

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, March 25, 2015 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, Town Engineer Tim Lavocat, Highway Superintendent James Dussing, Confidential Secretary to the Supervisor Karen Jurek and Planning Board Chairman Robert Sackett.

Director of Community Development – James Callahan

Public Hearings:

Towne Automotive Group 8215 Main Street

Applicant is proposing to develop a Maserati Dealership at 8215 Main Street, located on the south side of Main Street, east of Transit Road behind the BMW Dealership at an existing previously approved office use located in the Commercial Zone within Erie County Sewer District #5. Per the Zoning Law, the Town Board has approval authority via a Special Exception Use Permit. The property previously underwent an environmental review for the office use. The Town Board will be Lead Agency on this modification. All setbacks and bulk requirements are per code. The existing office space on the parcel will remain. The Planning Board has forwarded a recommendation to approve the change in use.

Regent Development-Wehrle Dome Apartments 8230 Wehrle Drive

Applicant is proposing a mixed use project including 112 units of multiple family housing. The proposed site is located on the north side of Wehrle Drive east of Transit Road (existing driving range) located in the Commercial Zone within Sewer District #5. Per the Zoning Law, the Town Board has authority to approve multiple family housing projects with a Special Exception Use Permit. The ZBA has granted a use variance to allow for 112 residential units. A Negative Declaration under SEQRA has been issued by the Town Board and by the ZBA on the actions. The Planning Board has approved the Concept Plan and architectural style of the amended design.

Formal Agenda items:

Heritage Ministries – Vinecroft Senior Housing 5945 Vinecroft Drive

Applicant is proposing to construct two additional duplex structures (total of 4 units) to the existing campus. The proposed site is located on the east side of Newhouse Road, south of Clarence Center Road at existing senior housing facility located in a PURD (Planned Unit Residential Development) within Erie County Sewer District #5. The area identified is within a residential classification and within a previously approved PURD. Any change to an existing PURD will require review and approval by the Town Board. The overall density within a PURD may not exceed 3 units per acre. The addition of 4 units is close to the maximum allowed on this parcel. Referral to the Planning Board to thoroughly review the project and recommend action may be in order.

Work Session items for consideration April 8 2015:

George Smilanich 8575 Roll Road

Applicant is proposing to sell vehicles from the existing parking lot. The proposed site is located on the south side of Roll Road east of Harris Hill Road at existing industrial building located in the Industrial Business Park Zone. Per the Zoning Law, the Town Board may consider the request with a Temporary Conditional Permit. Utilization of the existing parking area for sales and the number of vehicles displayed are issues to be addressed. Applicant currently leases the building.

Eastern Transit Plaza 5445 Transit Road

Applicant is seeking a special event permit to operate a “cruise night” (Sunday afternoons from June – September 3PM-7PM) at existing commercial plaza located in the Major Arterial Zone. Per the Special Events Local Law, the Town Board has approval authority for town-wide special events.

Brookfield Country Club 5120 Shimerville Road

Applicant requests a Fireworks Display Permit for April 24, June 20, July 4, July 11 and September 5th, 2015. All Bonds, insurance, Fire Chief approvals and fees are on file.

Town Attorney Lawrence Meckler

Town Attorney Meckler updated the Town Board on the crossing guard issue at Transit Middle School. In November 2014, Town Attorney Meckler and Supervisor Hartzell met with Town of Amherst Supervisor Barry Weinstein and his attorney. At that meeting it was agreed that the Town of Amherst would provide the crossing guards under the supervision of the Amherst Police and the Town of Clarence would participate up to \$7,500 which would be roughly half the cost. The Clarence Town Board passed a resolution to that effect in November and sent it to the Town of Amherst. Town Attorney Meckler spoke with Amherst Town Attorney Thomas Jones and was informed that Supervisor Weinstein never communicated the information to his Board. Once the information was presented to the Amherst Town Board, they unanimously approved a resolution whereby the Town of Clarence and the Town of Amherst would split the cost of a crossing guard at Transit Middle School however instead of doing it at the level the Town of Clarence agreed to (155 days a year), Amherst passed a resolution based on 180 days a year and their resolution goes until June 30th, 2016. (Clarence crossing guards work 155 days a year and Amherst Crossing Guards work 180 days a year).

The Town of Clarence starts our Crossing Guards March 2nd. This year assuming the Town of Clarence agrees with the Town of Amherst resolution, the Crossing Guards will not start for another week or so. Instead of the 155 days that they would normally work, it would only be approximately 135 days that we would be paying for this year. Next year we would start up in January so Town Attorney Meckler calculated that if the Town of Clarence agrees to this deal we would end up paying for ten more days than we originally had agreed to back in November 2014. Essentially, the Town of Amherst wants to know if the Clarence Town Board is in agreement with paying for fifty percent of the crossing guards from now until June 30, 2016. Supervisor Hartzell budgeted \$7,500 for this year which will not get spent because it is twenty days less than originally thought it would be. Next year has not been budgeted for yet but if the Town of Clarence went to June 30th, 2016 it would cost approximately \$5,000 and if the town decided to go past June, it will be another \$5,000. Next year the cost for crossing guards will be \$10,000. If the Town Board would like to proceed, Town Attorney Meckler drafted a resolution which would split the cost with the Town of Amherst from now until June 30, 2016.

Town Attorney Meckler stated that the Town of Amherst resolution was vague but had an attachment that showed the number of days worked for each crossing guard which was 180 days on a full year basis. The crossing guards that the Town of Clarence utilizes is for 155 days. The rate of pay is roughly the same, Amherst has three levels of pay but their starting rate is ten cents less than our crossing guards are making. Amherst guarantees four hours a day and the Town of Clarence guarantees five hours per day. Town Attorney Meckler said that from now until June 30th, 2016 it “will basically be wash” on what the Town anticipated paying and what we will pay. The only question going forward is does the Town of Clarence want to have a crossing guard at this location for

180 days or 155 days as previously agreed upon. The Town of Amherst is providing the employees (Crossing Guards), who would be covered under their insurance.

Councilman DiCostanzo stated that the town budgeted \$7,500 and next year it will be \$10,000. Town Attorney Meckler stated that we will be under budget this year because it will not be a full year and next year we are only committed until June 30th, 2016. At some point the contract will have to be reviewed again.

Supervisor Hartzell suggested that the number of students crossing in January and February should be counted. If students are not crossing during these months, the crossing guards could be eliminated. Karen Jurek stated that our crossing guards keep track of the number of children that cross and note it on their time cards.

The Town Board was in agreement with moving forward with the resolution Town Attorney Meckler drafted.

Town Attorney Meckler has one Attorney-Client matter to discuss in Executive Session.

Town Engineer Tim Lavocat

Councilman Casilio will announce the Request for Proposals (RFP) for Professional Construction Management Services for the proposed NYS Police, EC Sheriff's and Clarence Town Court Facilities Project.

Erie County Highway has contacted Town Engineer Lavocat regarding the Goodrich Road Project. They have some wetland impacts and are interested in discussing with the Town Board options of doing their mitigation on the Beeman Creek Park site. Town Engineer Lavocat is recommending the Town Board meet with Erie County Highway at the April 1, 2015 morning Work Session.

In the coming weeks, the Private Improvement Permits will be issued for the Eastgate Plaza improvements.

Highway Superintendent James Dussing

Superintendent Dussing has a tentative list of road projects scheduled for this summer, he has the list available for the Board to review.

Superintendent Dussing is waiting for the County bids to be published April 1st and the NYS Budget to see where the town stands on CHIPS funding (Consolidated Local Street and Highway Improvement Program). The more money he gets from the state, the more work his department can do.

Councilman Casilio congratulated Highway Superintendent Dussing on the use of the grapple truck. He observed it in operation today with one man on board picking up brush instead of a large crew with several pieces of equipment. Highway Superintendent Dussing noted that spring brush pickup will begin April 13th and once his department gets going, there will be crews and equipment picking up brush. The grapple truck has been in use since it was acquired by the Highway Department but it can only do so much.

Highway Superintendent Dussing has one Attorney-Client matter to discuss in Executive Session.

Supervisor David Hartzell

Supervisor Hartzell has several motions to address:

- Approve Karen Jurek request to attend NYS Retirement System Employee Education Seminar
- Award the bid for a new Tandem Vibratory Roller for the Highway Department
- Award the bid for the purchase of 2 - 2015 Jeep Patriots to Dave Warren Chrysler Dodge Jeep Ram of Jamestown, NY at a cost not to exceed \$19,993 for each vehicle
- Amend the motion of March 11, 2015 to correct the rate of pay for Laura Grande
- Grant a Special Event request for the American Legion #838 Memorial Day Parade

The Conservation Advisory Committee has asked the Town Board to see about constructing two parking lots, one at the bike path on Wehrle Drive (near the railroad tracks) and the other at Heise Road. The Committee is looking at a gravel parking lot to accommodate approximately six vehicles each. Councilman DiCostanzo suggested getting the Boy Scouts to put a small pavilion at the Wehrle Drive location. Supervisor Hartzell will work with Town Engineer Lavocat and Highway Superintendent Dussing to come up with the cost associated with these projects.

Councilman Patrick Casilio

Councilman Casilio has several motions to address:

- Motion regarding the crossing guard at the Transit Middle School
- Announce the RFP for Professional Construction Management Services for the proposed NYS Police, EC Sheriff's and Clarence Town Court Facilities Project.

Councilman Casilio attended a security presentation. The security company reviewed some proposals. Communication through Time Warner or Verizon is expensive, some alternatives were provided.

Councilman Casilio has one Executive Session item to discuss regarding collective negotiations and one Attorney-Client matter to address as well.

Councilman Peter DiCostanzo

Councilman DiCostanzo has several motions to address:

- Motion to grant a Conservation Easement on vacant land located on Keller Road
- Accountant Clerk PT Kim Ignatowski is requesting approve to attend the Introduction to Governmental Accounting-Basic Account School on April 14th – 15th, 2015

Ethic's Disclosure forms are due by the end of March.

Lumsden & McCormick LLP will present their audit at the April 1, 2015 Work Session

Clarence Jaycees are hosting their annual Antique Show on Sunday, March 29th at the Clubhouse from 10AM-4PM

The Fishing Derby is scheduled for April 11th. Hopefully the weather will cooperate.

Councilman DiCostanzo asked Director of Community Development James Callahan to discuss two upcoming projects that are great projects but will not fit into our Multi Family

Mixed Use. (Doodle Bugs on Sheridan Drive and an office complex on Transit Road next to Floss Insurance). Mr. Callahan stated that when they changed the law in terms of Multi Family they identified the Mixed Use component which works except in the Restrictive Business Zone. Restrictive Business specifically does not allow retail and that is where the conflict comes in. Mr. Callahan questioned whether the Board supports allowing a small scale retail component in a Restrictive Business Zone in conjunction with Multi Family (upstairs apartments with retail component on the lower level)? Currently only office type use, salons or banking type facilities are allowed in Restrictive Business and the question is whether or not the town wants to expand that to allow for some small retail. The Multi Family Law could be amended again to put in that exception that allows small scale retail in conjunction with a Restrictive Business Zone. Mr. Callahan suggested referral to the Planning Board for review and recommendation.

Councilman Robert Geiger

Councilman Geiger will make a motion authorizing Supervisor Hartzell to sign renewal leases with Kreher's Poultry Farm, John Kelkenberg and Anchor Farms.

Councilman Geiger thanked Director of Community Development James Callahan and Assistant Director Jonathan Bleuer for meeting at the Youth Bureau to listen to their objectives. Many great ideas were brought up.

Councilman Geiger would like to meet with someone as to the mechanicals at the Youth Bureau.

Councilman Geiger inquired as to whether or not a consultant has been selective relative to the Time Warner Contract. Town Attorney Meckler stated that he will discuss this further in Executive Session.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to enter into Executive Session pursuant to §105(1) E of the Open Meetings Law to discuss collective negotiations pursuant to Article 14 of the Civil Service Law (The Taylor Law); §105(1)E the employment history of a particular person and several Attorney-Client matters. Upon roll call – Ayes: Councilman Geiger, Councilman DiCostanzo, Councilman Casilio and Supervisor Hartzell; Noes: None. Absent: Councilman Kolber. Motion carried.

There being no further business the Work Session adjourned at 7:16PM.

Darcy A. Snyder
Deputy Town Clerk

Motion by Supervisor Hartzell, seconded by Councilman DiCostanzo to adjourn the Executive Session at 7:28PM. Upon roll call – Ayes: Councilman Geiger, Councilman DiCostanzo, Councilman Casilio and Supervisor Hartzell; Noes: None. Absent: Councilman Kolber. Motion carried.

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, March 25, 2015 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 Peter DiCostanzo, followed by prayer given by Councilman Geiger.

Members of the Town Board present were Councilmembers Robert Geiger, Peter DiCostanzo, Patrick Casilio and Supervisor Hartzell. Councilman Bernard Kolber was absent. 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 work session and regular meetings held March 11, 2015. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Supervisor Hartzell recognized Gabe Maddalena of Lake Shore Savings Bank and Chairman of the Board of the Clarence Chamber of Commerce.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to approve the request of Karen Jurek to attend the New York State Retirement System Employer Education Seminar to be held at the Clarence Library on April 15, 2015 from 9:00 a.m. to 3:30 p.m. On the question, Supervisor Hartzell said there is no cost for the Seminar. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Casilio that upon the recommendation of Highway Superintendent, James Dussing, to award the bid for a new Tandem Vibratory Roller for the Highway Department to Milton Cat of Batavia, NY for a cost not to exceed \$122,195.00. On the question, Supervisor Hartzell said the cost of this equipment will be funded from Capital Project 44. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger that upon the recommendation of James Dussing, Highway Superintendent, to award the bid for the purchase of 2 – 2015 Jeep Patriots to Dave Warren Chrysler Dodge Jeep Ram of Jamestown, NY, at a cost not to exceed \$19,993.00 for each vehicle. On the question, Supervisor Hartzell said the funds are available in the Vehicle Replacement Account and are replacement vehicles for two of the Building Inspectors. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Casilio to amend the motion of March 11, 2015 to correct the rate of pay for Laura Grande appointed to the position of Youth Activities Leader PT to the actual budgeted rate of \$9.89/hr. effective March 29, 2015. On the question, Supervisor Hartzell said the motion incorrectly gave the rate of \$9.59/hour. Upon roll call – Ayes: Councilmembers DiCostanzo, Casilio and Supervisor Hartzell; Noes: None. Absent: Councilman Bernard Kolber. Recuse: Councilman Geiger. Motion carried.

Motion by Supervisor Hartzell, seconded by Councilman Geiger to grant a Special Event request for the American Legion #838 Memorial Day Parade to be held on May 25, 2015 beginning at 11:00 a.m. and ending at approximately 12 noon. On the question, Supervisor Hartzell said the parade will begin at the Clarence Sr. High School at 9625 Main Street and end at the Clarence Town Park at 10405 Main Street. In the event of inclement weather, the parade will be cancelled and the memorial ceremony will be held in the Town Park Clubhouse at 11:00 a.m. All the appropriate agencies will be notified. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

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

WHEREAS, the Town of Amherst has a program of crossing guards, overseen by the Amherst Police Department, to enable youngsters to safely get to school; and

WHEREAS, the Amherst Town Board would like to place two crossing guards in front of Transit Middle School, which borders the Town of Clarence.

NOW, THEREFORE, BE IT

RESOLVED, that the Clarence Town Board authorizes the Supervisor to sign an Inter-Municipal Agreement with the Town of Amherst for the provision of two crossing guards in front of the Transit Middle School through June 30, 2016, overseen by the Amherst Police Department, with the cost of such program split evenly by the Towns of Amherst and Clarence.

Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Councilman Casilio announced that the Town of Clarence is issuing a Request for Proposals (RFP) for Professional Construction Management Services for the proposed 20,000 SF +/- New York State Police, Erie County Sheriff's and Clarence Town Court Facilities Project to be located adjacent to the Clarence Town Hall.

The RFP can be obtained by submitting a written request to:

Timothy M Lavocat, P.E.

Town Engineer

6221 Goodrich Road

Clarence Center, New York 14032

or

Request via email to tlavocat@clarence.ny.us

Proposals are due April 14, 2015

All applicable information and detailed instructions are contained within the RFP.

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

WHEREAS, pursuant to a prior resolution passed after a public meeting duly held on March 11, 2009, the Town of Clarence Town Board (the "Board") approved the purchase of approximately 42.5 acres of vacant land located on Keller Road (SBL No. 44.00-4-9.11) in the Town of Clarence, County of Erie, and State of New York (the "Premises");

WHEREAS, by virtue of that certain Deed with Full Covenants dated December 7th, 2009, and recorded in the Erie County Clerk's Office on December 24th, 2009 in Liber 11175 of Deeds at page 5524, the Town of Clarence currently holds fee simple title to the Premises; and

WHEREAS, the Board desires to grant the Western New York Land Conservancy, a New York not-for-profit corporation within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York, a conservation easement on the Premises in order to limit and restrict the development and use of the Premises and assure that certain conservation values, as they exist and as they may evolve, are forever preserved and protected on the Premises.

NOW THEREFORE, BE IT

RESOLVED, by the members of the Town Board of the Town of Clarence as follows:

1. The Deed of Conservation Easement by the Town of Clarence to the Western New York Land Conservancy (the "Easement"), attached as Schedule A and incorporated herein, is hereby approved, and the Town Supervisor is directed to execute the Easement.
2. This Resolution shall take effect immediately upon its adoption.

This resolution is hereby passed and adopted by the Town of Clarence Town Board on this 25th day of March, 2015.

Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger to grant the request for Kim Ignatowski, Account Clerk PT, to attend the Introduction to Governmental Accounting - Basic Account School sponsored by the Office of the NYS Comptroller on April 14-16, 2015 in the Village of East Aurora, NY at a cost of \$85.00 and with all reasonable and necessary expenses. On the question, Councilman DiCostanzo said this training is for 2 ½ days (April 14 and 15 will be from 9:00 a.m. to 4:00 p.m. and on April 16 from 9:00 a.m. until noon) and will be funded from the accounting budget. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger to request that the Planning Board review the Town Code as it relates to small scale retail in the Restricted Business

Zone. Any findings should be forwarded to the Town Board in the form of a recommendation. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Councilman DiCostanzo announced that the Clarence Jaycees Antique Show is Sunday from 10 a.m. to 4 p.m. at the Town Park Clubhouse.

Also, the Fishing Derby is scheduled for April 11th for children 15 yrs. old and younger. He suggests contacting the Recreation Department prior to the date to make sure it will be held due to ice still on the pond.

Motion by Councilman Geiger, seconded by Supervisor Hartzell to authorize the Supervisor to sign the annual renewal leases for agriculture purposes to continue to farm Town owned property as follows:

Kreher's Poultry Farm for property located on Salt and Greiner Roads; Anchor Farms for the property located on Salt (bordered by Clarence Center Road and Howe Road.) and John Kelkenberg for the property located on Keller Road.

On the question, Councilman Geiger said the leases are for a period of one year from April 1, 2015 through March 30, 2016. The leases are subject to review and approval of the Town Attorney.

Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Councilman Geiger thanked James Callahan, Jonathan Bleuer and Robert Sackett for putting on the Steinmetz program for master plan 2025 at the Youth Bureau. A lot of good ideas came out of it.

Town Clerk Nancy Metzger reminded everyone that the April meetings will be held on the 15th and 29th.

Town Clerk Nancy Metzger stated for the record that she has submitted the annual 2014 reports for her office. The total fees collected in the Town Clerk's Office in 2014 was \$770,774.69, slightly less than the previous year.

The 2014 Town & County Tax Collection was \$29,191,864.71, an increase of just over \$400,000 from 2013.

The 2014-15 School Tax Collection was \$45,686,927.76, an increase of just over \$1,000,000 from the previous year.

Councilman DiCostanzo said if you wonder what she does, \$75,000,000 is going through that office.

Supervisor Hartzell added that it is a very efficient office of only three people.

A Public Hearing was held to consider the request for a Special Exception Use Permit for an automotive dealership in the Commercial Zone at 8215 Main Street. James Callahan said the location is the south side of Main Street behind the BMW dealership in the Commercial Zone. It is an existing previously approved office park. The applicant proposed a change-in-use to a Maserati dealership, which requires a Special Exception Use Permit. The Planning Board forwarded a recommendation with conditions.

Tom Johnson, D. R. Chamberlin and Dan Downing, Sr. Manager of Towne Automotive were present.

Councilman DiCostanzo asked what the plans are for the other building.

Mr. Downing said they do not have immediate plans.

Speaking to the subject:

Donna Callahan said she lives adjacent to this property and she has a question about lighting. BMW has lighting that is supposed to be off by 9:00 p.m. but that does not always happen. She is also concerned that a buffer is continued from the BMW property to this property. There are a lot of dead trees there now. She also is concerned about drainage in that area.

Mr. Downing said they will continue the buffer and replace the dead trees. The lighting will be on the facility site only.

James Callahan said drainage was addressed in the previously approved complex and will be fine for the site.

Councilman Casilio said a condition of the approval is for Landscape Committee review and approval. The concerns for the buffer will be taken care of.

Bruce Wisbaum, manager of the LLC that owns Stonegate Apartments is here representing the owners and the residents. He is in support of the project, but has a couple concerns he would like to see in the motion to approve. One is the lighting, which security lighting on the building only was discussed. They also would like to see the other building used as an office or medical use and not retail or automotive.

Mr. Wisbaum said another concern is an emergency road that they are parking in front of and blocking to his property. A safety gate is there and they piled snow in front of it this winter. They do have an easement to the road to Main Street.

Lino Ayala said the tree line is decimated. They have pulled out dead trees and did not replace them. The neighborhood has also experienced the loud speaker announcements from BMW. He would like to know if that is going to extend to this dealership.

Dan Downing said there will only be 4-5 employees at this facility and he does not think it will be necessary.

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

Motion by Councilman Casilio, seconded by Councilman Geiger 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 Towne Maserati Automotive Sales and Service Operation. This Unlisted Action involves a change in use from professional office to automotive sales/service in the Commercial Zone. After thorough review of the submitted site plan and environmental assessment forms it is determined that the proposed change in use and Special Exception Use Permit will not have a significant negative impact upon the environment. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

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

Resolved, that after a public hearing duly held on March 25, 2015, the Clarence Town Board approves a Special Exception Use Permit to the applicant for the proposed Towne Maserati Dealership located at 8215 Main Street as per the submitted design from D.R. Chamberlain dated December 12, 2014, subject to the following conditions:

1. Review and approval by the Town Engineer on Development Plans/PIP's.
2. Review and approval by the Town Building Department for required building permits.
3. Review and approval by the Town Landscape Committee, including replacement of any existing trees along the east property line to further buffer the residential properties to the east.
4. Open Space and Recreation Fees.
5. Security lighting only at night.
6. Maintain fire access road to Stonegate.
7. No outside address speakers.

Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

A Public Hearing was held to consider a Special Exception Use Permit for Multiple-Family Housing at 8230 Wehrle Drive. James Callahan said the location is the north side of Wehrle Drive east of Transit Road consisting of the existing golf driving range in the Commercial Zone. The proposal is a mixed use project. The Planning Board has forwarded a recommendation. A Negative Declaration has been issued.

Sean Hopkins, Hopkins & Sorgi, David Huck and Caleb Huck of Regent Development and Michael Metzger of Metzger Civil Engineering were present. Mr. Hopkins said the project is for

seven two-story multi-family buildings, clubhouse and pool, 69 garage spaces, and total of 233 parking spaces. There will be 5.78 acres of greenspace and landscaping, which is 50%. They are in agreement to maintain the berm on the back portion of the site. The large recreation component is placed in the center. There have been a lot of modifications based on discussion with the Planning Board.

Mr. Hopkins said this project started back in 2012. They have met the requirements for a Special Exception Use Permit in the Multi-Family Law Chapter 229 -126 of the Town Code. The property is within Erie County Sewer District No. 5 and they will have capacity certification and other paperwork in writing. The commercial component along the frontage is 3.875 acres of the project. They hope to build office buildings in the future as requested by a specific tenant. There are no plans at this time. The buildings are limited to two-story buildings. The greenspace requirement is 30% and they are at 50%. They eliminated a curb cut on the east side of site to meet requirements. The units will be 25% - one bedroom; 50% - two bedroom and 25% - three bedroom.

Mr. Hopkins said they have gone through an extensive environmental study with the Zoning Board of Appeals issuing a detailed Negative Declaration. The density was reduced by 12 units. He asked that the Town Board affirm that Negative Declaration.

Mr. Hopkins said they also made some changes based on discussion with the adjacent property owner Mr. Wisbaum. The driveway has been relocated to 20 feet from the property line from 5 feet. They have agreed to some intensive landscaping in that area around the garage and moved the dumpster.

Mr. Hopkins said the next step is for fully engineered plans by Mr. Metzger and then back to the Planning Board for Development Plan Approval.

Speaking to the subject:

Bruce Wisbaum represents the Stonegate Apartment residents and owners. They did meet with Mr. Hopkins; he is in full support of this project and hopes it goes forward.

Councilman Casilio said it was mentioned that a commercial building will not be built until they have a tenant. He would like to know how long the dome is going to stay.

Mr. Hopkins said it will stay in place as long as it can or until a development plan is in place.

With no one else speaking to the subject, motion was made by Supervisor Hartzell, seconded by Councilman Geiger to close the public hearing. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

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

Resolved, that after a public hearing duly held on March 25, 2015, the Clarence Town Board affirms the negative declaration issued by the Zoning Board of Appeals on December 9, 2014 based on the Town Board's thorough evaluation of the detailed project information demonstrating the proposed project will not result in any potentially significant adverse environmental impacts and the Town Board issues a Special Exception Use Permit to the applicant to allow for the proposed Multiple Family Dwelling portion of the Mixed Use project at 8230 Wehrle Drive as per the approved Concept Plan approval by the Planning Board on February 4, 2015 and the Concept Plan prepared by Silvestri Architects dated February 17, 2015.

Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Heritage Ministries/Vincroft Senior Housing requests an Amendment to the existing Planned Unit Residential Development (PURD) to allow for the construction of two additional duplex units (4 total units) on the existing campus at 5945 Vincroft Drive. James Callahan said the location is the east side of Newhouse Road, south of Clarence Center Road consisting of an existing senior living complex in a Planned Unit Residential Development (PURD). The applicant proposes to add two duplex structures for a total of four additional units.

Paul Case of Greenman Pederson said he is the consulting engineer for Heritage Ministries, the owners. Heritage Ministries purchased Vincroft in 2013 and have had a positive impact on the community. They are now operating at full capacity. The main building has 44 one and two bedroom apartments, and nine duplex homes for a total of 18 units. They have an immediate demand for these four additional units.

Motion by Councilman Casilio, seconded by Supervisor Hartzell to refer the request by Heritage Ministries/Vinecroft Senior Housing for an Amendment to the existing Planned Unit Residential Development (PURD) to allow for the construction of two additional duplex units (4 total units) on the existing campus at 5945 Vinecroft Drive to the Planning Board. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Geiger to approve the following: Clubhouse Applications - A. Clarence Chamber of Commerce – June 9 & 10, 2015; B. Clarence Track Club – June 3, 2015; Legion Hall Applications – A. Jennifer Pusloskie – May 3, 2015; B. Ellen Swan – May 24, 2015; C. Youth Bureau – Summer Yoga Class for Kids – 4 weeks (couple days/week); D. Safura Hoviehzar – Nov. 7, 2015; Park Pavilion Special Requests – A. Clarence Cub Scouts – Oct. 3 & 4, 2015; and B. Youth Bureau – Oct. 22 – 24, 2015. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Councilman Casilio, seconded by Supervisor Hartzell that after proper audit and review by the Town Board, the following bills of March 19, 2015 are approved for payment: General Fund - \$144,039.03; Highway Fund - \$40,868.55; Water District - \$97.90; Central Alarm - \$50.52; Fire Protection Districts - \$2,081,992.56; Drainage District - \$4,018.10; Lighting Districts - \$670.12; Sewer Districts - \$200.00; Capital Fund - \$14,280.00; and Trust & Agency 203 - \$2,629.79 for a total amount of \$2,288,846.57. On the question, Councilman DiCostanzo said this bill pay is high due to paying the fire protection district contracts. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

Motion by Councilman Casilio, seconded by Councilman Geiger that after proper audit and review by the Town Board, the following bills of March 26, 2015 are approved for payment: General Fund - \$440,228.82; Highway Fund - \$82,022.69; Water District - \$1,425.01; Drainage District - \$90.49; Sewer Districts - \$457,414.20; Capital Fund - \$1,245.00; Trust & Agency 203 - \$715.00 for a total amount - \$983,141.21. Upon roll call – Ayes: All; Noes: None. Absent: Councilman Bernard Kolber. Motion carried.

“For the Good of the Town”

Councilman DiCostanzo said he would like to compliment the Clarence Center Coffee Company. He stops there sometimes three times per week in between dropping his kids off somewhere and meetings. They have good coffee and free Wi-Fi.

There being no further business, Supervisor Hartzell adjourned the meeting at 8:17 p.m.

Nancy C. Metzger
Town Clerk

SCHEDULE A

Deed of Conservation Easement

This CONSERVATION EASEMENT (the "Easement") is granted this ____ day of ____, 2015, by:

TOWN OF CLARENCE, a New York municipal corporation having an office at One Town Place, Clarence New York, (the "Landowner"), to

WESTERN NEW YORK LAND CONSERVANCY, a New York not-for-profit corporation having an office at 11663 Old Strykersville Road, Wales, NY and a mailing address of P.O. Box 471, East Aurora, NY 14052-0471, (the "Land Trust").

BACKGROUND RECITALS

The Landowner and the Land Trust enter into this agreement on the basis of the following facts, understandings and intentions.

- A. Property. The landowner is the sole owner of one 42.5-acre parcel (SBL 44.00-4-9.11, the "Property") located on the south side of Keller Road between Kraus and Strickler Roads in the Town of Clarence, Erie County, New York. The Property was purchased from the John Mosher family in 2009 as part of the Greenprint Program, the Town's bonded open space preservation program.
- B. Property Description. The Property is more fully described in the legal description attached hereto as Exhibit A, on the survey prepared by Wm Schutt & Associates and attached hereto as Exhibit B, and on the Easement Map attached hereto as Exhibit C.
- C. Land Trust. The Western New York Land Conservancy, a New York not-for-profit corporation within the meaning of Article 49, Title 3 of the Environmental Conservation Law of the State of New York (together with any successor statute, the "ECL"), is organized for, among other purposes, conserving real property, is a tax exempt and qualified organization within the meaning of Sections 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code, and is a "qualified organization" permitted to accept, purchase, and hold Conservation Easements under Section 170(h) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c).
- D. Agricultural Values. The Property contains productive farmland. All of the soils on the Property are classified as *Prime* or *Prime if drained* by the Natural Resource Conservation Service (NRCS). Crops are currently being grown on one 14.8-acre field. Another 6.4-acre field is currently fallow.
- E. Natural Habitat Values. The Property contains 21.1 acres of upland and wetland habitat. The upland habitat consists of a successional northern hardwood forest, a hedgerow separating

the cultivated and fallow fields, and transitional areas of scrubby and early successional plants. The forest includes small areas of three different types of wetland habitat: emergent marsh, hardwood swamp, and vernal pool. A small tributary of Beeman Creek flows northwest from the center of the forest. These habitats support diverse plant, insect, bird, amphibian and mammal species.

- F. Recreational Values. A tree-lined farm lane between two fields links to a network of forest trails.
- G. Scenic Values. The Property abuts Town of Clarence Memorial Park. The Property's forest provides a scenic backdrop for the playing fields in Memorial Park. Park and bike path users can enjoy an unobstructed view of the forest.
- H. Open Space Values. The Property includes open space consisting of farmland and a forested wetland located within the Clarence-Newstead Agricultural District. The preservation of these lands is pursuant to the following clearly delineated government policies:
- i. Article 14, Section 4 of the New York State Constitution which states, "the policy of this state will be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products."
 - ii. Section 49-0301 of the ECL which states, "in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, and the preservation, development and improvement of agricultural and forest lands... is fundamental to the maintenance, enhancement and improvement of...balanced economic growth and the quality of life in all areas of the state."
 - iii. Article 25AA, Section 300 of the New York State Agriculture and Markets Law which states, "It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited resources results...It is therefore the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products...It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance."
 - iv. Erie County Agricultural and Farmland Protection Plan, adopted February 2013, recommends identifying and conserving agricultural land.

- v. Town of Clarence Agricultural and Farmland Protection Plan, adopted April 2012, which recommends that there be no net loss of farmland in the Town of Clarence from 2012 to 2022.
- vi. Town of Clarence Master Plan 2015, adopted 2001 which identifies “loss of open space and agricultural lands as a major concern” and recommends developing a preservation plan to include “a purchase of development rights (PDR) program” which prioritizes protecting lands which are currently active in terms of agricultural production.
- vii. Conservation Easement Law of the Town of Clarence, Local Law No. 3 of 1997, which states, “In accordance with §247 of the General Municipal Law of the State of New York, the Town Board of the Town of Clarence has the authority to acquire such interests or rights in land . . . for the preservation of open space and areas which will constitute a public purpose for which public funds may be expended or advanced after due notice and a public hearing, by which the Town of Clarence may acquire by purchase, gift, grant, bequest, devise, lease or otherwise the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to acquire open space or open area . . .”
- I. Baseline Documentation Report. Pursuant to §1.170A-14(g)(5) of the Treasury Regulations, the conservation values, characteristics, state of improvement, and current uses of the Property are described in a Baseline Documentation Report prepared by Earth Dimensions, Inc. and October 2, 2014 (“Baseline Documentation Report”). The Landowner and Land Trust acknowledge that the Baseline Documentation Report is an accurate representation of the Property as of the date of its preparation and that the Report remains accurate as of the date of this Easement. Both the Landowner and the Land Trust have copies of this report, and a copy will be retained in the Land Trust's files. The Baseline Documentation Report is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with terms of this Easement.
- J. Public Benefit. Conserving the scenic, biological, recreational, agricultural, and open space values of the Property (collectively, the “Conservation Values”) is important in an area which is under increasing threat of development and fragmentation and will result in a significant public benefit to the people of the Town of Clarence, Erie County, and New York State.
- K. Intent. The Landowner and Land Trust have a mutual desire to conserve productive agricultural land, preserve wildlife habitat, protect scenic views, and provide passive recreation by entering into this Easement pursuant to the provisions of Article 49, Title 3, of the ECL and Section 170(h) of the Internal Revenue Code. The Property is expected to remain in its natural condition with minimal human modifications, except as follows: agricultural activities consistent with the terms of this Easement; those activities necessary to protect public health and welfare; construction and maintenance of any trails and similar means of access meant to direct and control human use of the Property for passive recreational purposes.

AGREEMENT AND CONVEYANCE

NOW, THEREFORE, in consideration of the payment of one and 00/100 Dollar (\$1.00) by the Land Trust to the Landowner, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the Landowner hereby grants and conveys to the Land Trust, this Easement, an immediately vested interest in real property defined by Article 49, Title 3 of the ECL, for the benefit of the general public, that will run with and bind the Property in perpetuity.

1. Purpose

The purpose of this Easement is to assure that the Conservation Values, as they exist and as they may evolve, will be forever preserved and protected, and that uses of the Property that are inconsistent with or detrimental to the Conservation Values will be prevented or corrected.

2. Implementation

This Easement will be implemented by limiting and restricting the development and use of the Property in accordance with its provisions. The Property remains subject to all applicable local, state and federal laws and regulations.

3. Definitions

- (a) **“Landowner”** includes the Landowner, its successors and assigns, all future owners of any legal or equitable interest in all or any portion of the Property, and any party entitled to the possession or use of all or any part thereof.
- (b) **“Land Trust”** includes the original Land Trust and its successors and assigns.
- (c) **“Parties”** refers to the Landowner and the Land Trust.
- (d) **“Farm Operation”** is as “the land and on-farm equipment and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise” in accordance with Section 301 of the New York State Agriculture and Markets Law (“Agriculture and Markets Law”), or such successor law as enacted or amended.
- (e) **“Impervious Surfaces”** are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads and parking areas, structures whose principal purpose is to protect soil and water resources, such as manure storage areas, and structures and improvements lacking permanent foundations.
- (f) **“Sound Agricultural Practices”** are defined as those practices necessary for on-farm production, preparation and marketing of agricultural commodities, provided such practices are legal, necessary, do not cause bodily harm or property damage off the farm, and achieve

the intended results in a reasonable and supportable way. If necessary, to determine if a practice is "sound," the Land Trust or Landowner may request that the New York State Department of Agriculture and Markets initiate a sound agricultural practice review pursuant to Section 308 of the New York State Agriculture and Markets Law, or any successor law as enacted or amended.

- (g) **"Viable Agricultural Land"** is defined as land highly suited for agricultural production.
- (h) **"Passive Recreation"** is defined as non-motorized activities that do not require human-made facilities and do not significantly impact natural, cultural, or agricultural resources. Such activities include hiking, running, picnicking, bird watching, cross-country skiing, snowshoeing, hunting, fishing, photography, and nature studies.
- (i) **"Hazardous Substance"** is defined as: (i) any hazardous waste or substance as defined by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC s. 6901 et seq.) as amended or by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (15 USC s. 9601 et seq.) as amended; (ii) any substance regulated by the Toxic Substances Control Act (TSCA) (15 USC s 2601 et seq) as amended or by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC s. 136 et seq) as amended; (iii) any pollutant as defined by the Water Pollution Control Act (33 USC s. 1251 et seq.) as amended, or by the Clean Air Act (42 USC s. 7401 et seq.) as amended; (iv) any hazardous waste as defined by §27-0901(3) and §27-1301 of the New York State Environmental Conservation Law and regulations promulgated thereunder; and (v) any other substance, pollutant or contaminant subject to any form of environmental law or regulation by any Federal, State or local governmental authority.
- (j) **"Bond Resolution"** refers to the open space bond act the Town of Clarence originally adopted on August 28, 2002 and extended on June 27, 2012 to fund the Greenprint Program. The resolution authorizes the Town to acquire interests or rights in real property in the Town of Clarence for the preservation of open spaces and areas
- (k) **"Effective Date"** is defined as the latest date on which (i) the last of the parties has (a) signed this Easement, and (b) initialed all changes made, if any, and (ii) a duplicate of this Easement with applicable original signatures and initials of the Parties has been received by the other Party or the other Party's attorney.
- (l) The following use areas are defined for the Easement:
 - (i) **"Natural Area"** is defined as the area depicted in Exhibit C which contains the successional northern hardwood forest, wetland areas, and a small tributary of Beeman Creek.
 - (ii) **"Farm Area"** is defined as the area depicted in Exhibit C which contains the existing farm fields and hedgerow.

4. General Prohibition

Landowner will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with or detrimental to the Conservation Values.

5. Reserved Rights

The Landowner reserves all customary rights and privileges of ownership not specifically prohibited or limited by this Easement, including the right of exclusive use, possession and enjoyment of the Property, the rights to sell, lease, and devise the Property, as well as any other rights consistent with and not to the detriment of the Conservation Values of the Property.

6. Development Rights

The Landowner grants to the Land Trust all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property. The Landowner and the Land Trust agree that all such development rights: (i) are terminated and extinguished by this Easement; (ii) may not be used or transferred to any portion of the Property or to any other property; and (iii) may not be used for the purpose of calculating permissible lot yield or building density of the Property or any other property.

7. Water Rights

The Landowner may use any appurtenant water rights sufficient to maintain the agricultural productivity of the Property in accordance with applicable local, state and federal laws and regulations. The Landowner will not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

8. Subdivision

The division or subdivision of the Property into two or more parcels, whether by physical or legal process, is prohibited.

9. Farm Operations

The Landowner has the right to use the Property as a Farm Operation, which includes the right to reestablish, maintain, and use the Farm Area. The Landowner and Land Trust recognize that changes in economic and environmental conditions, in agricultural technologies, and in accepted farm management practices may result in changes in the agricultural uses of the Property. It is the intention of this Easement to maintain the Landowner's discretion to employ its choice of farm uses and management practices so long as those uses and all farming operations are confined to the Farm Area and conducted in accordance with Sound Agricultural Practices as defined herein.

10. Recreational Uses

Landowner has the right to use the Property for otherwise lawful passive recreation, including, but not limited to, hiking, hunting, fishing, cross-country skiing, snow shoeing, bird watching and nature study. In all cases, recreational uses must be compatible with the intent and purpose of this Easement.

11. Motorized Vehicles

Use of motorized vehicles on the Property is not permitted, except as needed for farm operations, maintenance activities undertaken by the Landowner, or emergency services.

12. Improvements

- (a) *Impervious Surfaces.* The Landowner may construct structures and impervious improvements related to farm operations on up to 2.5% of the Farm Area without permission of the Land Trust. All impervious surfaces must be located in a manner that minimizes impacts to the prime and statewide important soils.
- (b) *Recreational Facilities.* Athletic fields, golf courses or ranges, basketball or tennis courts, swimming pools, skate parks, playgrounds, restrooms or any other recreational structures or facilities are strictly prohibited.
- (c) *Trails.* The Landowner may maintain existing trails for passive recreational use by the general public. The Landowner may establish new trails for passive recreational use in the Natural Area. All trails must be located and constructed in a manner that minimizes damage to the Conservation Values of the Property. Trails will be constructed of permeable materials such as bark mulch and wood chips, crushed stone or pea gravel, naturally rot-resistant timber. Using asphalt, concrete, brick, slag, or construction and demolition debris of any kind as fill for trails is prohibited. Trees may not be cut to maintain existing trails or establish new trails except as provided for in Paragraph 16.
- (d) *Communications Structures.* Cell towers or 911 communications towers are not permitted on the Property.
- (e) *Renewable Energy Structures.* Renewable energy structures are not permitted on the Property.
- (f) *Roads.* Road construction is prohibited except to provide access to and parking for permitted agricultural improvements. All road construction is subject to the Impervious Surface provision set forth above and will be located in a manner that minimizes impacts to the prime and statewide important soils.
- (g) *Notice.* In order to facilitate the monitoring and stewardship of this Easement, and ensure continuing communication among parties, the Landowner will give the Land Trust written notice not less than forty-five (45) days prior to the anticipated start of any construction to provide the Land Trust with the opportunity to review the construction plans for compliance with this Easement. Written notice will include submission of the construction plans.

13. Fences

Existing fences may be repaired, removed and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and

wildlife, safety and general management. New fences will be subject to any and all, required governmental approvals and permits.

14. Utility Services

Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to or from the improvements permitted for farm operations may be installed, maintained, repaired, and removed, and the Landowner may grant easements over and under the Farm Area for such purposes. All such services and systems will be compatible with the Conservation Values of this Easement, located in a manner that minimizes the impact to the Natural Area, prime or statewide important soils, and are limited to those items that service permitted improvements.

15. Maintenance and Improvement of Water Sources

The Landowner may use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Farm Area for agricultural uses permitted by this Easement. The Landowner may alter the natural flow of water over the Farm Area in order to improve drainage of agricultural soils, reduce soil erosion and/or flooding, provide or improve the agricultural management potential of the Property, provided such alteration is consistent with Sound Agricultural Practices, the Purpose of this Easement and is carried out in accordance with applicable local, state and federal laws and regulations. The Landowner must notify the Land Trust if an alteration in the natural flow of water is made.

16. Vegetation Management

There will be no removal, destruction or cutting of live vegetation on the Property except as follows:

- (a) *Removal.* Without permission of the Land Trust, the Landowner may remove vegetation to ensure public safety or the health of other vegetation. Vegetation may also be removed to maintain existing paths in the Natural Area and open fields in the Farm Area. All cut vegetation will remain on the Property as cover and habitat for wildlife, and be allowed to decompose naturally except in instances where allowing natural decomposition will damage the Conservation Values of this Property.
- (b) *Management Plan.* With permission of Land Conservancy, the Landowner may manage the forest in the Natural Area for wildlife habitat, recreation, and to maintain the Property's Conservation Values. All such activities will be in accordance with generally-accepted forestry best management practices and be carried out in accordance with a forest management plan prepared by a forester who is certified by the Society of American Foresters or such successor organization as is later created, a Cooperating Consulting Forester with the New York State Department of Environmental Conservation or a qualified forester approved by Land Conservancy.
- (c) *Notice.* In order to facilitate the monitoring and stewardship of this Easement, and ensure continuing communication among parties, the Landowner will give the Land Trust written notice not less than forty-five (45) days prior to the anticipated start of any

vegetation removal or management except when emergency removal is done to ensure public health or safety. Written notice of planned vegetation management in the Natural Area will include submission of the current forest management plan. In the case of emergency removal to ensure public health or safety, the Landowner will give written notice to the Land Trust not more than fourteen (14) days after removal.

17. Mining and On-Site Extractive Activity

The Landowner may move sand, soil and gravel in the Farm Area solely for the agricultural uses permitted by this Easement. Any other mining or extraction of soil, sand, gravel, rock, hydrocarbons, or any mineral substance, using a surface mining method or any other extractive technique is prohibited.

18. Dumping and Trash

Dumping, disposal, land filling, burial, application, injection, or accumulation of any kind of garbage, trash or debris on the Property is prohibited. The Landowner may temporarily store trash in receptacles for periodic offsite disposal. Should waste or refuse be found outside the short-term storage receptacles, it is the Landowner's responsibility to promptly remove and properly dispose of it. Biodegradable material generated as a result of uses permitted by this Easement may be composted or spread on the Property. All composting activities will be conducted in accordance with Sound Agricultural Practices and all applicable local, state or federal laws and regulations.

19. Permission of Land Trust

When the Landowner is required to obtain the Land Trust's permission for a proposed action, the request will be made in writing and include all related survey information, if available. The Land Trust will grant permission unless it determines that such action is harmful to the Conservation Values, incompatible with the Purpose of this Easement or in violation of the Bond Resolution. The Land Trust will respond with a decision in writing within forty-five (45) days of receipt of the Landowner's written request. If mutually agreed upon by the Land Trust and Landowner, this timeline may be reasonably extended. The Land Trust will not be liable for damages for any failure to grant permission to the Landowner.

20. Notices

(a) *Addresses.* Notices required or desired under this Easement will be in writing and properly addressed to the Landowner and Land Trust at the addresses listed in this Easement, unless the Party has given notice to the other Party of a different address. Notice of a change in address must be given as specified in this section (Notices).

(b) *Notice by Attorney.* Any notice required or desired under this Easement may be given by the Town of Clarence's town attorney on behalf of the Landowner to the Land Trust's attorney with a copy to the Land Trust. Any notice required or desired under this Easement may be given by the Land Trust's attorney on behalf of the Land Trust to the Town of Clarence's town attorney.

- (c) *Delivery.* Unless otherwise specifically provided, delivery of notices will be made by personal delivery, overnight letter delivery service that provides written evidence of delivery, overnight postal service that provide written evidence of delivery, or by registered or certified mail with return receipt requested.
- (d) *Receipt.*
- (i) If delivery is made by personal delivery, the document(s) delivered shall be deemed received on the date delivered.
 - (ii) If delivery is made by overnight letter delivery service or overnight postal service, the document(s) delivered shall be deemed received one Business Day following the date upon which the document(s) are deposited with the delivery or postal service with delivery charges paid or charged to the sender's account.
 - (iii) If delivery is made by registered or certified mail, the document(s) shall be deemed received (a) on the date the return receipt is signed, (b) on the date delivery is refused, or (c) if the mailing is not claimed, three Business Days following the date upon which the document(s) were deposited with the postal service with required postage affixed, provided copies of the document(s) were mailed by first class prepaid mail no later than one Business Day following the certified mailing.
 - (iv) If delivery is made in manner which does not comply with this section (Notices) and the other Party or the other Party's attorney acknowledges receipt of the notice, the notice shall be deemed received on the earlier of the date of the acknowledgement or the date of receipt set forth in the acknowledgement.
 - (v) If notice is given by a Party's attorney in accordance with this section (Notices), the notice shall be deemed received on the earlier of the date the notice is received by the other Party or other Party's attorney.
- (e) *Business Day.* Business Day ends at 5:00 p.m. and means calendar days excluding Saturdays, Sundays, and legal holidays. A day other than a Business Day shall end at 11:59 p.m.

21. Ongoing Responsibilities of the Landowner

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Land Trust, or to affect any obligations of the Landowner as owner of the Property, including but not limited to the following:

- (a) *Taxes and Assessments.* The Landowner will be solely responsible for payment of all taxes and assessments levied against the Property.
- (b) *Upkeep and Maintenance.* The Landowner will be solely responsible for the upkeep and maintenance of the Property to the extent required by law and this Easement. The Land Trust will have no obligation for the upkeep or maintenance of the Property.
- (c) *Indemnification.* The Landowner agrees to indemnify and hold the Land Trust harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys'

fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Land Trust or its agents, in which case liability will be apportioned accordingly.

22. Right of Inspection

- (a) *Annual.* The Land Trust has the right to enter the Property to inspect for compliance with the terms of this Easement. Inspections will generally occur once a year but may occur whenever the Land Trust deems appropriate. The Landowner is welcome and encouraged to accompany Land Trust representatives during such inspections.
- (b) *Emergency.* If the Land Trust believes or has reason to believe that there is an ongoing, imminent, or threatened violation of the terms of this Easement, representatives of the Land Trust may enter the Property at any time for the purpose of inspecting the Property. The Land Trust will use good faith efforts to contact the Landowner, but the Land Trust may enter the Property without the Landowner's presence.

23. Enforcement

The Land Trust has the right to enforce this Easement as follows:

- (a) *Rights & Remedies.* The Land Trust has all the rights, remedies, and powers that are provided by law to enforce the terms of this Easement. The Land Trust's remedies will be include the right to recover damages for violations of the terms of this Easement or injury to the Conservation Values, and to require restoration of the Property to the condition that existed prior to any violation.
- (b) *Notice.* Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, the Land Trust will give the Landowner written notice of the violation and thirty days to correct it before filing any legal action. When a violation has occurred and will reasonably take more than thirty days to correct, the Land Trust will provide the Landowner with an additional amount of time to correct the violation. The Land Trust may file legal action whenever the Land Trust, in its sole discretion, determines that the violation is not being completely corrected in a diligent manner.
- (c) *Injunction.* If the Land Trust determines, in its sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Land Trust may obtain an injunction to stop the violation, temporarily or permanently, and to require the Landowner to restore the Property to its condition before the violation. The failure of the Land Trust to discover a violation or to take immediate legal action will not bar Land Trust from doing so at a later time.
- (d) *Fees.* In any case where a court finds that a violation has occurred, the Land Trust has the right to petition the court for all expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. The failure of Land Trust to discover a violation or to take immediate legal action will not bar the Land Trust from doing so at a later time. In any case where a court finds no violation has occurred,

the Landowner has the right to petition the court for all costs, including but not limited to reasonable attorneys' fees.

- (e) *Limited Liability.* If and to the extent that any act taken by the Land Trust, its directors, officers, employees, or agents, gives rise to a claim by the Landowner against the Land Trust or its directors, officers, employees, and agents, the sole remedy on the part of the Landowner will be compensation for actual damages reasonably incurred by the Landowner; the Landowner will not have a right to any indirect, consequential, or punitive damages from the Land Trust or its directors, officers, employees, and agents unless actual damages are due to an intentional act or gross negligence on the part of the Land Trust.

24. Dispute Resolution

If Landowner and the Land Trust dispute the consistency of any proposed use or activity with the purpose of this Easement, or any of the specific provisions contained herein, and the Landowner agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to mediation by written request. If mediation is agreed to by the parties, then within thirty (30) days of such request, the Land Trust will schedule a meeting or the parties will select a single trained and impartial mediator knowledgeable about conservation easements to recommend potential resolutions of the dispute. Reasonable costs associated with the mediation process will be determined by the impartial mediator. Nothing in this clause will diminish Land Trust's rights under the "Enforcement" provision.

25. Amendment

The Landowner and the Land Trust have the right to agree to amend this Easement, but nothing in this Amendment provision requires that either party do so. All amendments are subject to the following:

- (a) *Adverse Effects.* No amendment will be granted unless the Land Trust determines that such amendment will not adversely affect or be inconsistent with: (i) the purpose of this Easement; (ii) the qualification of the Easement under any applicable laws, including but not limited to Section 170(h) of the Internal Revenue Code and Article 49, Title 3, of the Conservation Law; (iii) the status of the Land Trust under any applicable laws including but not limited to Section 501(c)(3) of the Internal Revenue Code; or (iv) the perpetual duration of the Easement. The Landowner will be required to submit all plans and documents the Land Trust deems necessary to make a determination regarding adverse effects.
- (b) *Written Consent.* The Easement may be amended only upon written consent of the Landowner and the Land Trust. The amendment must be recorded in the Office of the Erie County Clerk.
- (c) *Costs.* The Landowner will pay all reasonable fees, costs, and expenses of the Land Trust,

including but not limited to staff time and attorneys' fees, incurred in reviewing and/or preparing any amendment requested by the Landowner.

- (d) *Costs.* The party requesting the amendment will pay all reasonable fees, costs, and expenses of the other party, including staff time and attorneys' fees, incurred in reviewing and/or preparing any amendment.

26. Easement Transfer

If the Land Trust ever ceases to exist or no longer qualifies under Section 170(h)(3) of the Internal Revenue Code or applicable state law, it will assign or transfer this Easement to another organization that: a) has a similar purpose; b) is qualified under Section 170(h)(3) of the Internal Revenue Code and applicable state law; and c) agrees to monitor the Easement and enforce the terms. If the Land Trust fails to do so, a court with jurisdiction may transfer this easement to another qualified organization having similar purposes and the willingness to assume the responsibility.

27. Property Conveyance

The Landowner has the right to, without limitation, convey, transfer, lease, or mortgage this Property as follows:

- (a) *Conveyance Instrument.* Any deed or other instrument evidencing or effecting the conveyance of this Property will contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to Western New York Land Conservancy, Inc., by instrument dated _____, 20__, and recorded in the office of the Clerk of Erie County at Cartridge ___ of Deeds at Frame ___." The failure to include such language in any deed or instrument will not affect the validity of this Easement or its applicability to such property.
- (b) *Notice.* The Landowner will give the Land Trust notice of any subsequent conveyance in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. The failure to notify the Landowner will not affect the validity of this Easement or its applicability to such property.

28. Termination

- (a) *Cause.* If all or a part of the Property is taken for public use (or sold to a public authority under threat of condemnation), or if conditions on or surrounding the Property change so much in the future that it becomes impossible to protect and preserve the Conservation Values, then the Landowner and the Land Trust have the right to jointly request that a court with jurisdiction terminate the Easement (in whole or in part) and order the sale of the Property. The easement may only be terminated by judicial action.
- (b) *Criteria.* The fact that a use of the Property may become more economically valuable than uses permitted under this Easement will not be considered a changed condition. The

inability to use the Property for permitted uses, or the unprofitability of doing so, will not warrant termination of the Easement. The fact that some Conservation Value(s) may be compromised by casualty, condemnation, or changed conditions will not warrant termination of this Easement if other Conservation Value(s) remain or can be restored. Nothing in this Termination provision will require the Landowner or the Land Trust to agree to, or negotiate regarding, any proposed termination.

- (c) *Proceeds*. Should this Easement be terminated, in whole or in part, by judicial proceedings as provided by New York State Law, and the Landowner subsequently sells, exchanges, or transfers the property, all proceeds from that sale, exchange, or transfer will be used in a manner that is consistent with the documented intent of the Bond Resolution, including the reduction of indebtedness incurred by the Town pursuant to the Bond Resolution.

29. Interpretation

This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Article 49, Title 3, of the New York Environmental Conservation Law and Section 170(h) of the Internal Revenue Code, and will be interpreted consistently with such intention. This Easement will be interpreted to give maximum protection to the Conservation Values. The captions and paragraph headings of this Easement are not necessarily descriptive of all the terms thereunder, and such captions and paragraph headings will not be deemed to limit, define, or enlarge the terms of this Easement. The words "include", "includes", and "including" mean "include without limitation", "includes without limitation", and "including without limitation", respectively.

30. Severability

If any provision of this Easement, or its application to any person or circumstance, is found to be illegal, invalid, or unenforceable, the remainder of the provisions of this Easement will not be affected.

31. Warranties

- (a) *Title*. The Landowner represents and warrants that the Landowner has good and sufficient title to the Property and that the Property is not subject to any mortgages, deeds of trust, liens, leases, or other interests in the Property that have not been disclosed to the Land Trust in writing. The Landowner will defend the Property and the Easement against all claims from persons claiming by, through, or under the Landowner. The Landowner intends that this Easement encumber the entire Property, whether any interest in the Property is now owned or later acquired by the Landowner, including any mineral rights, water rights, or other severable interests associated with the Property.
- (b) *Environmental*. The Landowner and the Land Trust acknowledge that a phase I environmental assessment has been completed and that neither party has any independent knowledge of a release or threatened release of hazardous substances on the Property. The Landowner will indemnify, defend, and hold harmless the Land Trust, its directors,

officers, employees, and agents, from and against any and all loss, cost, liability, or expense, including reasonable attorneys' fees, for injury (bodily or otherwise), remediation, or damage arising from or connected with any release of hazardous substances or violation of federal, state, or local laws, unless caused by direct actions of the Land Conservancy and/or the Land Conservancy's failure to monitor the Property in accordance with the Land Conservancy's Monitoring Policy. If at any time after the effective date of this Easement there occurs a release in, on, or about the property of any hazardous substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, the Landowner will take all steps that may be required under federal, state, or local law necessary to assure its containment and remediation, including any cleanup that the Landowner is found responsible for. Nothing in this Easement will be construed as giving the Land Trust any right or ability to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, as amended.

32. Subsequent Encumbrances

The Landowner may not grant any Easement or Use Restriction that might diminish or impair the Conservation Values of the Property, or that are otherwise inconsistent with the Purpose of this Easement or the documented intent of the Bond Resolution

33. Duration of Easement

The Easement is a real property interest, immediately vested in the Land Trust, which shall run with the land in perpetuity. Every provision of this Easement that applies to the Landowner or Land Trust shall also apply to their respective heirs, executors, administrators, assigns, and all other successors in interest to this Easement or the Property or any interest therein. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or the Property except that liability for acts or omissions before transfer shall survive transfer.

34. Integration

This Easement sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement.

35. Waiver

No term of this Easement will be deemed waived unless such waiver is in writing signed by the party making the waiver. No forbearance, delay, or failure to exercise any right, power, or remedy will impair such right, power, or remedy, or will be construed as a waiver of such right, power, or remedy, or will prevent the exercising of such right, power, or remedy in the future. The Landowner waives the defenses of estoppel, laches, prescription, and adverse possession.

36. Acceptance

By resolution adopted on February 9, 2015 the Land Trust's Board of Directors has authorized accepting this Easement.

The Landowner and the Land Trust enter into this Deed of Conservation Easement as of the date first written above.

Landowner: Town of Clarence

By: _____
David C. Hartzell Jr, Supervisor

Land Trust: Western New York Land Conservancy

By: _____
Paul E. Lehman, President

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the ____ day of _____ in the year 201__ before me, the undersigned, personally appeared David C. Hartzell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in his capacities, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the ____ day of _____ in the year 201__ before me, the undersigned, personally appeared Paul E. Lehman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature/office of individual taking acknowledgement

EXHIBIT A
Property Description

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot Number 13, Section 7, Township 12, Range 6 of the Holland Land Company's Survey, described as follows:

BEGINNING at a point in the center line of Keller Road, said center line being also the north line of Lot Number 13, distant 1429.97 feet westerly as measured along the center line of Keller Road from the northeast corner of Lot Number 13, said point of beginning also being the northwest corner of lands conveyed to James J. Reitmeier and Claudia Reitmeier, his wife by a deed recorded in the Erie County Clerk's Office in Liber 7903 of Deeds at page 483; thence southerly along the westerly line of lands so conveyed to Reitmeier, a distance of 474.75 feet to the southwest corner thereof; thence easterly parallel with the center line of Keller Road, a distance of 760 feet to a point; thence southerly parallel with the east line of Lot Number 13, a distance of 1486.43 feet to a point, said point being in the south line of lands conveyed to John L. Mosher and Althea G. Mosher, his wife by deed recorded in the Erie County Clerk's Office in Liber 5723 of Deeds at page 479; thence westerly parallel with the north line of Lot Number 13 and along the south line of lands conveyed to Mosher a distance of 1346.17 feet to a point, said point being a point in the line established by boundary line agreement recorded in the said Clerk's Office in Liber 9194 of Deeds at page 60; thence northerly along the line established by said boundary line

agreement a distance of 863.44 feet to the southwest corner of lands conveyed to Donald Steinwachs by a deed recorded in the said Clerk's Office in Liber 10384 of Deeds at page 212; thence easterly along the southerly line of lands so conveyed to Steinwachs and continuing easterly along the southerly line of lands conveyed to William G. Ess, Jr. and Lucille T. Klinko by a deed recorded in the said Clerk's Office in Liber 10888 of Deeds at page 8039, a distance of 400 feet to the southeast corner of lands so conveyed to Ess and Klinko; thence northerly along the easterly line of lands so conveyed to Ess and Klinko a distance of 625.25 feet to the southwest corner of lands conveyed to Lisa M. Lutley by a deed recorded in the said Clerk's Office in Liber 11144 of Deeds at page 4659; thence easterly along the southerly line of lands so conveyed to Lutley a distance of 100 feet to the southeast corner thereof; thence northerly along the easterly line of lands so conveyed to Lutley a distance of 474.75 feet to the center line of Keller Road; thence easterly along the center line of Keller Road, a distance of 119.88 feet to the point or place of beginning.

EXHIBIT B
Survey

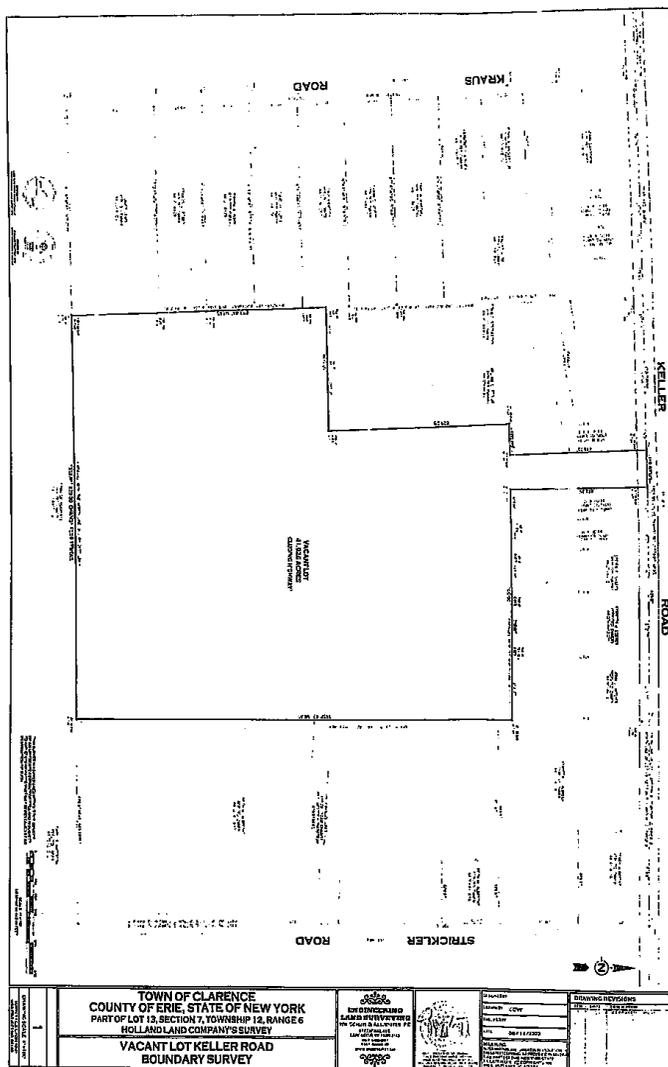
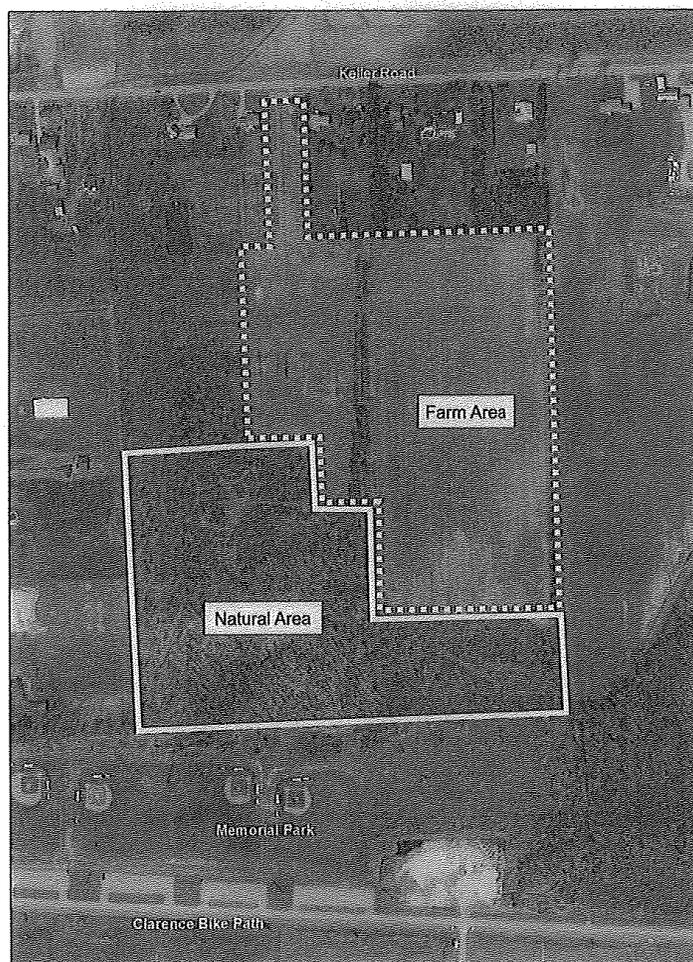


Exhibit C – Easement Map



Mosher Parcel

