

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, September 10, 2014, 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 Patrick Casilio, Peter DiCostanzo and Robert Geiger. Councilman Kolber was absent. Other Town Officials present were Director of Community Development James Callahan, Junior Planner Jonathan Bleuer, Town Attorney Lawrence Meckler, Deputy Town Attorney Steven Bengart, Town Engineer Timothy Lavocat, Senior Building Inspector David Metzger, Planning Board Chairman Robert Sackett, Planning Board member Steven Dale, Confidential Secretary to the Supervisor Karen Jurek, Highway Superintendent James Dussing and Director of Administration and Finance Pamela CuvIELLO.

### **Director of Community Development – James Callahan**

#### ***Public Hearings:***

The Main Ingredient 9980 Main Street

A Public Hearing is scheduled at 7:45 PM to consider the requests for a Temporary Conditional Permit for outside dining along the front and west side of the building.

Signs of the Code of the Town of Clarence

A Public Hearing is scheduled for 7:50 PM to consider proposed amendments to Chapter 181, Sign Law.

#### ***Formal Agenda items:***

Phil Silvestri 8353 Main Street

Applicant is proposing a Change in Use from the previously approved nail salon to a professional office building. The proposed site is located on the southeast corner of Main Street and Susan Drive on existing vacant land consisting of .52+/- acres in the Residential Single Family Zone. A use variance was granted in 2007 to allow for a nail salon with the condition that any future change in use would require Town Board review and approval. In addition, the use variance identifies that the Traditional Neighborhood District Zoning Classification should be used to guide design of the property development. Per the use variance granted in 2007, the Town Board has authority to approve any proposed change in use to the property. Referral to the Planning Board to detail site development details would initiate a formal review of the proposed use.

Elliott Lasky – Roxberry Subdivision Phase II Gentwood Extension

As a corridor road for Eastern Hills Mall is no longer being pursued, the applicant is proposing to develop the residential subdivision as previously conceptually approved. The proposed site is located on the west of Gentwood Drive, east of Eastern Hills Mall on existing vacant land proposed as an extension to the existing Gentwood Drive which received concept approval in 1998 and was tabled at Development Plan approval by the Town Board to pursue development of a proposed access road to Eastern Hills Mall. The applicant agreed to table the action until such time that a corridor plan for the Eastern Hills Mall was developed. As the item was tabled at the Town Board on 6/26/2002, the Town Board must take action to take the matter off the table. As there has been 12+ years since the matter was last publicly discussed, the public should be notified of any action. ***(Councilman Casilio will recuse himself from discussing this project, it is located in his neighborhood).***

Michael Development – Wehrle Drive west of Shisler Road

Applicant is proposing to develop an Industrial Business Park on the property. The proposed site is located on the south side of Wehrle Drive, west of Shisler Road on

existing vacant property consisting of 24.69 acres in the Industrial Business Park Zone containing an active sand and gravel mine. The Town Board initiates all project reviews by identifying any concerns associated with the proposed development prior to initiating formal review. Referral to the Planning Board would initiate formal review of the project

#### Open Space Design Development Overlay District amendments

The Planning Board has forwarded a recommendation to amend the Zoning Law to make some updates to the Open Space Design Overlay Section (Article XIII of Chapter 229). These updates come after the Town Board has referred the review of this section of the Town Code on February 12, 2014. A copy of the proposed law with amendments was distributed to the Town Board.

#### **Work Session items for consideration at September 24, 2014:**

Lou Visone east of 8574 Main Street

Applicant requests a Temporary Conditional Permit for an outside display of accessory structures (sheds) on property he owns at 8570 Main Street.

#### Administrative Review Fees

Proposed amendment to Chapter 99 of the Code of the Town of Clarence, Fees, to include a Per Unit Recreation Fee for Multiple Family Residential Project.

#### **Planning Board Chairman – Robert Sackett**

Mr. Sackett informed the Town Board that the alternate position on the Planning Board is still vacant. There is an upcoming conference in November that would be beneficial for the alternate to attend. Supervisor Hartzell suggested the Planning Board interview potential candidates and recommend to the Town Board. The Town Board will make the final decision.

#### **Supervisor David Hartzell**

- Award bid for removal of Leaf Compost from the town recycling area to Thomann Asphalt
- September 2014 has been designated by the Erie County Legislature as the 30-day period during which landowners may submit requests to include predominantly viable agricultural land into any existing certified agricultural district

#### **Councilman Patrick Casilio**

- Approve a transfer of funds from the 2014 Engineer Budget

Councilman Casilio inquired as to when meetings would be set up to go over the 2015 Budget. Clarence Center VFC is requesting a meeting with the Supervisor and possibly the Town Board to discuss their budget.

Town Attorney Meckler suggested having a report that shows year to date and displays what was budgeted and what the actual is. A comparison as to where you stand this year which will make it easier to plug in the numbers for 2015. Director of Administration and Finance Pam CuvIELLO stated that she has those reports.

#### **Councilman Peter DiCostanzo**

- Motion to seek Lead Agency status on the proposed Grimm Open Space Design Subdivision Overlay located at 8196 County Road

- Issue a Negative Declaration on the proposed amendments to Chapter 181 of the Code of the Town of Clarence – Sign Law

Maple Grove Farm presented a request to the ZBA to approve and grant a 94' variance to allow for the construction of a 154' wind turbine located at 6879 Salt Road. The request was granted. The ZBA distinguished why this request was granted and the request for 8850 Clarence Center Road was denied. The big difference between the two requests was that Maple Grove Farm had no neighbor concerns or complaints.

**Councilman Robert Geiger**

- Grant permission to Animal Control Officers Jerome Schuler and Anne Cimato to attend the County Emergency Animal Sheltering Plan Training and Drill in Lockport

Recreation Advisory Committee member Michael Powers is requesting another 12.5 million dollars to put into the Green Print Program as a continuation of the original program. There is approximately three million dollars left. The RAC would like to put it on the ballot in November. It was discussed at the August 13<sup>th</sup> Work Session that there was not enough time to hold a public hearing and get the process completed before the November election. Supervisor Hartzell asked if there was any way to get this done this year if the Board held a special Public Hearing. Town Attorney Meckler stated that in order to meet the schedule, the Board would have to forego the Public Hearing. When this was last discussed on August 13<sup>th</sup>, the Board agreed that since this is a significant amount of money the taxpayers should have a say at a public hearing. There is not enough time to post the public hearing for this election cycle.

Motion by Supervisor Hartzell, seconded by Councilman Casilio 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 lease of real property but only when publicity would substantially affect the value thereof. Upon roll call – Councilman Geiger, Councilman DiCostanzo, Councilman Casilio, Supervisor Hartzell; Noes: None. Absent: Councilman Kolber.

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

Darcy A. Snyder  
Deputy Town Clerk

Councilman Kolber arrived at 6:55 PM.

Motion by Supervisor Hartzell, seconded by Councilman Kolber to adjourn the Executive Session at 7:45 PM. Upon roll call – Ayes: All; Noes: None. Motion carried. No action taken.

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, September 10, 2014 at the Clarence Town Hall, One Town Place, Clarence, New York.

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

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.

Supervisor Hartzell said the minutes of the previous meetings were not yet finished. They will be approved at the next meeting.

Supervisor Hartzell said the Clarence Chamber of Commerce held a Legislative Breakfast last Saturday at WBBZ in the Eastern Hills Mall. Councilmen DiCostanzo and Geiger also attended. It gave residents a chance to ask their elected representatives questions.

Supervisor Hartzell said the Town Board met with the Clarence School Board on August 25<sup>th</sup>. It was discussed how the two entities might join in shared services initiatives. A meeting is set this Thursday with the Town, our grant writer Bernie Rotella and Clarence Business Manager Rick Mancuso to see if we could write larger grants by applying together.

We are also working on a program with our accountants to explore shared services between the Clarence, Lancaster and Amherst.

Supervisor Hartzell reported that the IDA met with Dave Clare, a developer to discuss the new business park on Wehrle Drive. This will be the second new business park in 2014. The IDA meets tomorrow in a special session to discuss strategy to attract new business to the Town of Clarence.

Motion by Supervisor Hartzell, seconded by Councilman Kolber that upon the recommendation of Highway Superintendent, James Dussing, the bid for removal of 4,500 cubic yards of leaf compost from the Town recycling area on Sheridan Drive be awarded to Thomann Asphalt, 56 Gunnville Road, Lancaster, NY at their bid of \$3.07 per cubic yard.

On the question, Supervisor Hartzell said Thomann Asphalt is required to remove the material within 60 days from the time of the award of the bid and supply the necessary insurance certificate naming the town as an additional insured.

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

Supervisor Hartzell announced that September 2014 has been designated by the Erie County Legislature as the 30-day period during which landowners may submit requests to include predominantly viable agricultural land into any existing certified agricultural district. A public hearing on the submitted applications will be scheduled to consider all requests and the date will be announced. The Erie County Department of Environment and Planning will accept applications from September 1 through September 30, 2014 and the contact person is Rachael Chrostowski, Planner with the Erie County Dept. of Environment and Planning at (716) 858-8002. Information is also available from the Office of the Clarence Town Clerk and the Assessor's Office.

Supervisor Hartzell read a letter from a resident on Christian Drive to Highway Supt. James Dussing regarding the repaving job recently done by the Highway Department. They are very pleased and think that Clarence Highway Department is the best.

Motion by Councilman Casilio, seconded by Councilman Geiger to approve the following transfer of funds in the 2014 Engineer Budget as follows: \$4,975.00 from Budget Line A1440.1 – Personal Services to A1440.475 – Engineer Building Maintenance. 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 Grimm Open Space Design Subdivision Overlay located at 8196 County Road. This Unlisted Action involves the development of a 12-lot subdivision

within the Traditional Neighborhood Zoning District and within Erie County Sewer District No 5.

On the question, Councilman DiCostanzo said this is not any sort of approval of the project. This is to obtain comments from involved agencies regarding the project. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to approve the request for James Callahan and Jonathan Bleuer to attend the Upstate New York Planning Association Annual Conference in Rochester from September 17 – 19, 2014 with all reasonable costs covered by the Town and allowing use of a Town vehicle.

On the question, Councilman DiCostanzo said the costs are budgeted. Mr. Callahan is attending for one day and Mr. Bleuer for three days.

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

Councilman DiCostanzo thanked Councilman Geiger for mentioning 9/11 in his prayer tonight.

Motion by Councilman Geiger, seconded by Councilman Casilio to grant permission to Jerry Schuler and Anne Cimato to attend the County Emergency Animal Sheltering Plan Training/Drill at the Niagara County Cornell Cooperative Extension in Lockport, NY on September 11, 2014 and approve the use of a Town vehicle and all reasonable and necessary expenses to be paid by the Town. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Geiger announced that the Youth Board has one adult opening due to the resignation of Gary Server. Applications will be taken through October 24<sup>th</sup>.

There is also one opening for a student member for the Youth Board. Applications will be accepted from students in Grades 9 – 12 through September 19, 2014.

Councilman Geiger announced that the Chamber of Commerce Golf Classic will be held on September 15<sup>th</sup> at Brookfield Country Club.

Councilman Geiger announced that not only did Dan and Patti Gamin receive six blue ribbons from the Erie County Fair, but they received two super-sized blue ribbons on behalf of the Clarence Historical Society. The fruit came from trees planted outside the log cabin on Main Street. He thanked them for this and they will be presenting the ribbons to the Historical Society.

Supervisor Hartzell said it is too early to hold the public hearing, so he will move to the end of the agenda.

Motion by Councilman Kolber, seconded by Councilman Casilio that after proper audit and review by the Town Board, the following bills of September 11, 2014 are approved for payment: General Fund - \$100,286.49; Highway Fund - \$124,623.43; Water District - \$35,039.69; Fire Protection Districts - \$304.88; Drainage District - \$905.61; Capital Fund - \$12,170.00; and Trust and Agency 203 - \$4,675.00 for a total amount of \$278,005.10. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to approve the following: Clubhouse Applications - A. Daniel Gregorio – Sept. 12, 2014; B. Carol Conwall – Sept. 18, 2014; C. Clarence Soccer Club – Nov. 8, 2014; D. Clarence Track Club – Nov. 18, 2014; E. James Shoemaker/Den Meetings – Monthly meetings Sept. thru Dec. 2014 & Jan. thru May 2015; Legion Hall Applications - A. Sue Ciminelli – Oct. 5, 2014; B. John Darlak – Dec. 7, 2014; C. Girl Scout Troop 1498 – Monthly meetings for 2015; and D. Shayon Waseh – Sept. 13, 2014. Upon roll call – Ayes: All; Noes: None. Motion carried.

Open Space Design Development Overlay Amendments – Article XIII of Chapter 229 - Zoning of the Code of the Town of Clarence. James Callahan said these updates come after the Town Board referred this section to the Planning Board for comment and recommendation. The proposed law is available online and in the Town Clerk's Office.

Mr. Callahan said the significant changes are for open space design conservation easements, ownership and definition of baseline study requirements.

Motion by Councilman Geiger, seconded by Councilman Kolber to set a public hearing for October 8, 2014 at 7:45 p.m. to consider a Local Law amending the Code of the Town of Clarence

of Chapter 229 – Zoning, Article XIII. OSD Open Space Design Development Overlay. Upon roll call – Ayes: All; Noes: None. Motion carried.

Michael Development requests Preliminary Concept Review of a proposed Industrial Business Park on Wehrle Drive, west of Shisler Road. James Callahan said the location is the southwest corner of Wehrle Drive and Shisler Road consisting of an existing vacant property in the Industrial Business Park Zone.

Michael Metzger, architect was present with his client Dave Clare of Michael Development. The property is just under 30 acres. The site was actively mined for many years. It is across the street from Wilson Greatbatch. The proposal is to develop the industrial business park and lease the buildings. They will be large, high buildings to allow for storage of equipment for businesses, such as landscaping. He believes it is a great fit for this property. It also includes a large pond.

Supervisor Hartzell said the IDA and Councilman Geiger met with Mr. Clare last week to discuss his project and the IDA is 100% in favor of it. They are very excited and wish Mr. Clare the best.

Mr. Metzger said the buildings will be pole barn style buildings.

James Callahan said there is architectural requirements in the Zoning Code for these buildings in the Industrial Business Park Zone.

Councilman Kolber said he likes what they want to do, but he would like to see a different layout. The way it is proposed creates a huge wall of steel buildings along Wehrle Drive.

Councilman Casilio suggested that they apply the architectural requirements on the side of the buildings facing Wehrle Drive.

Michael Metzger said they have them placed so that the garage doors are on the inside facing an interior road. They would also use landscaping to dress it up.

Councilman Kolber said he believes it could be more aesthetically pleasing with a different placement.

Councilman Casilio said Wilson Greatbatch has a beautiful building across the street and they should keep that in mind.

Mr. Metzger said this was a mined site that does come with some limitations on space. They will be happy to work with the Planning Board.

James Callahan said any industrial use has final approval of the Town Board. It will require a significant environmental review.

Councilman DiCostanzo said there is plenty of space to landscape to help break it up also.

Councilman Kolber said he still believes it will be a huge wall of steel buildings.

Councilman Casilio said we go to great pains to preserve the view scapes. He also would not be in favor of 280' of steel walls.

Councilman Kolber said we cannot renew the mining permit to a new owner. They have to apply.

Mr. Metzger said they will look into that.

Motion by Councilman Casilio, seconded by Councilman Geiger to refer the request by Michael Development for Preliminary Concept Review of a proposed Industrial Business Park on Wehrle Drive, west of Shisler Road to the Planning Board for review. On the question, Councilman Kolber asks that they consider the visual concern with the length of steel buildings going down Wehrle Drive. They could look at moving the buildings to be perpendicular to Wehrle to reduce the impact. They should also look at all possibilities of buffering and landscaping. Upon roll call – Ayes: All; Noes: None. Motion carried.

A Public Hearing was held to consider a Temporary Conditional Permit for outside dining at 9980 Main Street. James Callahan said the applicant, The Main Ingredient, is located on the north side of Main Street, east of Kraus Road. It is an existing restaurant in the Commercial Zone.

Diane Meaney owner was present. She is proposing to use the same outdoor space as the previous owners.

Councilman Casilio said we have never received any complaints about any restaurant at this location. We talked about music the last time and the applicant said she would utilize the outdoor speakers for background music.

Ms. Meaney said the hours of operation are Monday through Sunday from 6:00 a.m. to 3:00 p.m.

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 Kolber to adopt the following resolution:

RESOLVED, that after a public hearing duly held on September 10, 2014, and after all interested parties being heard, the Clarence Town Board grants a Temporary Conditional Permit to the applicant, The Main Ingredient restaurant, for outside dining at the existing restaurant located at 9980 Main Street subject to the following conditions:

1. The Temporary Conditional Permit is granted for one year.
2. Hours of operation: Monday through Sunday from 6:00 a.m. to 3:00 p.m.
3. Outdoor seating not to exceed not to exceed 7 tables and 30 seats.
4. No live entertainment permitted.
5. Music restricted to background music.

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

A Public Hearing was held to consider a Local Law amending Chapter 181 – Signs of the Code of the Town of Clarence. James Callahan said the Planning Board has forwarded a recommendation to amend the Sign Law. The proposed amendments include temporary signs related to flags, LED regulations specifically to gas or service stations in the Traditional Neighborhood District, non-conforming signs definition update, base landscaping between maintenance and other design changes in the Restricted Business Zone detailing the parameters for a monument sign.

Councilman Kolber said this is to clean up our Sign Law and reflect the changes in technology. He does not think there is anything that is ground shaking.

With no one else speaking to the subject, motion was made by Supervisor Hartzell, seconded by Councilman Casilio to close the Public Hearing. 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 Town Board issues a Negative Declaration on the proposed amendments to the Code of the Town of Clarence, Chapter 181 Sign Law. After thorough review of the proposed amendments and the completed Environmental Assessment Form it is determined that the proposed action is considered minor, is in conformance with Master Plan 2015 and will not have a significant impact upon the environment. Upon roll call – Ayes: All; Noes: None. Motion carried.

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

RESOLVED, that after a public hearing duly held on September 10, 2014 and after all interested parties having been heard, the Clarence Town Board adopts Local Law No. 3 of the year 2014 amending the Code of the Town of Clarence, Chapter 181-Signs. Upon roll call – Ayes: All; Noes: None. Motion carried.

Phil Silvestri of Silvestri Architects requests a Change-in-Use from vacant, previously approved nail salon, to a professional office building at 8353 Main Street. James Callahan said the location is the southeast corner of Main Street and Susan Drive consisting of a vacant lot in the Residential Single Family Zone. A use variance was granted in 2007 to allow for a nail salon with the condition that any future change-in-use would require Town Board review and approval.

Lowell Dewey said this is a 3,400 sq. ft. single-story office building with a masonry façade. Parking is around it. It will be on septic. They will look into the possibility of a sewer connection.

Councilman Casilio said he would prefer to see the parking in the back of the building. They were thinking that it may be too high. He asked that they keep the house behind them in mind. It may be okay with the change in elevation.

Mr. Dewey said the highest point is 19 feet.

Councilman Casilio said it was also discussed whether the exit onto Susan Drive is necessary. Further discussion on this should take place.

Councilman DiCostanzo said he lives in that area and the intersection is always busy. If they do not need both, he would like to see the Susan Drive exit omitted.

Mr. Dewey said that would be the safest exit. They do have a small detention area along Main Street.

James Callahan said the NYS DOT will comment on the access.

Motion by Councilman Casilio, seconded by Councilman Kolber to refer the request for a Change-in-Use from vacant, previously approved nail salon, to a professional office building at 8353 Main Street to the Planning Board for review. Upon roll call – Ayes: All; Noes: None. Motion carried.

Eliot Lasky, Roxberry Subdivision requests Development Plan Approval for a previously conceptually approved subdivision consisting of 19 Residential Single Family lots as an extension of Gentwood Drive. James Callahan said this is the second phase of Roxberry Subdivision located on the west side of Gentwood Drive to the Eastern Hills Mall consisting of vacant land in the Residential Single Family and Restricted Business Zones. The applicant agreed to table the action to allow the Town time to pursue a corridor plan for Eastern Hills Mall. No action has occurred on that plan so the applicant is seeking Development Plan Approval.

Councilman Casilio said this project is literally in his backyard so he will recuse himself from all discussions and decisions.

Sean Hopkins, attorney for the applicant and Leanne Voit, project manager were present. They are proposing a 19-lot subdivision as an extension of Gentwood Drive. This plan is almost identical to the original plan submitted in 1993. A Negative Declaration was issued. It has been 12 years since this project was presented. The subdivision regulations have changed and he believes the next step is to go to the Planning Board for review and decision. They have some technical issues to address and feel this can be done.

Mr. Hopkins said Leanne Voit did send letters to all of the property owners within 500 feet of the project site explaining what the project is along with a map. She included contact information and have received about 7 calls. A few of the neighbors were concerned about blasting. Since the sewer lines area already in, there is no need to blast. A letter is on file with Mr. Callahan stating that there will not be any blasting.

Councilman Kolber said this project was approved quite some time ago. The applicant did hold off while the corridor road was explored to see if there could be other uses for the property.

James Callahan said the property was rezoned with the update to the Zoning Law. The east side is Residential Single Family and the west side is Restricted Business which does allow single family homes.

Councilman Kolber said there was a change in the number of homes allowed on a cul-de-sac.

Mr. Hopkins said on that subject, since there is a Negative Declaration issued, Concept Plan Approval and the unique situation, they would hope that it would be approved as is. Mr. Lasky was cooperative with delaying his project.

Leanne Voit said there was a stormwater permit issued for a dry basin under the new regulations.

Councilman Kolber said the legal concerns have to be addressed. The best way to get everything resolved is to send it to the Planning Board for review.

Motion by Councilman Kolber, seconded by Councilman Geiger to refer the request for Development Plan Approval for a previously conceptually approved Roxberry Subdivision consisting of 19 Residential Single Family lots as an extension of Gentwood Drive to the Planning Board for review. Upon roll call – Ayes: Councilmembers Geiger, DiCostanzo, Kolber and Supervisor Hartzell. Noes: None. Recuse: Councilman Casilio. Motion carried.

There being no further business, Supervisor Hartzell adjourned the meeting at 8:25 p.m.

Nancy C. Metzger  
Town Clerk