

Town of Clarence  
One Town Place, Clarence, NY 14031  
**Planning Board Minutes**  
Wednesday April 26, 2017

**Work Session 6:00 pm**  
Status of TEQR Coordinated Reviews  
Review of Agenda Items  
Miscellaneous

**Agenda Items 7:00 pm**

Approval of Minutes

**Item 1**

Dave Heinrich  
Agricultural Rural Residential

Requests a Minor Subdivision Approval to create one (1) new building lot at 9980 Keller Road.

**Item 2**

Brett Vogel  
Agricultural Rural Residential

Requests a Recommendation for a Special Exception Use Permit for a Farmers Market at 8670 County Road.

**Item 3**

Satellite Antenna and Tower Law  
Wind Energy Conversion

Discussion.

Chairman Robert Sackett called the meeting to order at 7:00 p.m.

Councilman Robert Geiger led the pledge to the flag.

Planning Board Members present:

Chairman Robert Sackett  
2<sup>nd</sup> Vice-Chairperson Wendy Salvati  
Gregory Todaro  
Jeffrey Buckley

1<sup>st</sup> Vice-Chairman Richard Bigler  
Timothy Pazda  
Steven Dale  
Jason Geasling

Planning Board Members absent: none

Town Officials Present:

Director of Community Development James Callahan  
Assistant Director of Community Development Jonathan Bleuer  
Councilman Paul Shear  
Councilman Robert Geiger  
Deputy Town Attorney Steven Bengart

Other Interested Parties Present: Brad Batt Daniel Gamin Gene Tenney

Motion by Gregory Todaro, seconded by Steven Dale, to **approve** the minutes of the meeting held on March 29, 2017, as written.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Chairman Sackett explained the protocol for the meeting noting that Mr. Callahan will introduce each project. The applicant will have the opportunity to add any information he/she feels necessary. The Board will ask questions of the applicant regarding the project. Members of the audience will have the opportunity to voice their questions/concerns regarding the project. The applicant is asked to address issues raised by members of the audience.

**Item 1**

Dave Heinrich  
Agricultural Rural Residential

Requests a Minor Subdivision Approval to create one (1) new building lot at 9980 Keller Road.

**DISCUSSION:**

Mr. Callahan provided the background on the project noting that it is located on the north side of Keller Road, east of the intersection with Kraus Road. It is an existing residential and vacant agricultural land in the Agricultural Rural Residential Zone. Per the Subdivision Law the Planning Board has final review and approval authority for this minor split.

David Heinrich is present said the property goes uphill for about 400-500 feet then crests and goes down. There is a mature pine grove that the previous owners planted. They want to be back 450' to build their house, which would put them 100' behind the pine grove, which gives a 100' front yard. The driveway would come out the east side. The location would facilitate the draining of the house where a sump pump would not be needed, it would drain out the back where gravity would just take it away. They like the trees and it doesn't make sense to cut them down to put a house there when it can be moved to the back of the property.

Chairman Sackett said the Town Engineer has asked for easements in order to access the creek. Mr. Heinrich said he would have only a 20' section and that would be no problem. He and the owner of the property have not discussed it but he does not see why he would have a problem. Mr. Heinrich will address it with the owner in the next few days and let the Board know.

Chairman Sackett asked when the applicant wants to start building. Mr. Heinrich said as soon as possible.

Mr. Pazda asked where exactly the Town Engineer is looking for an easement on this parcel. It is clarified that the section is at the south east corner of the property. The survey stake is in the middle of the water that is currently pooled in the drainage ditch.

Deputy Town Attorney Steve Bengart said he gave Mr. Heinrich his contact information who will in turn provide it to the property owner who will reach out to the Town Attorney's office regarding the easement on the parent parcel.

Nicki Heinrich referenced the picture on display and pointed out the property stake that is shown in the middle of the drainage ditch.

Mr. Todaro asked if the applicant's house would be in line with the structure to the west. Mr. Heinrich said yes that structure is approximately 500' back. Mr. Todaro then asked which way the septic will be draining. Mr. Heinrich said they would put it to the back of the property.

Brad Batt lives across the street from the project site. He built his house in 1987. He is concerned with how the septic is going to run out the back. He is not against this, but his concern is the ditch. The ditch crosses the road and he has maintained that ditch since 1987 putting 1,000's of dollars into it. He has rented an excavator to clean it out. Emerald Ash Borer is on the property now and he has cut down 200 trees to keep this ditch maintained. The County dug the other side of the ditch which puts more water into that property now. His concern is how the back of the property is going to be maintained and if it will be cleaned out. He went on to describe the path of the drainage and said once it gets to Jurek's Christmas Tree Farm it goes from a 5' wide culvert to a 24" culvert. He was able to maintain his property with all the money he spent on berming and cleaning the ditches but looking down the road with houses being built there and built up, it will totally affect him and his neighbor. The property behind him is full of water. He asked how the water will be maintained. That ditch has been plugged three (3) times over the years by the current owner, Mr. Batt had to get a lawyer before they came down and cleaned it up. Chairman Sackett clarified that Mr. Batt's concern goes beyond the boundaries of the proposed subdivision, Mr. Batt said that is correct.

Deputy Town Attorney Steve Bengart offered Mr. Batt his contact information and explained that the Town is interested in gaining easements so that they have access to deal with these types of situations going forward. He would like to discuss an easement for Mr. Batt's property to access that ditch. Mr. Batt said he has been over this for the past 15 years. Deputy Town Attorney Steve Bengart said he cannot speak to the past but said the Town Engineer and the Highway Superintendent may have great interest in being able to maintain that ditch. Although he can't promise this he would like Mr. Batt to contact him to discuss the possibility. Mr. Batt accepts the contact information but said he has dealt with the last three (3) supervisors and has gotten nowhere.

Chairman Sackett explained that this is a new initiative between the Town Engineer, the Highway Superintendent and the Town Attorney's Office to have the Planning Board get as many easements as possible so that the ditches of Clarence can be maintained. Mr. Batt said he went for an easement and he was told he couldn't have one.

Mr. Heinrich thanked the Board for considering his proposal. He talked with the two (2) other neighbors who agreed with the setback of the house. That documentation is on file.

#### **ACTION:**

Motion by Wendy Salvati, seconded by Richard Bigler, pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Part 2/3 Short Environmental Assessment Form as prepared and to issue a Negative Declaration on the proposed Minor Subdivision located at 9980 Keller Road. This Unlisted Action involves a minor subdivision to create one new residential building lot in the Agriculture

Rural Residential Zone. After thorough review of the submitted survey, drawings and Short Environmental Assessment Form it is determined that the proposed action will not have a significant negative impact upon the environment.

**ON THE QUESTION:**

Mr. Todaro asked if the Environmental Assessment Form needs to be modified if an easement is agreed to. Mr. Callahan said no.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

**ACTION:**

Motion by Wendy Salvati, seconded by Richard Bigler, to **approve** the Minor Subdivision at 9980 Keller Road to create one (1) new residential building lot in the Agriculture Rural Residential Zone as per the submitted drawings and with the following conditions:

1. Review and approval from the Erie County Department of Public Works for required access to the new lot.
2. Review and approval from the Erie County Health Department for future on-site sanitary facilities.
3. Review and approval from the Town Building Department for future building permits required to develop the property.
4. Drainage easements, for future Town Highway Department access, as required by the Town Engineer. Such easement language and filings shall be subject to review and approval by the Town Attorney’s Office.
5. In order to preserve the existing public view and natural features of the new lot, the front yard setbacks for the future principal residential use of the property shall be allowed to extend beyond the existing tree line on the property but shall not exceed 450’ (Subsequently amended to 500’).
6. Open Space and Recreation Fees.

**ON THE QUESTION:**

Chairman Sackett asked if the applicant understands and agrees to the conditions. Mr. Heinrich asked for an explanation on the conditions. Mrs. Salvati said the applicant has to apply to the County because it is a County road and they have to approve the driveway. He needs to submit a plan to the Health Department and obtain approval for sanitary facilities. Conditions 3 and 4 are self-explanatory. The Board is allowing the applicant to have a setback that exceeds the Town Code up to 450’. Open Space

and Recreation fees are standard fees that are part of the Building Permit fee. Mr. Heinrich now understands and agrees with the conditions.

Mr. Bigler asked the applicant if 450' will be adequate. Ms. Heinrich asked if they could go 500'. Mr. Callahan noted that the property to the west is setback approximately 500'.

Condition #5 is amended to read, "In order to preserve the existing public view and natural features of the new lot, the front yard setbacks for the future principal residential use of the property shall be allowed to extend beyond the existing tree line on the property but shall not exceed 500'." Mrs. Salvati and Mr. Bigler agree to the amended motion.

Mr. Todaro asked if the structure will be in the center of the property or towards one side. Mr. Heinrich said it will favor the west side, there will be no variances needed. Chairman Sackett said this does not fall under the Open Space Development Code. The Town Code is 15' side yard setback. The applicant understands.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

**Item 2**

Brett Vogel	Requests a Recommendation for a Special
Agricultural Rural Residential	Exception Use Permit for a Farmers Market at
	8670 County Road.

**DISCUSSION:**

Mr. Callahan provided the background on the project noting that it is located on the north side of County Road, east of Green Acres. It is an existing barn located in the Agricultural Rural Residential Zone. The applicant is proposing to use the existing barn and property as a Farmers Market. The Town Board has forwarded the request for review and recommendation under a Temporary Conditional Permit application.

Brett Vogel is present and explained that the current plan is the revised plan of the parking, the driveway and the front of the property per his discussion last week with the Executive Board. He hopes to have the proposal up and running by June 2017.

Chairman Sackett said the Planning Board does not have the authority to approve the Temporary Conditional Permit but the Town Board has asked them to review the proposal and discuss possible condition with the applicant that would add to the welfare and safety of the community. He went on to say that the applicant has widened the driveway and added some parking in the rear. The applicant confirmed that the material used to widen the driveway will be the same material as what currently exists. He also confirmed that the width of the driveway will accommodate 2-way traffic, it is approximately 20' wide. Chairman Sackett asked if there is an entrance to the front of the project off County Road or do patrons have to go to the rear to get to the establishment. Mr. Vogel clarified that they have to go to

the rear to get to the establishment. He agreed to post signs indicating parking is in the rear in order to discourage street parking.

Mr. Dale asked if the applicant can elaborate on the landscape berm. Mr. Vogel said it is currently open to County Road and he would like to put up a landscape berm to show that patrons cannot come in to the establishment off of County Road and park in front of the building, they have to use the driveway and parking in the rear. Mr. Dale asked how he will do that. Mr. Vogel said he would install things like shrubs and narrow planter boxes a few feet off the ground. It would be a raised bed to detract people. He would use 2' of landscape timbers. Mr. Dale thinks that would be adequate and asked if the applicant can wrap it around the corner to provide an end corner but not all the way to the building. Mr. Vogel said yes.

Mr. Pazda asked for details on the Farmers Market. Mr. Vogel said he will provide fresh produce for the local community. He will purchase his produce locally and it will be organic, he would like to grow some of his own on the back property. Mr. Todaro asked if it will be an open air facility and then some items out front as well. The tables that are denoted on the plan in the back of the property were discussed, a concern is that cars could back into those tables. Mr. Todaro asked if those tables could be divided off so that won't happen. Mr. Vogel said yes he will put up some fencing if they put the tables there. As of right now, there will be no tables in the first year of business, but tables are a possibility for the future.

Mr. Dale asked what the hours of operation will be and what the lighting will be like at the site. Mr. Vogel said the hours of operation will be 11:00am to 7:00pm. There may be a light for a sign but there will be no back-lighting and nothing ostentatious or lighting up the whole neighborhood. It is a seasonal business from April to the end of October early November.

Mrs. Salvati noted for the record that a letter was received from David and Joan Rogers of 8705 County Road. The letter is on file. The Rogers' have concerns about parking out front and narrow shoulders, they want to make sure the applicant has a parking lot and adequate parking for customers and that he has highly visible signs indicating parking at the back and that he has some type of blockade devices along the roadway shoulders during hours of operation; Mrs. Salvati thinks the landscaping is going to be preventative for that.

Mr. Todaro asked if there will be truck deliveries. Mr. Vogel said no large truck deliveries.

Gene Tenney is the attorney of the owner of the property across the street, Pine Lake Drive Inc., from this project, they own 20 acres. They are very interested in the property as far as it being used. Mr. Tenney asked that client be prepared, he asked that a tape be made available to him to get the minutes of tonight's meeting to know what the petitioner has promised he is going to do. County Road is a 2-lane highway and most of the time cars are flying down that road. He has represented the owners of the property across the street for 25 years, prior to that Mr. Tenney owned the property, so he is familiar with it. He lives in the Town of Amherst, he cares about what happens in the Town. He has seen in the past that promises are made at the time permission is being asked and somehow they get set aside. Chairman Sackett noted that the authority to grant this request lies with the Town Board, not the Planning Board. The Planning Board has been asked to review the project and make recommendations for the conditions so that if there is a motion tonight that is passed they are really not restrictive of the applicant, the Town Board would put the restrictions on. Mr. Tenney would like to see the details of the plan. He said it is important for the Planning Board to know the details as well, along with anyone who owns property in the immediate area.

Daniel Gamin, of 5287 Shadyside Drive, asked where exactly on County Road is the proposal located. Chairman Sackett said it is east of Green Acres and west of Connor Road, on the north side of County Road. Mr. Gamin said the applicant states the proposal is for a Farmers Market, he went on to say that there is already a Farmers Market in Clarence, it's called the Clarence Farmers Market located on Main Street in Clarence Hollow and has been in operation for 10 years. If the applicant uses the name Farmers Market it will cause problems for the present Farmers Market, it will cause confusion among the residents of the Town and the customers of the present Farmers Market because they may think the present one moved. Mr. Gamin also asked about the hours and days of operation.

Mr. Vogel said he doesn't know how to guarantee that people will not enter off County Road besides doing what he says which is landscaping it, he wants it closed off that is why he designed it that way. He will add a small section on to the east corner to extend the landscaping and for an "L". He does not feel this will be an issue. The timbers will be 24" high and will run along the property, the width of the bed will be approximately 2 ½'. Mr. Pazda said it will be helpful to have a drawing of that when the applicant goes to the Town Board for the approval. Mr. Vogel will put the dimensions of the planters bed on the plan. Mr. Dale suggested detailing the types of plants that will go into that bed. Chairman Sackett explained that the plan will need Landscape Approval only if the Town Board makes it a condition. Mr. Vogel does not think his name will compete or conflict with the Farmers Market, plus he will be doing something slightly different. Mr. Vogel said the name of his market will most likely be Roots Local Organic Farmers Market, this does not compete with Clarence Hollow Farmers Market. Mr. Vogel went on to say his hours would be Tuesday through Sunday, 11:00am to 7:00pm on weekdays and 9:00am to 7:00pm on the weekends. The parking lot is 80' wide by 46' long. Mrs. Salvati said that would provide 9 parking spaces. She went on to say the drawing does not show the parking going the full length of where he has the stone/paving, which appears to go all the way to the property line. If he goes the full length of the building he would be able to get a few more parking spaces. Chairman Sackett clarified the recommendation is to put benches on the plan and put some anticipated parking lines for the spaces, this will be helpful for the Town Board.

Mr. Pazda asked if the applicant will sell Christmas trees, Mr. Vogel said no, there will be no winter activities.

#### **ACTION:**

Motion by Wendy Salvati, seconded by Steven Dale, to **recommend** approval of a Temporary Conditional Permit for an agriculture farm stand/farmers market at 8670 County Road as per the submitted site plan dated April 26, 2017, with the following conditions:

1. Driveway access to be widened to accommodate 2-way traffic at 20' wide.
2. Parking lot be added to the rear and be extended as per site plan drawings.
3. Any customer seating shall be to the rear of the barn and partitioned.
4. Landscaping along the County Road right-of-way to provide a low barrier to the market area along County Road to prevent entrance to the front of the building.
5. Signage is to be installed to clearly and visibly indicate parking is available in the rear.
6. Initial permit approval for one (1) year.

**ON THE QUESTION:**

Mr. Vogel agrees with and understands the conditions.

Mr. Todaro suggested Condition #3 be amended to add partitioning for the seating area. This amendment is agreeable to Mrs. Salvati and Mr. Dale.

Mrs. Salvati said it would be to the applicants benefit to add specificity to the drawing in the form of dimensions to depict items such as the 20' width of the driveway, Landscape barrier at the front be 2 ½' by whatever, the use of timbers, shrubs and perennials and what else might be planted. Also add dimensions for the parking in the rear, with a standard of 10' x 20' for a parking space, this way the number of spaces can be delineated.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

**Item 3**

Satellite Antenna and Tower Law  
Wind Energy Conversion

Discussion.

**DISCUSSION:**

Mr. Callahan introduced agenda item #3 noting that the Planning Board has completed a draft code which is ready for recommendation to the Town Board. An action under the State Environmental Quality Review Act (SEQRA), a Negative Declaration has been issued by the Town Board on this action and the Draft Code is ready for the Planning Board's review and recommendation to the Town Board.

Chairman Sackett said this is the second time the Board has sent the draft code forward. The addition is that they have included language in the Community Facilities and the Traditional Neighborhood District.

**ACTION:**

Motion by Richard Bigler, seconded by Steven Dale, to recommend approval of the final draft of the Satellite Antenna and Tower Local Law Amendments addressing Wind Energy Conversion Systems.

Jeffery Buckley	Aye	Steven Dale	Aye
Gregory Todaro	Aye	Timothy Pazda	Aye
Wendy Salvati	Aye	Richard Bigler	Aye
Robert Sackett	Aye		

MOTION CARRIED.

Meeting adjourned at 7:46 p.m.

Carolyn Delgato  
Senior Clerk Typist