sale for a youth program fundraiser at her church. They did it in an extremely ethical manner. Throughout the years doing business with them, she has found them to be upright, do what they say they will do and to look out for the other person. She wanted to offer her experience in doing business with their company.

A resident of County Road said they object to the proposed greenhouse and garden center, per the Lavocat's letter, on this site. They would like to preserve the character of the neighborhood which consists primarily of single family homes in a country setting. There are no other commercial businesses in this section of County Road. She had reports from realtors stating that having a commercial business in their neighborhood could have a negative impact on property values by 15%. They believe that their quality of life, their safety and property values will be significantly impacted. She asked that the Town take their views into serious consideration and ask yourself if you would like to live next to this retail garden center.

Sharon Siminski said she lives right next store and her concern is the drainage. She already has enough water. She is also concerned with increased traffic problems.

A Public Hearing was held to consider renewal of the Hydrant Rental contract between the Town of Clarence and the Town of Lancaster on behalf of Harris Hill Fire Protection District for fire hydrants along the southerly line of Wehrle Drive.

With no one 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 Councilman Casilio, seconded by Councilman Kolber to authorize the Supervisor to sign the renewal agreement between the Town of Clarence on behalf of the Harris Hill Fire Protection District and the Town of Lancaster and the Consolidated Water District of the Town of Lancaster for a term of five (5) years commencing April 1, 2013 and terminating March 31, 2018. Upon roll call – Ayes: All; Noes: None. Motion carried.

A Public Hearing was held to consider a Temporary Conditional Permit for an automotive service operation at 9265 Main Street. James Callahan said the location is the south sides of Main Street, east of Thompson Road consisting of an existing commercial building in the Commercial Zone. Per the Zoning Law, the Town Board may consider the use with a Temporary Conditional Permit following a required public hearing.

Alex Peters said it is a small business servicing European cars. They do not paint vehicles or do general service, so the traffic is limited. It is a specialized business. They would occupy the rear of the building. Most vehicles would be stored within the building, and any outside are behind the building. Most cars have to be kept protected under cover. They would like to operate Monday through Saturday from 8:00 a.m. until 6:00 p.m. The building is very

well insulated. They have run some noise testing and it will be fine. They are mindful of neighbors around them.

Councilman Kolber said this building was previously used for auto service.

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

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

Be It Resolved That, the Clarence Town Board, after a public hearing duly held on March 27, 2013 and after all interested parties being heard, grants a Temporary Conditional Permit to the applicant, Alex Peters/Kraftmaschine, for an automotive service operation at the existing commercial structure located at 9265 Main Street, subject to the following conditions:

1. The Temporary Conditional Permit shall be for a period of one year.
2. No more than eight (8) cars to be stored outside.
3. Hours of operation to be Monday thru Saturday from 7:00 a.m. to 6:00 p.m.
4. No outside display or sale of vehicles.

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

Harris Hill Commons requests an Action under SEQRA and Concept Approval, including creation of a Town Sewer District on the west side of Harris Hill Road, north of Greiner Road. James Callahan said the property is located on the west side of Harris Hill Road, between Greiner Road and Sheridan Drive. They are proposing an open space design subdivision in the Residential Single Family Zone. The applicant is present seeking action under the State Environment Quality Review Act and for the proposed subdivision. The Town Board has final approval authority on this matter. The Planning Board has forwarded a recommendation for approval.

Sean Hopkins was present representing the applicants who were also present. The Town has completed the coordinated environmental review with no concerns expressed by any involved agencies. They have worked hard with the various Town departments and boards to see if they could assist the Town with the long-term sanitary sewer objectives. As a result, they are offering to extend the sewer line as it currently ends on Greiner Road, through their subdivision and connecting to Harris Hill Road. This involves approximately 2,373 lineal feet, which takes it to 2,057 lineal feet from the intersection of Harris Hill and Sheridan. It does require an upgrade of the trunk sewer to a 15” diameter from an 8” diameter. The greatest cost is the depth of the sewer line because it has to be deep enough to accommodate the Town’s long-term sewer objectives.

Mr. Hopkins said this is a voluntary effort from his client and has no benefit to this project. They feel they have made great progress over the past year in working with the Town on this proposal. The project site is approximately 62.73 acres. They are proposing 66 single family detached homes. It is a very low density project with 50% of the site to remain permanently as open space. They are also preserving the entire Harris Hill corridor with a minimum depth of 200 ft., except for the roadway to the subdivision.

Mr. Hopkins said they are now respectfully asking for issuance of a Negative Declaration, approval of the concept plan and to commence the process of creating a new Town sanitary sewer district. They only ask that the project site be included in the sewer district, as well as the vacant property on Sheridan Drive and the vacant property on the corner of Greiner and Harris Hill. They are aware that this is a very lengthy process. The portion of the sewer line on Greiner is private, but if and when the project site is included, it would be dedicated to the Town of Clarence sewer district.

Councilman Geiger asked if they were making the road connection.

Mr. Hopkins said they are making the connection to Garrock Road and there may be some upgrades needed, which they are willing to do if necessary. It ties into Glenwood Drive. They are also lining up to the roadway across Harris Hill Road.

Councilman Kolber said he likes the project overall, but his concern is with the sewer. He does not like piecing onto sewers without having a long-term sewer solution in place.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger that pursuant to Article 8 of the Environmental Conservation Law, the Clarence Town Board issues a Negative Declaration on the proposed Harris Hill Commons Open Space Design Subdivision including creation of a Town Sewer District to service the project area. This Type I Action involves the

development of a 66 +/- lot subdivision that includes the creation of a town sewer district. After thorough review by the Planning Board and Town Board of the submitted EAF, including 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 DiCostanzo said an environmental review of possible additional property to be included in a proposed new Town of Clarence sanitary sewer district, as to be determined by the Town Board, will be subject to SEQRA during the required process of potentially either creation of a new sanitary sewer district or an extension of Erie County Sewer District No. 5 and that an environmental review of any future development of the parcels at the corner of Harris Hill and Greiner and Sheridan Drive shall be required at such time that the Town receives applications seeking land use approvals for these parcels.

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

Motion by Councilman Casilio, seconded by Councilman Geiger to approve the concept plan for the proposed Harris Hill Commons Open Space Design Subdivision and the commencement of the process of the potential for creation of either a new Town of Clarence sanitary sewer district including the Project Site and any other parcels the Town Board deems appropriate or an extension of Erie County Sewer District No. 5. The process shall be in accordance with procedural requirements of applicable provisions of NYS Town Law.

- a.) Subject to Open Space and Recreation fees.
- b.) Subject to Landscape Committee review and approval of a final landscape plan to include two (2) trees per lot per the Landscape and Tree Conservation Law.
- c.) Subject to the granting of an easement along the Harris Hill Corridor for a future recreation trail/bike path.
- d.) Design connection to Garrock Road to be as approved by the Town Highway Superintendent/Town Engineer.
- e.) Permanent Open Space as depicted on the Concept Plan shall be subject to a Declaration of Restrictions prohibiting its future development and such Declaration of Restrictions shall be recorded upon the Applicant receiving all required approvals from the Town of Clarence for the subdivision. The content and form of the Declaration of Restrictions shall be reviewed and approved by the Clarence Town Attorney's Office before the Declaration of Restrictions is recorded and a recorded copy of the Declaration of Restrictions and recording receipt shall be provided to the Town Attorney's Office and Town Clerk's Office immediately upon recording at the Erie County Clerk's Office.
- f.) Upon the final approval by the Town Board of either a new sanitary sewer district or an extension of Erie County Sewer District No. 5 including the project site, the Applicant shall be required to dedicate the existing privately owned sanitary sewer infrastructure along Greiner Road and to grant any necessary easements to the Town of Clarence or Erie County Sewer District No. 5, as appropriate.

On the question, Councilman Kolber asked if the sewer line along Greiner Road is inside or outside of the right-of-way.

Mr. Hopkins said it is outside of the right-of-way.

Councilman Kolber said you could not dedicate a line outside of the right-of-way without an easement.

Mr. Hopkins said you could add any necessary easements this motion.

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

Request for a Public Hearing to consider the Annual Renewal of Temporary Conditional Permits:

- A. Edward Strickland, 5880 Salt Road
- B. David Delagrang, 4545 Transit Road
- C. Christopher Morgan, 10165 Main Street
- D. Gene Metzinger, 8325 Transit Road
- E. Brian Thomas, 9920 Main Street

- F. Shelia Bailey, 5701 Transit Road
- G. Larry Engasser, 8346 County Road
- H. Gregory Ribbeck, 5750 Shimerville Road
- I. Rose Parlato, 4401 Transit Road
- J. David Burghardt, 8694 Lapp Road

James Callahan said the Town Board approves certain uses on a temporary basis per the Zoning Law. The items on the above list are seeking renewal. Action requires a public hearing be held.

Motion by Councilman Casilio, seconded by Councilman Kolber to consider renewal of the following Temporary Conditional Permits: A. Edward Strickland, 5880 Salt Road; B. David Delagrange, 4545 Transit Road; C. Christopher Morgan, 10165 Main Street; D. Gene Metzger, 8325 Transit Road; E. Brian Thomas, 9920 Main Street; F. Shelia Bailey, 5701 Transit Road; G. Larry Engasser, 8346 County Road; H. Gregory Ribbeck, 5750 Shimerville Road; I. Rose Parlato, 4401 Transit Road; and J. David Burghardt, 8694 Lapp Road. On the question, Councilman Kolber said we have not had any complaints about any of these items. However, it has been determined that item f for 5701 Transit Road has not fulfilled all of the obligations of the original permit relative to landscaping. They will be notified that they must be taken care of before any renewal is granted. Upon roll call – Ayes: All; Noes: None. Motion carried.

Lavocat Family Nursery requests review of a proposed nursery/greenhouse use at 8841 County Road. James Callahan said the location is the south side of County Road, east of Westminster Drive consisting of vacant land in the Agricultural Rural Residential Zone. The request is for a permitted use in that zone.

Sean Hopkins was present with Don Lavocat, Sr., Don Lavocat, Jr. and other family members. The property is zoned Agricultural Rural Residential and one of the expressly enumerated uses listed in the Town Code is greenhouses or nurseries. There were concerns given earlier in the meeting that this would be like Walmart, Lowe's or Niagara Produce. That is absolutely not the case. The Lavocats have been in business for 32 years and intend to grow landscape and nursery products, plants, flowers, etc. on the site and sell them.

Mr. Hopkins said the Town adopted the Right-to-Farm Law several years ago. He read from that law adding that this project is very clearly an example of the potential conflicts of different land uses. The Right-to-Farm Law clearly specifies that those uses should be permitted. If you look at the definitions of this law and the New York State Ag and Markets Law, this use is permitted. This type of use is also regulated by the New York State Dept. of Conservation. They must get a building permit from the Town of Clarence and supply a drainage plan as part of that process.

Mr. Hopkins said they are willing to discuss various issues with the neighbors, but not about whether or not this is a permitted use. It is a Type II Action under SEQRA and does not require an environmental review. New York State Agriculture & Markets Law states that municipality's regulations for agricultural uses are very limited; categorically they are not subject to environmental review pursuant to SEQRA; and they can have a retail component. It is also appropriate to sell products from offsite locations. Anything that would be sold would be related to what they do. They are a local business who has made an additional personal investment. It is consistent with the Zoning Code, the Master Plan and Right-to-Farm Law. These types of businesses should be allowed to exist, grow and thrive.

Mr. Hopkins said it would be acceptable to them to go before the landscape committee to ensure that there is adequate landscaping and screening.

Councilman Kolber said when does something stop being agricultural as it moves to other products becoming a commercial operation. He does not know.

Councilman Casilio said his concern is that they make this investment and then have to be shut down by the Town. Is there a provision that crops have to be grown on the property for a year before they can be sold there? We all know this is going to be watched and he wants to make sure it is done the right way.

Don Lavocat said everything that they sell on this property will be grown here. They have wholesale growing contracts on Heroy Road and that will remain there.

Mr. Hopkins said that moving it from one site to another for sale is not regulated.

Councilman Casilio asked why they are not centering the operation on the site.

Mr. Lavocat said there is a house on the site that is being rented out. There is also a septic system, so it made more sense to move to the west side. They will use the driveway to the house as part of the driveway to the business.

Mr. Hopkins said, with all due respect, this does not require discretionary approval. They know they need approval for a building permit, drainage plan and oversight by the Town.

Councilman Casilio said he understands that if he follows that fine, but if he deviates from that he could be tested and shut down. If he puts a wheelbarrow out there for sale, the Town will be notified and there will be problems.

Mr. Lavocat said they do not do that now and do not plan to do it there. This is going to be strictly agricultural growing of their plants, shrubs and perennials. They have 30,000 sq. ft. at the Heroy Road site and this is 15,000 sq. ft.

Sean Hopkins said they are adding a 6 ft. fence on one side and screening along the parking area as shown on the plan.

Mr. Lavocat said they grow 900 varieties of plants. There was a lot of confusion and rumors spread about them when they presented this project. They grow everything. He does not understand why the Town would want to tie the hands of the growers.

Councilman Kolber said sometimes when you do a project right in the face of the neighbors, you create enemies for life or you can do it in a way that is harmonious.

Mr. Hopkins said they are willing to discuss screening and those types of options with the neighbors, but if it is a discussion of whether or not they are permitted, that they are not willing to engage in.

Motion by Councilman Kolber, seconded by Councilman Casilio to forward the request for the proposed nursery/greenhouse use at 8841 County Road to the Planning Board for their review to make the project amenable and work. On the question, Councilman Casilio said he thinks it is good to work this out and let everyone have a chance to participate in the discussion. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Supervisor Hartzell to grant approval for the following: Clubhouse Applications - A. Clarence Lions Club – April 6, 2013; Legion Hall Applications – A. Mindy Sauer – April 12, 2013; B. Patricia Foley – April 21, 2013; C. Shelley Strobel – May 18, 2013; D. Kathleen Fordham – June 9, 2013; E. Don Lavocat, Jr. – June 22, 2013; F. Maria Cahlstadt – Nov. 30, 2013; Pavilion Special Events – A. Rotary Club of Clarence – May 31, June 1 & 2, 2013; and B. Clarence Baseball Association – May 17, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Casilio to grant approval for use of the Nature Center Lodge to the Clarence Senior Center on May 16, 2013 for educational presentation. 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 28, 2013 are approved for payment: General Fund - \$204,956.44; Highway Fund - \$63,291.38; Water District - \$1,641.12; Sewer Districts - \$82.90; Capital Fund - \$840.00; Trust & Agency 203 - \$660.00; Trust & Agency 202 - \$15,745.57; and Trust & Agency 205 - \$210.76 for a total amount of \$287,428.17. Upon roll call – Ayes: All; Noes: None. Motion carried.

“For the Good of the Town”

Hans Mobius said he is a member of the Farm Bureau and he is here to support Don Lavocat. The Right-to-Farm Law basically says that if you move to a nuisance such as a farm, that farm is protected. It also protects the neighbors from a farmer who is misbehaving. The Town can take action if this man misbehaves, but he doubts very much that he would.

David Stengel said March 10th they received a letter and it states right in it a high-end grower, greenhouse and garden center. Now they are saying it is not a garden center. The agricultural laws that he has been reading give the zoning board the authority to oppose anything they want and the farming laws do not apply. He spoke with Bob Summers from Agriculture & Markets and he said the same thing. Plants have to be in the ground for a year before they are sold.

Councilman Kolber said that is the point of the Planning Board review to flush out all of the issues. It is a permitted use.

James Blum said he was honored to stand in for Bob Fogelsonger to lead in the pledge tonight. He believes Mr. Fogelsonger is in his 90's and has given his whole life to the Town in many ways. He donated the land that became Glenwood Park. Mr. Blum asked the Town Board to consider renaming that park Fogelsonger Park before Mr. Foglesonger is no longer with us.

A resident from County Road said Lavocats might be very nice people who do a great job with growing their plants and all, but she had photos that they took at the site on Heroy Road. (Councilman Casilio suggested she take them to the Planning Board.) She believes there are code violations at the Heroy Road site including propane tanks that are not chained, garbage and stuff all over. It is visible from the road.

Don Lavocat said there is debris associated with a landscaping business. The landscaping portion of their business is not coming to County Road.

There being no further business, Supervisor Hartzell adjourned the meeting at 9:00 p.m. in honor of Dmytro Baranyckyj, father of Parks Department employee Jean Ranney who recently passed away.

Nancy C. Metzger
Town Clerk