

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, June 26, 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, Peter DiCostanzo and Robert Geiger. Councilman Casilio was absent. Other Town Officials present were Director of Community Development James Callahan, Assistant Planner PT Michael Hutchinson, Junior Planner Jonathan Bleuer, Town Attorney Lawrence Meckler, Town Engineer Timothy Lavocat, Senior Building Inspector David Metzger, Confidential Secretary to the Supervisor Karen Jurek, Planning Board Chairman Robert Sackett, and Director of Administration and Finance Pam Cuiello.

Director of Community Development - James Callahan

Public Hearing:

A public hearing is scheduled for 7:45PM to consider a Local Law amending the Code of the Town of Clarence, Chapter 229 Zoning, §229-126 Multifamily Developments and Town Board Policy regarding a residential building permit cap.

Formal Agenda items:

Waterford Village, LLC

Applicant is proposing to dedicate the most recent addition to the PURD that will include approximately 700 linear feet of Wicklow Manor and 11 residential building lots in the Waterford Estates. The proposed site is located on the north side of Roll Road, west of Rinaldo Circle in a residential classification within the Waterford Planned Unit Residential District (PURD). The Town Board has final approval authority to dedicate town roads and accept Final Plats. The Town Engineer and Highway Superintendent will have to approve the road construction.

Zoe' Restaurant 5701 Transit Road

Applicant is seeking approval to reopen the outside dining at the existing restaurant located in the Commercial Zone. A public hearing was held and the renewal application was tabled pending completion of a required landscape area along Transit Road. The proposed site is located on the east side of Transit Road, south of Highland Farms Drive. Per the Zoning Law, outside dining permit uses may be allowed with a Temporary Conditional Permit as approved by the Town Board. Landscaping has been completed and a public hearing has been held on the request.

Brookfield Country Club – Fireworks Permit

Applicant requests a Fireworks Permit for the public display of fireworks on July 6th and September 21st, 2013 at 5120 Shimerville Road. Application, fees, insurance and Fire Chief approvals are all in order.

Town Engineer Timothy Lavocat

The library parking lot grant was approved; more information will be available at the next Town Board meeting as far as what the Town's share will be. Unfortunately it will not coincide with the library repair project which is expected to begin July 1. Library Director Monica Mooney obtained the grant.

Senior Building Inspector – David Metzger

In 2009 there was a house fire at 8320 Clarence Center Road and has been the subject of several complaints. The demolition paper work has been filed and will be signed tomorrow.

Confidential Secretary to the Supervisor Karen Jurek reminded the Town Board that there will be no July 3rd morning Work Session, it will be held on July 10th along with the regular Town Board meeting in the evening.

Planning Board Chairman Robert Sackett reminded the Town Board of the joint Town Board/Planning Board meeting on July 31, 2013.

Supervisor David Hartzell

- Special Event Request – Hollow Fest July 4, 5 and 6, 2013 at Clarence Town Park
- Appoint Kristin Beaver Clerk PT Seasonal

Motion by Supervisor Hartzell, seconded by Councilman Geiger to renew Grant Writer Bernard Rotella contract for another six months. Upon roll call – Ayes: Councilman Geiger, Councilman DiCostanzo, Councilman Kolber, Supervisor Hartzell; Noes: None. Absent: Councilman Casilio. Motion carried.

Councilman Bernard Kolber

Councilman Kolber referenced the Draft Multiple Family amendment-page 2 #2 should be removed from the law.

Councilman Kolber thanked Director of Community Development James Callahan for his comments in the Buffalo News relative to the tax base and development.

Councilman Peter DiCostanzo

Councilman DiCostanzo referenced the Draft Multiple Family amendment – page3-G3 should be changed. Director of Community Development stated that after the public hearing and public input, the amendments will be made.

The Board received a complaint about several dirt bikes riding behind a house on Strickler Road. Unfortunately there is not much the Town can do for the residents in the area. “The town does not have a noise ordinance and if we did, Code Enforcement would be driving around town all day for these things.” Councilman Kolber said there have been similar complaints from residents on Candlewood Lane as well. Supervisor Hartzell said we get complaints about the noise from snowmobiles as well.

Councilman DiCostanzo suggested contacting Erie County Correctional Facility Service Action Corps. Program that would allow inmates to volunteer to clean out the ditch on Christian Drive. Supervisor Hartzell said he would run this by Highway Superintendent Donner to see if it can be done. Councilman Kolber stated that over the years, he has previously discussed this with Highway Superintendent Donner however; there is no formal easement on that ditch. Town Engineer Lavocat stated that a portion of the ditch has an Erie County easement on it. The problem with some of the ditches is that there is no public easement on them. A temporary easement could be obtained to allow access on private property.

Councilman DiCostanzo had a meeting concerning the 2012 Audit. The auditors had some comments on how to strengthen internal controls and procedures. Councilman DiCostanzo along with the auditors met with Pam Cuvillo, Lori Plis, Karen Jurek, and Robin Sendlbeck to see how the town can implement some of the auditor’s recommendations. Councilman DiCostanzo will send a memo to the Audit Committee recapping the meeting and see if they are on board with it and hopefully get those recommendations implemented.

The Youth Bureau interviewed nine students for two open positions on the board. A motion will be made at the July Town Board meeting.

Councilman DiCostanzo will make a motion to accept Michelle Zastempowski resignation from the Youth Bureau and appoint Chelsea Venditti as Youth Activities Leader PT-Seasonal.

Councilman Robert Geiger

Councilman Geiger will make a motion authorizing the Supervisor to send a written request to County Executive Mark Poloncarz to effectuate necessary repairs to Goodrich Road in the Town of Clarence.

Mercy Flight will be making a landing in Clarence Town Park on June 29th during Day in the Park. Clarence Fire Chief William Major will be on board. There will also be a French-Indian War reenactment at the Historical Museum.

The annual Senior Center meeting will be held Thursday, June 27, 2013.

Erie County Legislature Rath and Brian Poliner were discussing some of the intersections in Clarence. Supervisor Hartzell commented that where the bike paths cross county and town roads there are virtually no markings or they have worn away. Supervisor Hartzell would like to see larger markings possibly white stripes with a bike in the middle of the road. The bike path at Salt Road has no markings other than a small stop sign, the speed limit is 55mph down Salt Road, this is an accident waiting to happen. Councilman Geiger suggested solar blinking lights for either side of the bike path. County Legislature Rath is talking to Erie County Director of Engineering Charles Sickler and will report back to Supervisor Hartzell.

There was a discussion regarding the Building Cap. Currently the cap is 240 for Single Family Residential homes (170 inside subdivision/70 outside). It does not include any multi-family or manufactured homes; this is a way of integrating those permits in as well. Former Planning Board Chairman Al Schultz and James Callahan put this concept together about one year ago. They had done some Master Planning and environmental review identifying that this would be an acceptable means of controlling the issuance of permits.

Total residential permits - 225 units

Single Family Homes within Subdivisions 100-225 units (includes permitted duplexes and quadplexes within Open Space Design Developments/PURDS counted as 2 units and 4 units respectively). If no Multiple Family Housing Permits are issued within a calendar year, the cap on single-family residential may be raised up to the 225 permit cap limit. Single Family Homes outside of subdivisions 25 units (includes permitted duplexes counted as 2 units). Multiple Family Residential Units and Manufactured Housing Units – 100 units (senior housing units to count as .75 of a unit).

In reviewing the reports received from the Building Department (Residential Single Family only- does not include manufactured housing) 2007– 103 building permits were issued, 2008–62, 2009–56, 2010-47, 2011-70, 2012-112, 2013 through May-60 permits issued. If you included manufactured housing or multi-family, those numbers would change.

There are not many parcels available to be able to develop multi-family that would meet current conditions – sewerage in the commercial zone if this law is adopted.

James Callahan suggested keeping the Building Cap as Town Policy then the Board has the ability to adjust the number depending on economic conditions.

Johnson Controls did an Energy Audit of the Town; Supervisor Hartzell distributed the information to the Board. Johnson Controls specializes in saving towns energy in many different forms, however it is a 10 – 15 year payback and very expensive.

There being no further business, the Work Session adjourned at 7:45 PM.

Darcy A. Snyder
Deputy Town Clerk

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, June 26, 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 Jacqueline Kim, Clarence High School Salutatorian, followed by a moment of silence.

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 work session held June 5, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio to accept the minutes of the work session and regular meetings held June 12, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio to accept the minutes of the work session held June 20, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to approve the following special event subject to receipt and approval of the required insurance coverage:

HOLLOW FEST-FAIR at the Clarence Town Park, 10405 Main Street

Dates: July 4, 5 and 6, 2013 from 11:00 a.m. to 12:00 a.m. on all three dates

Number of People Expected: approximately 1,200+/- per day.

(The applicant has also requested the dates of July 3, 2013 for set up and July 7, 2013 for clean-up and to break down the event.)

On the question, Supervisor Hartzell said all the appropriate agencies are to be notified by the applicant. The applicant has been advised to provide the required Certificates of Insurance. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Kolber to appoint Kristin Beaver as Clerk PT Seasonal effective July 8, 2013 and ending August 30, 2013 at the rate of \$12.42 per hour. Upon roll call – Ayes: All; Noes: None. Motion carried.

Supervisor Hartzell announced that the Town Board made a motion in the work session to renew the agreement with Bernie Rotella, the grant writer for the Town.

Motion by Councilman Kolber, seconded by Councilman Casilio to grant a Fireworks Display Permit to Brookfield Country Club at 5120 Shimerville Road for July 6, 2013. All necessary paperwork and fees have been submitted. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Kolber said the library has received a grant to increase the size of the parking lot.

The 2012 Annual Report for the Clarence Public Library is out. It states that an average of 486 people per day visited the library during 2012. They also had 3,541 hours of time given by volunteers.

Councilman Kolber said there was an article in the Buffalo News on Monday that tied some of the school tax issue and school operation to the Town. He complimented James Callahan for his comments. You have to watch where your information is coming from. It was developers who said we were too strict on development. We have maintained a slow steady growth that allows us to absorb it without being a victim of our own success. As a result, we have kept the Town taxes, which we can control, virtually flat. If we grew at the rate of other towns, it would destroy us. We do not have the road infrastructure in place or a police force.

Councilman Casilio said he would also like to compliment Mr. Callahan on his comments in the article. We have been able to keep our tax rate pretty flat.

Councilman Casilio said he is on the Day in the Park Committee and wanted to mention how hard everyone is working to have a successful event this Saturday, June 29th.

Motion by Councilman Casilio, seconded by Councilman Kolber to authorize NYSEG to activate seven (7) street lights in the Waterford Commons Subdivision Phase 3, Part B, on Monaghan Lane, per the approved street light layout, as per the NYSEG proposal and as per “as-built” conditions. Standards, fixtures and underground conductors installed by the developer. Conductors, fixtures and standards to be owned and maintained by the Town of Clarence. Connection, energy lamps and photo electric eye replacements to be supplied and maintained by NYSEG under the terms and conditions of NYSEG’s street light agreement with the Town of Clarence. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Casilio, seconded by Councilman Kolber to authorize the Supervisor to sign the “Approval to Refinance” document for the refinancing by the Harris Hill Volunteer Fire Co., Inc. for an existing obligation relating to the firehouse building subject to review and approval by the Town Attorney’s Office.

On the question, Councilman Casilio said the required public hearing was held at the Harris Hill Volunteer Fire Co., Inc. on June 13, 2013 at 7:00 p.m. by hearing officer Garry Soehner. The Supervisor received the hearing officer’s written report on June 17, 2013. Councilman Casilio added that the fire hall was financed at an extremely good rate and they have paid down on that debt. They would like to refinance now at an even better rate, which benefits the district and the Town of Clarence.

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

Councilman DiCostanzo said the Youth Bureau Board interviewed nine candidates last night to fill two open student positions on their board. They are recommending two students to be appointed. He will make these appointments along with reappointments altogether in July.

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to accept the resignation of Michele Zastempowski from the Clarence Youth Board. On the question, Councilman DiCostanzo said her term expires 12/31/14, but she felt she could not serve anymore. This creates an opening on the Youth Bureau Board. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger to appoint Chelsea Venditti to the position of Youth Activities Leader PT – Seasonal at the budgeted rate of \$9.59/hr. effective June 27, 2013 pending all necessary employment paperwork is approved and pre-employment requirements are being met.

On the question, Councilman DiCostanzo said it is anticipated that she will work with the Youth Bureau through mid-August. He added how much the student volunteers are helping out different organizations in Town and elsewhere. They have 60 events in July that they will be volunteering for.

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

Councilman DiCostanzo announced that the pool is open along with the new slide. Councilman Geiger added that he was there the other day and it was very interesting to watch the control in using the slide for safety purposes.

Motion by Councilman Geiger, seconded by Councilman Casilio that the Clarence Town Board hereby authorizes the Supervisor to send a written request to County Executive, Mark Poloncarz, to effectuate necessary repairs to Goodrich Road in the Town of Clarence. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Geiger said Day in the Park is this Saturday, sponsored by the Lions Club. Mercy Flight will be landing between 3 and 4 o’clock at the Park. Clarence Fire Chief Bill Major, who is also an EMT for Mercy Flight will be on board. There will also be a reenactment of the French Indian War. The Historical Museum will be open.

Councilman Geiger said the HollowFest will be held July 4th, 5th & 6th at the Main Street Park.

Councilman Geiger said the annual meeting of the senior center will be held tomorrow at 1:15 p.m.

A Public Hearing was held to consider a Local Law amending the Code of the Town of Clarence, Chapter 229 Zoning, §229-126 Multifamily Developments; and Town Board Policy regarding a residential building permit cap. James Callahan said the proposed amendment to the Zoning Law involves a modification to the Special Exception Use Permit requirements for multiple family dwellings.

Numerous proposals have been reviewed by the Town Board and Planning Board. The amendments include:

- Multifamily housing only allowed in Commercial, Restricted Business and Traditional Neighborhood Zones.

- Commercial and Restricted Business Zones allow only sewered lots of 5+ acres and with 25% commercial use requirement to preserve the commercial use longterm.

- Maintaining minimum open space and recreation requirements.

- Maintaining 8-units per acre maximum density and including a 2-story height restriction to further limit maximum density.

- Traditional Neighborhood District has a maximum of 16 units.

- The draft does include an allowance for unsewered lots with restrictions and a required mixed use component and a 4-unit per acre density.

The proposed building cap, which was included in the public hearing notification, is a Town Board policy matter that is under consideration to limit the number of residential use permits issued in a calendar year by the type of housing.

Speaking to the subject:

Joe McIvor, Buffalo Niagara Builder's Association requested that a vote not be taken this evening on both of these issues because the members of the Association were not aware that they were coming before the Town Board this evening. He would like to come back with a position statement prior to the next meeting. He received a call at 5:00 today.

Supervisor Hartzell said they may vote on the multifamily issue tonight, but not on the building cap.

Mr. McIvor said he has a number of members that would be severely affected by the way this law is drafted. He believes that the multifamily law is tainted with a brush that is not necessarily appropriate. Living in a community that recently faced a 10% school tax increase, multifamily units do not generally add to school population as compared to single family units. They contribute heavily to the school tax base, but not use of the schools.

Councilman Casilio said this has been going on for six months and we have the potential of 17 new projects and adding 10,000 more people to the Town. He believes 10,000 more people in the Town will affect the tax rate and we certainly do not want to raise taxes.

Mr. McIvor said he understands that no project can go forward without a majority vote of the Town Board. Therefore, the Board still maintains total control of project approvals.

Councilman Kolber asked how could we give one project approval and not another if they are similar. The Board could be deemed as being arbitrary and capricious.

Mr. McIvor said the Board could be deemed as being arbitrary and capricious by not providing affordable housing in the community. It happened downstate where they were mandated by the Federal government to provide so many units of affordable housing per every single family home built.

Councilman Kolber said we do not want to eliminate multifamily development, but he is sure there are a lot of people in the Town that would like them to.

Mr. McIvor said by virtue of the attendance tonight, it does not seem to be a tremendous concern to the population.

Councilman Kolber said maybe they are confident in the actions of the Town Board.

Mr. McIvor said they came out in favor and against in great numbers when the 10% increase in the school tax rate was proposed.

Councilman Kolber said there are many issues involved including maintaining a balance in the type of residential development that goes forward keeping with the nature of our semi-rural town. The majority of the residents want to maintain that character. The building cap number was done in the past and they have not discussed it yet. We have to maintain a balance of commercial growth in proportion to the residential. We have very little suitable commercial property.

Mr. McIvor said he understands all of that, but the Town Board controls the destiny. He does not think it is right to say you have to include a commercial component within an apartment

complex. Businesses locate where there is traffic and business. Some people do not want to live where there is a lot of businesses.

Councilman Casilio said they are trying to interact commercial to help generate funds for our tax base. He does not believe wall-to-wall white boxes of apartments will pay for themselves. He also does not believe that generally there will not be any kids.

Mr. McIvor said all he is asking is that the Town Board does not vote tonight on this law to give the industry the opportunity to speak on an issue that most of them did not know was coming up tonight.

David Huck said he was reading the various adjustments to this regulation. He thinks the Board should give more consideration of the unique properties around the Town because he does not believe one regulation will fit all. There should be some flexibility to deal with them. You would not want to put commercial far back off of a main road. If a nursing home is considered multifamily, you could not build one with this law. They have a unique design and tend to be different than apartments.

James Callahan said nursing homes are in a separate category.

Councilman Casilio said the law does address his concern with commercial limited to the front of the property and as you go back further on the property, the requirement is not there. He added that the project Mr. Huck submitted for Wehrle Drive would fit this law.

Mr. Huck said he did not own the frontage. There are odd ball shaped properties that would need flexibility.

Councilman Kolber said no law is perfect. The question is how imperfect is it and will there be a lot of variances to it. They tried to draft something that keeps within the character of the Town and allows multifamily, but scales it to a level that the Town can absorb. They found out that some of the largest, denser projects did work in certain areas. We need something that is all encompassing. That is why we have a Zoning Board of Appeals. He believes the Town Board can also make special exception variances, but you have to start someplace.

Michael Metzger said we need to have varied housing type options available in the Town. We hate to see our children grow up and have to move out of town because they have no options for affordable housing. There are people who choose not to own a home and prefer to live in apartments. This law almost prevents that option from happening.

He also has a concern with the limitation to redevelopment options in certain areas of the Town. We should encourage that. Too much limitation will discourage that from happening. He knows there has been a lot of work on this, but he thinks more emphasis should be that a multifamily project be viewed as a valuable commercial project. He had a client with a project that they ran the numbers on how much property tax revenue would be generated as opposed to an office complex that would fit at the same location. It is very close, especially with a commercial project that has an IDA inducement.

Councilman Casilio said one project with 1,000 people added puts a strain on the schools, police and infrastructure. The dollars fall short coming in, but the added people to support burdens the services.

The law does not limit the amount. Councilman Casilio said we have almost 2,000 apartments in the Town now. He asked what Mr. Metzger felt the right amount of apartments should be for a Town of our size since he said there are not enough.

Mr. Metzger said he does not see where the projects are coming in that would bring an additional 10,000 new residents to the town. The one project he brought forth previously would never have had 1,000 people. It consisted of approximately 150 units.

Councilman Casilio asked again how much is enough for a town of 30,000 people?

Mr. Metzger said he did not have a number. This is a public hearing where people can come to speak and express their opinions about the subject. He feels as though this is an inquiry.

Councilman Casilio said he asks because of his profession as an engineer.

Michael Metzger said he does not have a specific number. He just does not want the Town to close the door for more opportunities. There were a few applications brought in which leads you to believe that there is a need. A project does not come forth without the applicant doing their research. This is the basis for his statement.

Michael Metzger said he feels that the code goes against the principles of the Traditional Neighborhood District.

The restriction for sewerred areas gives no ability to have a functioning treatment facility. He understands the concerns because of the issues in the Town. The technology that is available today, along with the environmental oversight, they are able to do sound systems. There are very

limited exceptions in this draft for reasonable systems. It restricts it so that nobody could afford to do the projects. He asked that it be looked at further before approving this law.

Mr. Metzger said he is also concerned about the non-residential component mandate is a recipe for disaster. Some may be an expert at multifamily development, but not other types of commercial uses. He believes there are other ways to do that without making it a requirement.

Mr. Metzger said he realizes that open space is important in this Town, but believes there are other ways to preserve. One way is by allowing more than two stories. It would open up more land.

Mr. Metzger said every project does not fit into the same box. It is difficult to regulate every concept that could come up. The Town has the ability to decide what works and what does not. He believes that more and more the courts are siding with the municipalities that have a strong decision making process and state reasons why a project does not work. He believes the Board should trust in the Planning Board and themselves to work within the law that is already in place.

Lou Visone said it is tough when you think you are making the right decision and it comes back to bite you. He understands that a lot of time was spent on this law. His family owns commercial property, apartments and vacant land in the town. He is redoing an old motel on Main Street into apartments and he sees who wants to live in Clarence. He has single mothers, young families and older people. The families are using the apartments as a stepping stone to save up for a home of their own. They have about 50 tenants. He has never had an issue with police and his tenants.

Councilman Casilio said looking at towns across the state; it seems the magic number for a local police department is about 40,000 people. We are not there yet. He would rather see the Town work with the State Police or the Sheriff's Department.

Supervisor Hartzell said they also found towns over 100,000 people with no police department. The startup costs are \$3million and \$7million a year to operate.

Councilman Kolber said they use county police forces. Taxes would skyrocket if we had to take that on.

Daryll Remsen said he is interested in development and how it affects the quality of life. There are people interested in making profits. He said Councilman Casilio asked before if there was a magic number. He asked Mr. Callahan if there is one. There are studies for many things and is there some national standard.

James Callahan said every community is going to be different. The magic number would vary. The market also dictates what a community can absorb. There is no number that is universal for every community.

Councilman Casilio said communities within Erie County will be different because some may have sewers and some do not. He thinks just by putting 50 units in a dense area, you could have the police going there. Some complexes are as big as Meadowlakes Subdivision. The ratio of that many people in a denser situation dictates that need.

Mr. Remsen said the article in the Buffalo News said the Supervisor declined to comment and he asked if he cared to comment now.

Supervisor Hartzell said no.

Mr. Remsen said he has said before that he thinks the Supervisor also acting as chairman of the IDA gives at least the appearance of a conflict of interest.

Supervisor Hartzell said it is not a conflict of interest at all. In fact, almost every town in Erie County that has an IDA, the chairman is also the supervisor. It is not unusual at all.

Councilman DiCostanzo said we have strayed away from the subject of the public hearing. It is a time for people to give their views and now it is turning into an interview the Supervisor.

Supervisor Hartzell said there is an opportunity to speak at the end of the meeting about any subject you choose.

Howard Melancon said he has attended many town board meetings, but this meeting is not being controlled. He said to Councilman Casilio that he questioned a speaker about a number and there is a professional engineer on staff that he could ask. Councilmen are here bragging that we do not have our own police force. He thinks the other residents of the county and state would wonder why Clarence takes advantage of the Sheriff's and State Police and buys

greenspace instead of funding the police. He does not know why this is not being kept on the subject of apartments and density.

Supervisor Hartzell said he believes in having an open forum. If you drive over here and you want to talk about something, we will listen. During a public hearing, the council members will also ask questions back and forth. He grew up in Boston where at a town meeting you put up your hand if you wanted to talk. Everybody listens and there was a lot of debate and transparency. He thinks that is how a town meeting should be with lots of questions and lots of dialogue.

Councilman Casilio said if someone says there is not enough apartments, his question is how much is enough and what would be recommended for a town this size. It is a public hearing and it is give and take right now.

Supervisor Hartzell said he felt it was a fair question, which is why he let the debate go back and forth.

Councilman Kolber said he believes we have about 11,000 residential units in town. If the 2,000 rental units is correct, we have about 18%. You would have a higher percentage in a city where it is denser.

Noel Dill said he believes it would be okay if the current law stands as is. The law states that any multifamily project requires a special exception use permit with a supermajority vote of the Town Board. The point is that the Board already has control over whether the projects can move forward. It is a very long and arduous process. He believes the reason for the proposed law was that a few large scale projects came in with 200 units or more. They were proposing a mixed use project for Main Street. The parcels on Main Street are much smaller than others throughout the town. When you regulate all of them the same without regard to where they are, there are hardships to those parcels. They feel the mixed use of business, retail and apartments along Main Street is an appropriate use. It is meant to have more density than other areas.

Mr. Dill said it was stated earlier that this is a semi-rural town, but it is a mixture of different areas with some more dense than others. That is what makes Clarence unique. They are supportive of sewers wherever they are going to be. Main Street has a lot of old motel units that were necessary at one time. Now they represent semi-transient lodging. It has a demographic where you may get more police calls, than you would get in an area like Coventry Green.

One issue is the cap in terms of how many units per acre on areas that are already zoned commercial. You end up having a situation where those projects are no longer financially viable. There needs to be a way to walk residential and commercial together along Main Street. There is a big gap from Goodrich Road to the Hollow area making it difficult to develop the commercial area. Many former commercial structures have been cannibalized by apartments showing that there is a demand for residential apartments in the town.

Mr. Dill said there was a discussion at a previous work session a while ago on whether variances were an appropriate remedy. They would be opposed to having to apply for a variance for something. They see the variance process as a remedy for a hardship that came up unforeseen. Development for apartments is not unforeseen. It takes that process away from what it is supposed to be.

The current law does not give you the right-of-use. Any consideration of a law that envisions something that you would like to build, it is not appropriate for the Town Board to break that law without consideration of is this going to require a variance. They are looking for a sewage solution for the approved project for Goodrich and Main. Everyone seemed to be in agreement that it would be a model of what would be good for Main Street. That project could not be approved by this draft law. He does not see how it would make sense for a Town Board to draft a law that would preclude a project that everybody agrees makes sense. That is why he believes the current law makes more sense. They are looking to build a sustainable community along Main Street to fill in the holes and add to the tax base. The revenue would stay in the Clarence schools and you would not see the need for a high tax increase.

Councilman DiCostanzo said he thought they added to section F for exceptions to help out in this case. He asked if Mr. Dill's contention is that they are still limiting it.

Councilman Casilio said he thought there were other avenues in place for him to do what he wanted to do.

James Callahan said he has a special exception use permit for Main and Goodrich. That project has been approved.

Mr. Dill said he is using that as an example for adjacent land on Main Street that they feel is equally viable. He is talking about putting in a mixed use with commercial across the front with apartments above.

Councilman Casilio said there are avenues to change things.

James Callahan said the property across from Dash's was zoned Traditional Neighborhood District and then the Town rezoned the back portion to accommodate the additional growth. In terms of the exception, we do require a mixed use. We limit the density to four units per acre and cap it at 16 with septic.

Noel Dill said their comment to that is limiting to four units per acre is a hardship in terms of a mix of residential and commercial. The DEC would allow up to 33 units on a project. A five acre parcel now would only be allowed 20 units. The onsite treatment limit is much more aggressive than what the DEC or the County requires. They would connect to public sewers as soon as they became available and abandon their investment because they believe that the overall concept of getting that rolling is very important.

Mr. Dill said they see a lot of opportunity for positive growth and more tax revenue for the town. There was a comment about expertise in operating blended environments and they are already doing that. He believes it is the formula to change the face of Main Street for a positive private sector investment.

Paul Stephen said he does not want to see big box along Main Street either. He would like to see something special and different. He said the former supervisor asked them to talk to someone from UB and they did. His suggestion was to get a company started at a lower rate so that they can build their business. The mixed use works great. He believes in new taxes by way of getting rid of the old and putting in new. He buys property, fixes it up and takes care of it to improve the area.

Councilman Kolber said he would like to see a variety of uses there. He does not think people want to see the same thing all along Main Street and that is his concern. You would preclude other types of development. He does not think this law does it. He would like something that looks at the overall character of Main Street and allows and encourages in the right areas a mixed use development. He does not want it the entire stretch of Main Street. Development goes through cycles.

Paul Stephen said there is nothing worse than seeing so many empty buildings for rent on Main Street. If success happens, more will follow.

Councilman Kolber said that is the case everywhere.

Councilman Casilio said his concern is that the apartments could put a financial burden on the Town residents. He asked if he knew what the dollar amount is for an apartment to pay for itself.

Paul Stephen said they have 95% seniors and maintain their own property. Almost 100% of the money goes to what they need. New apartments or mixed use require all of the maintenance.

Councilman Kolber said he was concerned when we were inundated with potential projects coming in. They will be overbuilt in a stagnant declining area and end up with empty apartments. With a retail space, something will fill that void.

Councilman Casilio said we do not want to slam the door in their face. There are other avenues to go down to get a project approved. He should submit the project and see how far it will go.

James Callahan said the final approval on a multifamily is a supermajority vote by the Town Board. A density question would be an area variance. The ZBA could consider it, but it would still come back to the Town Board for final approval.

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 Geiger, seconded by Supervisor Hartzell to adopt Local Law No. 2 of 2013 amending the Code of the Town of Clarence Chapter 229 Zoning - §229-126 Multifamily Development, with amendments to the draft to include: Remove from page 2, item 2., which reads "Where an interconnection with other residential or commercial uses is provided, the amount of green space can be reduced to 20 percent; remove G. 3. Parking shall be to the rear or side within any multiple family residential development. This local law shall become

effective upon filing with the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule.

On the question, Supervisor Hartzell said this motion is just for the Multifamily Development Law, and not on the building cap. The Town Board will be discussing that over the next few weeks.

Councilman Kolber said the Board had agreed to remove the second sentence of item 2. James Callahan said G. 3. Related to the parking requirement should also be removed. Councilman Kolber said this is not a perfect law. It is the best attempt made by the Planning Board and Town Board. It is not a law he would like passed. He does not know if they could all come to an agreement of something better. A serious attempt was made by all parties to protect the character of the Town.

Councilman Casilio said there are parts of the law that he disagrees with too, but we need to move forward so that people can submit their projects to see if it works through the system. He does not agree with the density in the Traditional Neighborhood District. We have the ability to amend the law if we have to in the future. If the applicants want a denser project in the TND, they have other avenues through the Town to try to get their projects approved.

Councilman DiCostanzo said they have been talking about this for a long time. They have tried to put some things in the law to address concerns they heard from people. We are going to go with it as it is and maybe we will have to change some things.

Councilman Casilio said studies were done with the former supervisors that showed you need \$250,000 to \$275,000 assessed value on residential homes just to support itself for infrastructure and the schools. It would be nice to know what the number is for apartments without burdening the existing residents.

Councilman Kolber said if he had a child in a school district that was struggling; he would rent the cheapest apartment in Clarence to get them in the school.

Councilman Casilio said the concern is some apartment complexes are as large as our residential developments. The taxable value in Loch Lea could be \$500 million, but an apartment complex in the same location could be \$20 million.

Councilman Kolber said you could change the character of the Town by overbuilding and then not be able to change it back. When you have slow steady growth, you can make changes along the way.

Councilman Casilio said he has seen apartments in other towns that have vacancies. He thinks we need to keep an eye on it to protect our citizens. We have been looking at this for the last six or seven months.

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

Supervisor Hartzell thanked Jim Callahan and Robert Sackett for all of the time they put in on this law.

Waterford Village LLC requests Final Plat Approval for Phase 3, Part D to include 12 sublots and approximately 700 linear feet of Wicklow Manor. James Callahan said the location is the north side of Roll Road, west of Renaldo Circle consisting of a previously approved phase in the Waterford Estates Subdivision.

Bill Schutt was present representing his client.

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

RESOLVED, that the Clarence Town Board approves the request of the applicant, Waterford Village LLC, for final Plat Approval for the previously approved Phase within the Waterford Village PURD that will include public road dedication of approximately 700 linear feet of Wicklow Manor and 12 residential building lots in the Waterford Estates subject to the following conditions:

1. Subject to all conditions of the Town Engineer.
2. All applicable fees.
3. All documents for the road dedication are to be submitted to the Town Attorney for review and approval.
4. No building permits shall be issued until the road deeds are filed with the Erie County Clerk's Office and proof of same is submitted to the Town Attorney's Office.

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

Zoe's Restaurant requests a Temporary Conditional Permit for outside dining at 5701 Transit Road. James Callahan said the location is the east side of Transit Road, south of Highland Farms Drive consisting of an existing restaurant in the Commercial Zone. The public hearing was held April 24, 2013. The item was tabled pending landscaping being completed. The Town Board can renew this permit for any period up to five years.

Alex Pozantidis was present.

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

WHEREAS, at a public hearing duly held on April 24, 2013, and after all interested parties being heard, the Clarence Town Board tabled the request for outside dining pending completion of a required landscape area along Transit Road by the applicant and said requirement has been completed, be it

RESOLVED, that the Clarence Town Board approves the request of the applicant, Zoe's Restaurant, for outside dining at the existing restaurant located at 5711 Transit Road subject to the following conditions:

1. The Temporary Conditional Permit is granted for one year.
2. Hours of operation: Monday through Saturday 6:30 a.m. to 11:00 p.m. and Sunday 6:30 a.m. to 10:00 p.m.
3. Outdoor seating not to exceed not to exceed 8 tables and 32 seats.
4. No live entertainment permitted.

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

Motion by Councilman DiCostanzo, seconded by Councilman Kolber to approve the following: Clubhouse Applications - A. Clarence Hollow Association – July 4, 5 & 6, 2013; B. Clarence Holiday Valley Ski Club – Sept. 29, 2013; C. Clarence Youth Bureau – Oct. 17, 18 & 19, 2013; Jan. 25 & 26, 2014; and Legion Hall Applications – A. Hearts and Hands – Aug. 14, 2013; B. Daniel Michnik – Aug. 28, 2013; and C. Ora Ganschow – Dec. 29, 2013. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Kolber, seconded by Councilman Casilio that after proper audit and review by the Town Board, the following bills of June 20, 2013: General Fund - \$230,431.05; Highway Fund - \$96,760.63; Water District - \$1,103.76; Lighting Districts - \$863.97; Sewer Districts - \$10,540.66; Capital Fund - \$11,561.05; and Trust & Agency 203 - \$880.00 for a total amount of \$352,141.12. Upon roll call – Ayes: All; Noes: None. Motion carried.

There being no further business, Supervisor Hartzell adjourned the meeting at 9:23 p.m.

Nancy C. Metzger
Town Clerk

