

Clarence Planning Board Minutes  
Wednesday, January 25, 2006

Work Session (6:30 PM)

- Roll Call
- Minutes
- Sign review
- Update on pending items
- Committee reports
- Zoning reports
- Miscellaneous
- Agenda Items

Agenda Items (7:30 PM)

Patricia Powers, Chairperson, called the meeting to order at 7:30 PM. Councilman Scott Bylewski led the pledge to the flag.

Planning Board Members Present:

Patricia Powers	Timothy Pazda
George VanNest	Phil Sgamma
Gerald Drinkard	

Other Town Officials Present:

Councilman Scott Bylewski  
James Callahan, Director of Community Development  
James Hartz, Asst. Director of Community Development  
David Donohue, Town Attorney

Other Interested Parties Present:

John Lindemann	Tom Thielmann
Laura Pfennig	William Pfennig
Mike Schlabach	Jim Blum
Sal Russo	Garret Meal
Dominic Piestrak	Ken Zollitsch
John Kausner	

Motion by Gerald Drinkard, seconded by Timothy Pazda, to approve the minutes of the meeting held on January 11, 2006, with the following changes as discussed:

- Cover page reflects the correct date of 2006.
- Page 2006-2, first paragraph reflects the correct date of 2005.
- Item 6, Carl Frizlen, has been amended to reflect additional comments made at the January 11, 2006 meeting under the "Discussion" and "On the Question" sections.

Corrected copies of the minutes will be sent to the appropriate parties.

Patricia Powers	AYE	George VanNest	AYE
Phil Sgamma	AYE	Gerald Drinkard	AYE
Tim Pazda	AYE		

**MOTION CARRIED.**

Patricia Powers extends the Planning Board's sympathy to Jeffrey Grenzebach and his family with the passing of his mother.

**Item 1**

Cesar Banach

Residential Single-Family

Requests Preliminary Concept Review for a proposed office and warehouse at 8500 Roll Road.

**DISCUSSION:**

Jim Callahan provides the background on the project. The property is located on the north side of Roll Road, west of Harris Hill Road. It consists of approximately 6.19 acres, zoned Residential Single-Family. The applicant has received a variance to allow for commercial uses on the property. The applicant was tabled at the last Planning Board meeting pending receipt of revised site plan as presented.

Garret Meal of Urban Engineers and Cesar Banach are present. Mr. Meal indicates that revisions have been made to the site plan in response to the Planning Board's suggestions from the previous meeting. There are two main revisions. The first revision is to move the setback on the side to 45 feet to accommodate the potential for road expansion. The second revision was to adjust the parking so that it does not extend in front of the building. There have been some modifications made to the buildings, as well.

Patricia Powers indicates the Planning Board members have noticed an increase in the size of the buildings from the previous plan.

Timothy Pazda asks the applicant to explain how the building increased. Where did it increase? Was the building lengthened? Cesare Banach indicates the building has increased by square footage. He is taking advantage of the size of the property. Mr. Banach is figuring on using the space in the future so he thought he would address it now as opposed to coming back for approval in the future. Mr. Meal indicates the plan shows one of the buildings has been moved down and additional footage has been added to it. The back building is slightly shorter than the original proposal, but it includes the "L" shape that has been added to the back.

Timothy Pazda asks who has the recommendation from the County Traffic Department. Jim Callahan had a brief meeting on the adjoining parcel with the County Traffic Engineer. The Engineer identified that the County would require any extension of Harris Hill Road to be aligned with the existing Harris Hill Road. The concern is the Right-of-Way. If there is a need for some Right-of-Way acquisition, is this something the applicant would be amendable to? No details are known at this point, this information is provided for thought, as the project moves forward. Mr. Banach indicates if he comes off the property line and aligns the adjacent roads the project is still at 45 feet, he doesn't feel that it is a big concern, right now. Garret Meal advises the side of the property they are questioning is

the “high” side of the property. He is trying not to take too much away from the high side of the property. Patricia Powers advises the applicant this information is being provided so that he is aware of it as the project moves forward.

Timothy Pazda suggests something as simple as reconfiguring the shape of the building, enlarging it backward so as to keep the same square footage. This way the applicant would have no worries when it comes time to deal with the Right-of-Way issue. Patricia Powers advises the project has gone as far as it can go; it is on the one-hundred year floodplain.

Garret Meal indicates there are some issues pushing backwards, where the project needs room to work with to accommodate the drainage and storm water. David Donohue asks about a septic system. Mr. Meal points out the area near the parking on the site plan. He will take advantage of that spot if in the future the sanitary sewer gets extended up that way. He will have the option to make a connection. The septic would be for both buildings.

Patricia Powers asks if a detention pond is required, where does the applicant plan on putting it? Garret Meal advises that is the reason for leaving an area in the back, to accommodate having some flexibility to work with the storm water.

David Donohue asks Jim Callahan if any part of the project can fall in the one hundred year floodplain. Mr. Callahan advises the project would have to be designed around it. Mr. Donohue asks if any part can extend into the one hundred year floodplain, like the sand filters? Mr. Callahan advises it probably could extend with a one hundred year floodplain development permit, but the applicant would probably prefer to avoid that.

Phil Sgamma asks if parking can extend into the one hundred year floodplain. Jim Callahan advises it would be under the same conditions as previously explained.

George VanNest asks if there is any flexibility on the front or is the project at the setback on the line as well? This would enable the expansion of the building up front. Jim Callahan advises it is based upon the existing building setback.

Phil Sgamma understands that there is a rendering of the building. Cesar Banach advises the rendering was supposed to be in hand, as soon as he obtains it he will forward it to the Planning Board.

Phil Sgamma asks if the Planning Board moves the project along to the Municipal Review Committee, then it comes back to the Planning Board will it be for Preliminary Concept? Patricia Powers confirms that procedure is correct. Ms. Powers advises Concept Plan Approval will not be given until the Planning Board hears from the Municipal Review Committee, the Traffic Safety Advisory and the Fire Safety Advisory. Phil Sgamma thinks this project should be moved on.

There is no one in the audience who wishes to speak to this agenda item.

Phil Sgamma asks what conditions will be placed on this item, he would like to view the rendering of the building and wonders if viewing can be done at Concept Review. Patricia Powers says, “Yes.”

Patricia Powers advises the following conditions:

- all parking will be behind the front base of the office building.
- the parking configuration includes 82 spaces for the office building and 5 for the warehouse. This is the minimum number of spaces for an office building, using a ratio of one per two-hundred feet. If medical offices are put in the building it will require additional parking.

Phil Sgamma asks what the square footage of the building is. Cesar Banach advises the front building is 16,600 square feet and the rear building is 18,750 square feet.

Jim Callahan suggests the conditions for approval reflect the setback along what could be future extended Harris Hill Road must be a minimum of 45 feet and look to see if there is anyway to increase the formation of a public road.

Patricia Powers continues with the conditions:

- the minimum setback is currently at 45 feet from the property line. Should the proposed road come through, that would necessitate a change. In addition, the applicant needs to work to maintain the setback to the greatest extent feasible without changing the character of the building. To maintain the minimum of 45 feet, although it would be preferred to increase it.

David Donohue asks if Concept Approval for this project is this evening. Patricia Powers advises it is not Concept Approval but Preliminary Concept Review.

**ACTION:**

Motion by Phil Sgamma, seconded by Gerald Drinkard, to REFER the project to the Municipal Review Committee, Traffic Safety Advisory and Fire Safety Advisory.

**ON THE QUESTION:**

Timothy Pazda asks for clarification on where the 45 foot setback is from. Jim Callahan advises that right now it is described from the property line. The issue becomes whether an extended Harris Hill Road will encroach into that. Mr. Callahan clarifies that the 45 foot setback is from the property line is minimum and if it could be slid back further in case there is a future road extension that may reduce the setback, that would be preferred.

Phil Sgamma asks why is the larger setback “preferred” and not “required”? Mr. Callahan advises, “Because you don’t know that a public road is ever coming, it’s hard to mandate that.” This will keep the design flexible enough if there are changes that need to be made in the future. Patricia Powers asks Mr. Banach if he is aware of this, he is. Mr. Banach thinks the 45 feet will be “ok”.

Jim Callahan brings up the other issue of a power pole being in the area of the road, but he advises the road would probably bend before that. Mr. Banach agrees.

David Donohue asks Jim Callahan how wide the Right-of-Way is, currently, on Harris Hill Road, the south side of Roll Road. Mr. Callahan advises 66 feet. Mr. Donohue asks if 66 feet is the minimum. Mr. Callahan advises the road would be a town road and the minimum is 60 feet. Mr.

Banach advises, at this point, there is nothing proposed. Mr. Donohue clarifies that the Right-of-Way would be 30 feet on either side of the centerline.

Garret Meal advises the side yard minimum setback for commercial property is 25 feet. Timothy Pazda indicates if this becomes a road the side yard setback would not be an issue.

Patricia Powers	AYE	George VanNest	AYE
Phil Sgamma	AYE	Gerald Drinkard	AYE
Tim Pazda	AYE		

**MOTION CARRIED.**

Mr. Banach advises he will have the drawing, which was previously discussed, to the Planning Board Executive Committee on Tuesday January 31, 2006.

**Item 2**

Roll Road Industrial Park  
Industrial

Requests Preliminary Concept Review for a  
proposed Industrial Business Park at 8520 Roll  
Road.

**DISCUSSION:**

Jim Callahan provides the background on the project. The property is located on the north side of Roll Road, east of Harris Hill Road. It consists of approximately 32 acres, zoned Industrial Business Park. The applicant was tabled at the last Planning Board meeting pending the receipt of an updated site plan reflecting all adjoining uses.

Dominic Piestrack, applicant, and Ken Zollitsch, representative of Greenman-Pedersen, Inc., are present.

Mr. Zollitsch advises he has submitted the revised site plan showing the adjacent properties.

Gerald Drinkard asks Jim Callahan, "Who works with who in the building of that road, to some specification requirement?" Mr. Callahan advises this would be treated as any other major subdivision, it would be a Town road, and therefore, it would need to meet Town specifications and would need to be approved by the Engineering Department. The County would be an involved agency in the review, Harris Hill Road would have to align based on the intersection, it could bend based on the minimum requirements, but the intersection itself would have to be maintained as a true 90 degree cross intersection.

Gerald Drinkard asks for clarification on who builds the road, the developer? Jim Callahan advises that is correct, the developer builds the road for the subdivision. David Donohue asks if some of the road would be on the Banach property. Jim Callahan indicates some of the Right-of-Way would have to be. It looks like the pavement could be right along his property but some of the Right-of-Way may be encroaching, this is the reason for the Planning Board asking for the building on the Banach property to be moved as far west as possible.

Gerald Drinkard wonders how Mr. Diblasi will enter and exit his property during the course of development. Jim Callahan advises the current driveway will be maintained during construction, upon completion of the road he will then have access to the new road.

David Donohue indicates that the property line on this project goes just beyond the centerline. Mr. Piestrak advises he has a letter from Mr. Diblasi saying that he would agree to the proposed road. The road would have to meet Town specifications, the County's involvement would be on the intersection.

Patricia Powers asks, if the project moves forward, would the applicant consider a bike path. Mr. Piestrak is not quite sure where a bike path can be put in. Phil Sgamma thinks there is a bike path that is proposed through Vincroft. Vincroft guaranteed the Town that a bike path would come down through their property. The bike path could be continued all the way to Clarence Center Road. Eventually the Recreation Committee is trying to connect all parts of the bike path.

Jim Callahan points out the unknown is the location of wetlands at the site.

Patricia Powers asks if the wetlands have been delineated. Mr. Piestrak points out the wetlands on the site plan and advises he has avoided these areas while developing the plan.

Patricia Powers asks if, in the future, something were to happen on the northern portion, beyond where the Industrial Park is now, does Mr. Piestrak have access to Newhouse Road. Mr. Piestrak has an option on a neighboring 9 acre parcel.

Mr. Piestrak indicates the Town was not interested in a residential development at this location, thus the reason for the submitted Industrial Business Park.

Councilman Scott Bylewski suggests that the bike path/pedestrian walkway can be proposed adjacent to any proposed Harris Hill Road extension. The applicant needs to keep in mind the Subdivision Law for bike paths/pedestrian walkways.

#### **ACTION:**

Motion by Gerald Drinkard, seconded by Phil Sgamma, to REFER the project to the Municipal Review Committee, Traffic Safety Advisory and Fire Safety Advisory. Due to the segmentation issue, the Planning Board will ask the Municipal Review Committee to look at the entire parcel, as well as the parcel that the applicant has an option on.

#### **ON THE QUESTION:**

Jim Callahan provides clarification in looking at the northern portion; if it is speculative it is difficult to put any parameters on it. The Municipal Review Committee and the applicant may be put in a very difficult position if it is an unknown project; it is hard to quantify it. Patricia Powers asks if the Planning Board should ask the Municipal Review Committee to review the industrial part only. Jim Callahan thinks this is the intent. The applicant has identified his intent was housing at the location, so there is a conflict at this point, therefore to ask the Municipal Review Committee to review that portion when it is speculative is an impossible task unless you have a site plan that extends and is all inclusive.

Phil Sgamma asks if it wouldn't be the Municipal Review Committee's option to decide whether this is permissible segmentation. Jim Callahan indicates what is being referred is just the 30 acre parcel of Industrial Park; this is what should be reviewed. Phil Sgamma states the Municipal Review Committee can make the determination based on just the Industrial Park.

Mr. Piestrak wonders if a market exists for this type of use, and if it doesn't he would like to exercise his option and do something else. Mr. Piestrak thinks this location is perfect for single family homes, however the Town's idea and Zoning Code disagrees. Jim Callahan advises that this brings up a tremendous unknown and makes this project very difficult to review.

George VanNest indicates that this project can be considered sufficiently concrete and definite if it is strictly the southern portion. David Donohue agrees and indicates that by adding the northern portion, the segmentation issue is created where one really doesn't exist. Patricia Powers advises it was not the intent of the Planning Board to create the segmentation issue.

David Donohue asks for clarification on lot number 1. It appears that lot number 1 is separately owned, but on a previous map lot number 1 is included. Patricia Powers advises lot number 1 is not part of this project. Jim Callahan indicates that lot number 1 is owned by the applicant and was previously divided when they acquired the property. Even though lot number 1 was a deeded separate parcel, it should be included as part of the project. The reason Mr. Donohue asked for clarification is because one of the earlier maps did not show parcel number 1.

Mr. Piestrak suggests that the property line is incorrect. The heavy black line on the map indicates that lot number 1 is part of the project; the black property line should not include lot 1. Phil Sgamma advises that the Planning Board asked the applicant to provide a map showing the surrounding parcels, this map shows the surrounding parcels. David Donohue advises the lot should be shown as a separate parcel. Jim Callahan advises that even though the lot is a separate parcel, it is owned by the applicant, and that is the reason the GIS mapping system printed this way.

Patricia Powers looks to have the Motion rescinded; however, Jim Callahan indicates the Motion was fine, there was just a discussion related to the northern portion. The motion is fine as long as it is clear that only the 30 acre parcel is under review. Gerald Drinkard confirms that was the motion.

Phil Sgamma thinks the Planning Board should consider the 30 acres as outlined, with the modification that Mr. Piestak said he will provide. This is what should go to the Municipal Review Committee for review.

Patricia Powers	AYE	George VanNest	AYE
Phil Sgamma	AYE	Gerald Drinkard	AYE
Tim Pazda	AYE		

MOTION CARRIED.

Item 3

Ransom Road Open Development Area  
Agricultural Rural Residential

Requests Preliminary Concept Review for a three-lot open development area at 4180 Ransom Road.

**DISCUSSION:**

Jim Callahan provides the background on the project. The property is located on the west side of Ransom Road, opposite the intersection with Jones Road. It consists of approximately just under 8 acres, it is zoned Agricultural Rural Residential. The applicant is introducing a concept for an open

development area and this represents the first time the project has been on the Planning Board agenda after being referred from the Town Board in December 2005.

John Kausner, project builder, is present to answer any questions.

Gerald Drinkard asks for clarification on the acreage. Jim Callahan indicates the project is 7.75 acres. Mr. Drinkard looks at the map and indicates that this adds up to the first lot being approximately 1½ acres. The way the plan is designed, Mr. Drinkard's calculations are correct. Mr. Kausner advises there is an existing home at this location. David Donohue indicates the frontage lot is 275 feet by 234 feet.

Jim Callahan voices a concern regarding the interpretation of the Open Development Law. The question is whether the frontage lot should be included as part of the design or whether it can be totally excepted from it. David Donohue asks if all the lots are under the same ownership at this time. Jim Callahan advises they are.

Gerald Drinkard confirms "it is one parcel going to four parcels". All four parcels should be in compliance with the Open Development Law. Mr. Drinkard refers to the Open Development Law which states each parcel shall be 2 acres each.

John Kausner advises that Mr. Metzger has two other Planning Board meetings this evening, but he should be here shortly. Mr. Kausner advises the front lot has an existing house on it at the regulation for a similar lot size, if he read the ordinance correctly. Timothy Pazda advises Mr. Kausner did not read the ordinance correctly; it is very clear and indicates "it must be 2 acres each". Gerald Drinkard advises this information is in the Subdivision Law on page 27, Article V, Item 2C.

George VanNest questions the driveway right-of-way. The Open Development Law suggests and requires the minimum right-of-way be 36 feet. Shown in the eastern portion of the property it shows a 20 foot line and as you go west it says 36 feet. Mr. Kausner thinks the 20 feet refers to the paved area. It should be a 36 foot right-of-way with a 20 foot paved area. Pat Powers advises that in the plan in front of her it looks like the right-of-way comes up to the property line. Mr. Kausner advises this is correct.

David Donohue thinks the matter should be taken to the Town Attorney's office.

Timothy Pazda comments, for the record, that also in Article V (of the Subdivision Law) it reads, "An Open Development Area is not an as of right use and must be designed to maintain the rural character of the Town as well as to meet the conditions as herein established. Mr. Pazda wants to make this very clear.

John Lindemann, of 4200 Ransom Road, is present. Mr. Lindemann has created an aerial map of the layout of the land. The information is distributed to members of the Planning Board. Mr. Lindemann points out the "Points to Consider" listed on the aerial map. Stated on the drawing and referring to the code, Mr. Lindemann indicates that there should be a minimum of a 100 foot separation between the padded driveway and the existing driveways. He has not done a survey, but according to the map he has created the separation is less than 100 feet. Timothy Pazda asks for confirmation that the proposed private drive and the driveway at lot 4200 are less than 100 feet. Mr. Lindemann confirms. Phil Sgamma asks if Mr. Lindemann lives in lot 4200, Mr. Lindemann replies, "Yes, Sir." Phil Sgamma asks what the frontage is at Mr. Lindemann's property, it is 100 feet.



David Donohue advises it may be within 100 feet of Jones Road, which may also be a problem, because the requirement is within 100 feet of driveways and roads as well.

Mr. Lindemann refers to number two under the "Points to Consider" on the aerial map. He doesn't understand how the applicant can start out with less than 8 acres and end up with 2 acres each; it looks like the applicant is trying to do an exceptional

Mr. Lindemann refers to number three on the aerial map. He advises he has a lot of standing water between his yard, at 4420, lot 4170 and lot 4160. The standing water happens quite frequently. Attached to the aerial map are photos of the backyards showing standing water, the photo was taken on Saturday. Mr. Lindemann believes that if this development were to proceed, a lot of the spores would be cut down adding to poor additional run-off, which would hurt the drainage in our backyards.

Mr. Lindemann refers to number four on the aerial map. He states that he did not move to Clarence expecting to have a 20 foot wide paved, 1000 foot long driveway along our property line. As proposed, the driveway is 18 feet from the side of his house and "kisses" his property in two places. He is not fond of this; he feels he is being infringed upon with the proposed driveway. If this were to proceed he would require a buffer zone.

Mr. Lindemann refers to number five on the aerial map regarding the poor alignment between the private drive and Jones Road. The private drive is basically a small road and he's not sure that this alignment would be a good thing.

Mr. Lindemann refers to number six on the aerial map. He quickly looked at some soil mapping and thinks that there may be possible negative soils in the area.

Laura Pfennig lives at 4170 Ransom Road, just south of the project. She owns the property that Timothy Pazda went to see today. Ms. Pfennig states that she has standing water from December to June, every year. There have been very few times that she has been able to plant her garden on time, she has had to wait until Father's Day to plant it because it is so saturated. Adding the three houses is only going to increase that run-off onto our property.

Ms. Pfennig has copies of the petition that was sent to the surrounding neighbors. There are signatures from 44 neighbors who are opposed to this project. Some of the issues that are addressed in the petition are not only the standing water, but there are issues with water pressure as well. Another concern is the whole area in the back has been a wildlife habitat for years; we should be protecting that area instead of destroying it. She realizes that there is green space between the houses and areas that will be protected, but if you walk back on any of the neighboring properties you'll see the deer trail and the turkey beds. This habitat will not only be disturbed, but destroyed. If you look at the entire section of Ransom Road from Tillman Road to the Interstate 90, it's about ½ mile, all the neighboring properties are about ¼ mile deep on the west side of Ransom Road. If you look at where the housing is and the development for the properties it's in the first 200 feet of the property. So even if they took 900 feet and multiplied that by the ½ mile and then divided it to come up with acreage, there is really 55 acres of open green space that should not be developed.

Another concern that is listed in the petition is that permits have not been obtained for work that has been done; burning of the construction debris has taken place even after the fire department spoke with Mr. Kausner and advised him not to burn any more. Another burn took place on December

21, 2005. From Ms. Pfennig's property line you can see construction debris such as door knobs in the back.

She is also concerned about the privacy issue. On the south side of the property is Ms. Pfennig's swimming pool. The area is just kind of open to where that first lot would be. There are trees, but the trunks of the trees are 10 feet high and you can see clear through.

Ms. Pfennig indicates that there is a property further south on Ransom Road, the address is 4050. In the past there was a request to build a ranch house on this property at about 600 feet from the road. It was approved by the Planning Board. A recommendation was made to the Town Board to approve the proposal but the Town Board defeated the proposal because it was not within the character of the existing homes. The neighboring homes were all built in the 1880's, 1920's, 1940's, 1960's and a couple in the 1980's, they are very modest homes.

Patricia Powers advises Ms. Pfennig that the petition and the photos of the standing water have become a part of the file.

George VanNest asks Ms. Pfennig if she has raised the problems of water pressure with the Erie County Water Authority. Ms. Pfennig has not. Mrs. Minnick, a neighbor to Ms. Pfennig, advises she has called the Erie County Water Authority.

Carol Minnick of 4220 Ransom Road speaks to the Planning Board. Ms. Minnick addresses what she considers the wetlands in her back yard. She has lived at this location for about thirty-six years. When she moved to this location, and up until about fifteen years ago, she did not have a sump pump in the basement. It seems to get wetter and wetter. The water pressure has always been a problem. She and her neighbors really enjoy looking out their backyards and seeing trees and deer and the stars, that's why they are there. If we wanted to have houses in our backyards we would have moved somewhere that had houses in the backyards. Another bird that is present in this area is the Pileated Woodpecker.

Mike Metzger, the engineer on the project, is present and speaks to the Planning Board. Mr. Metzger understands that there may be some existing drainage problems now, it is preliminary to get into too much detail at this point except to say that a grading and drainage plan will be prepared. This plan will meet the Town requirements, it will have to be reviewed and approved by the Town Engineer prior to the project moving forward. The design that will be prepared will not create problems for others; the water on-site will be taken care of properly, disposed of properly. If it is determined by the Town Engineer to be a benefit to the neighbors in the area, Mr. Kausner would be willing to put in a storm water detention pond and try to route as much of the existing water from the area to it as possible. Mr. Metzger indicates that in the past he has found that as he prepares plans for a project that has had no drainage work done; the plan will actually improve a situation that might already exist.

Mr. Metzger addresses the question of hydric soils on site. He has hired a biologist who has walked the entire site and has concluded that there are no Federal Wetlands on the site, he has also looked at State Wetland maps and there are none on this property. There are no State Wetlands even within enough proximity that any buffer would have any impact on the project. There are no wetlands associated with this property.

Mr. Metzger addresses the water pressure issue. He has contacted the Erie County Water Authority to find out what water pressures are like in the immediate area. Mr. Metzger has a report

from the Erie County Water Authority from a fairly recent flow test. The report indicates that the required fire pressure and domestic pressures are available on Ransom Road to serve this property. The pressures of the flows are probably two to three times of what would be required for fire and domestic pressures. This information will be shared with the Town Engineer at the appropriate time.

Mr. Metzger speaks to the Planning Board regarding the privacy and development issue. The Open Development Area scenario that is being proposed for this site has, traditionally, been embraced by the Town of Clarence as a very good and reasonable alternative to a conventional subdivision. It provides a very low density development scenario compared to what could result developing the property under conventional subdivision methods, which would end up with significantly more density and more homes in the area. So, he looks at this project as an environmental and neighborhood friendly form of development.

Mr. Metzger address the lot that would be created up front that would be approximately 1.5 acres in size. Just by review of the Open Development Ordinance it is clear that this lot would not have to be made a part of the Open Development. The request is for a three lot Open Development Area and there would be, as a result, a 1.5 acre frontage lot that would be created by portioning off the six plus acres, that would go to the Open Development Area. This subject was actually discussed with the Town Board when they made the referral. There was some discussion, at that time, whether there might be a need for a minor subdivision for that lot, but in looking at it the Planning Department has concluded that the Open Development Area process would, in effect, create that lot. There would not necessarily be a need to create a minor subdivision process for that as well. Mr. Metzger wanted to clarify this matter.

Mr. Metzger refers to Article V - Open Development Areas of the Subdivision Law. He refers to the text regarding frontage lots and how they have to be of size if they are being included as part of the driveway. This text relates to situations where someone would like to add a frontage lot on to that driveway, this is not part of the plan at this time. This plan will provide for a common driveway for the three homes and will exceed the 100 foot minimum requirement from other driveways, existing and proposed.

Timothy Pazda asks if the lot to the north is a hundred foot lot, how does Mr. Metzger come up with the calculation that it is one hundred feet away from the driveway? Mr. Metzger advises the lot is not 100 feet; it is over 200 feet in width. David Donohue clarifies: the question is regarding the width of the adjacent/neighbor lot to the north. Mr. Kausner has measured the lot himself and has assured Mr. Metzger that it is more than one hundred feet away. Mr. Kausner corrects this statement by saying it is "very close" to one hundred feet. Mr. Metzger advises one of the things that will be done as this project progresses is to have a photographic survey done. Once this is done we will know exactly what the distance is to the driveway from this project's north property line and if there is a need for any adjustment whatsoever in that driveway, it can be moved further south. Based on Mr. Kausner's measurements it appears that this will not be a problem. There is not an exact measurement from a land surveyor.

Phil Sgamma asks if Mr. Kausner is both the owner and the developer. Mr. Kausner does not own the property at this time; he has a contract to buy it. Phil Sgamma clarifies that Mr. Kausner does not own the property now.

Phil Sgamma asks if the current owner is living on the property now. Mr. Kausner advises the owner was living on the property until November 2005. Mr. Sgamma advises the property looked in

very poor shape. Mr. Kausner advises it was in very poor shape, the barn was falling down, and the outbuildings were in bad shape. He refers to a comment made by a neighbor during the earlier part of this meeting regarding the work that was being done on the property. When he began the work he called Dave Metzger from the Building Department and found that there was no permit required for the work that was being done, the roof, the siding, and replacement windows. Subsequent to that, Mr. Kausner has taken Dave Metzger and Paul Gross through the property. The only thing Mr. Kausner did that required a building permit was he began to replace the garage roof, the timbers were rotting. At this time two of the building inspectors have been through, all the paperwork and plans have been filed for the house. He confirms the property was in very poor condition and he is taking the barn down.

Phil Sgamma asks if Mr. Kausner was the one who was burning the debris. Mr. Kausner replies, "No, Sir." Mr. Kausner indicates that Mr. Wood had someone from his church there and they were having bonfires. Mr. Kausner refers to a statement that he thinks Carol Minnick made indicating that Mr. Kausner had been contacted; he was not contacted by anybody. He received a call from Dave Metzger on December 20 or so of 2005 regarding the burning. Mr. Kausner was not burning anything and was told by Mr. Wood that the burning had something to do with the tree stumps there. He believes the Fire Department was called at that time.

Gerald Drinkard contends that what is being discussed here is one lot going into four lots, three of which a house will be built on, but all of the lots have to come into compliance with the two acre requirement. You can not leave one stranded at an acre and a half and peel off the three lots that you have and meet the guidelines of the Open Development Area. David Donohue thinks this is the legal issue before the Planning Board this evening.

David Donohue speaks to the Planning Board regarding the legal issues. We are questioning whether we can have the number of lots for that site and does the frontage lot count as part of that minor subdivision. We also have the issue with the driveway being 100 feet from any other driveway; this can be satisfied with a simple survey. The proposed private drive, right now, goes right to the lot line, that would have to be amended at least three feet to be within code. If the private drive is put in, Mr. Donohue wonders if the setback on the house to the north would be 45 feet from that private drive. Obviously the new houses would have to be 45 feet but he thinks the existing house should be at 45 feet as well.

David Donohue addresses the question regarding the frontage lot being counted as one of the four lots, as it would only be one and a half acres. Initially, Mr. Donohue points out that one of the things the Master Plan talks about is preserving the rural character, particularly in an agriculturally zoned area. This is something that Mr. Donohue would prefer to discuss with Steve Bengart, Town Attorney, review it properly and come back to the Planning Board with an answer at a later date. George VanNest adds that the question of rural character comes into play when you are looking at placing a private drive eighteen to twenty feet from a neighboring house. Mr. Donohue indicates this is where the 45 foot setback is a concern for him. The new houses have to be 45 feet from the private drive; he would think that, so too should the existing house have that same luxury.

Mr. Lindemann advises he measured 45 feet from his house and 45 feet from the house that is being remodeled and that leaves a road that is nine inches wide. Mr. Donohue thinks these issues can be resolved with a certified survey, once we get beyond the initial question of whether three additional lots are acceptable.



- the definitions for caliper and diameter breast height were clarified.
- the definition for timber harvesting was clarified and identified in section 7.E.; the Municipal Review Committee wanted it clarified and matched.
- the species list should be available for public review in the Building Department.
- a drawing is being worked on to illustrate the regulation on what will identify the footprint of the total area of a project under section 9 - D. 7.
- add a replacement tree section for existing roads, an example being as in Clarence Center or some of the older town or county roads, when trees are removed because of age or disease, there should be a replacement clause. This will be incorporated in the law as well.

Patricia Powers notices that all the questions and concerns of the Planning Board and Jim Blum have been addressed in the latest draft, which is Draft 3.

Jim Callahan indicates that Wendy Salvati has identified that she has some comments from the Conservation Committee, nothing very significant. The comments include some typographical errors and clarification issues. Ms. Salvati will forward them to Jim Callahan as soon as possible.

Gerald Drinkard refers to the list of trees; he indicates that the Pin Oak tree is listed as desirable and undesirable. Jim Callahan clarifies that the Pin Oak is recommended for park use but not for street use.

Councilman Scott Bylewski indicates that for the sake of consistency with the new Subdivision Law and the Zoning Law, perhaps the definitions should be in the back, it may make it easier to read.

Gerald Drinkard asks if Jim Callahan wants the typographical errors, Mr. Callahan advises anyone with typographical errors can provide him with a copy of the document indicating the errors and they will be corrected.

George VanNest asks if there is a definition of Mature Trees. Phil Sgamma agrees there is a need for a definition for a Mature Tree as well as for what a Woodland is.

Jim Blum speaks to the Planning Board. Mr. Blum refers to the definition section. In a number of places in the document it is required that the tree be 2 ½ inches diameter in breast height, in the definition it basically says the diameter breast height is only used to describe trees above a 6 inch trunk. Jim Callahan indicates that Roy McCready has clarified this issue. Mr. McCready identified that existing mature trees are measured from diameter breast height and caliper is used for planting trees.

Councilman Scott Bylewski indicates the definition for Diameter at Breast Height states “a large tree trunk made at four and one half feet above ground level” while the Zoning law indicates the measurement at four feet. The measurement needs to be consistent.

Mr. Blum indicates on page three of the draft, there is a definition for Clear Cutting; he is worried about the word “complete” in the definition. He feels the definition can be interpreted in different ways and may cause confusion. A developer may clear all the trees, but four, on an acre of land and say he has kept to the code.

Mr. Blum refers to page six and seven. He does not understand that you can remove ten trees from the setback, basically the front yard, but there is no reference to the back yard. As Mr. Blum reads the draft further, his confusion is clarified. Jim Callahan advises the law is trying to preserve some of the trees in a front yard setting.

Mr. Blum is not sure how well the law deals with non-residential properties. Jim Callahan advises landscaping is somewhat covered in the Zoning Law. The main thrust of this is the landscaping upon completion or mitigation of properties cleared for commercial use. The site plan review process will require the tree survey in any of the trees be protected that are of a significant in nature. There are other laws that work hand-in-hand.

Mr. Blum refers to pages four and seven and suggests the law needs a definition for the term “screen” or change the wording to reflect “screen from view”. David Donohue asks Jim Callahan if those in the industry will understand the wording. Mr. Callahan indicates clarification can certainly be worked on and suggests maybe the word “screen” is not the correct word to use.

Mr. Blum refers to a few typographical errors on page nine.

Mr. Blum refers to page ten and wants to make sure the law applies to residential as well as commercial.

Mr. Blum refers to page eleven, item H. 1. He indicates that wherever there is a waiver, a super majority is called for. He suggests the super majority be considered here.

Mr. Blum refers to page eleven, item ten. He thinks this is referring to “on one property” and perhaps the wording should be corrected to reflect this.

Mr. Blum refers to page twelve and thirteen. There is a duplication of four items between item C.2. on page twelve and item F.5. on page thirteen. Regarding 12.A.1. on page thirteen, “trees shall not be planted within five feet of a right of way or property line;” Mr. Blum indicates that many people have a hedge on their property line between them and their neighbor. He asks, “Would I have to come in for an exception if I wanted to put a hedge on my property line between me and my neighbor?” Phil Sgamma points out that this part of the law is pertaining to trees.

Mr. Blum refers to page fifteen under section sixteen. Once again there is a waiver and Mr. Blum suggests a super majority here as well.

Patricia Powers thanks Mr. Blum for his input on this document.

Phil Sgamma advises a better definition of “mature” trees is needed. Gerald Drinkard advises that, after reviewing information provided from state documents in declaring what is a “mature” tree and what is not, it is predicated that maximum size and the context of being either fruit-bearing or worth some financial reward indicates maturity, so maturity would clearly be based on the species of the tree.

David Donohue asks if the term “mature tree” is actually used in the legal section.

Gerald Drinkard refers to the Master Plan in which the context refers to preservation of “mature trees”. Mr. Drinkard makes mention of a case that was presented and referred to a gentleman who was

speaking of the Essex area, he showed an aerial view from 1951 when Clarence was basically Agricultural, the area was clear. He showed another aerial from 1971 showing a scrub area and now some of the trees are thirty, forty and fifty feet in height. The area grew relatively quick, will soon die but they will regenerate themselves so the vista will be preserved. Mr. Drinkard would contend that this is a “mature” woodland in the context of the species of tree that grows in that area.

Gerald Drinkard indicates that the Subdivision Law does not refer to “mature trees”, but it does specifically talk about vistas.

Jim Callahan indicates that in terms of the Landscape Law, he does not know that the term “mature tree” is mentioned in a context where it will become an issue. Mr. Callahan believes the Landscape Law is acceptable with regards to this issue.

**ACTION:**

Motion by Patricia Powers, seconded by Timothy Pazda, to RECOMMEND the Landscape and Tree Conservation Local Law to the Town Board for public hearing and eventual adoption as local law with the corrections that were discussed this evening. This will be Draft Number Four.

**ON THE QUESTION:**

George VanNest asks if the comments from Wendy Salvati and the Conservation Committee will be taken into consideration. Jim Callahan advises he will incorporate any comments from Wendy Salvati and the Conservation Committee

Patricia Powers	AYE	George VanNest	AYE
Phil Sgamma	AYE	Gerald Drinkard	AYE
Tim Pazda	AYE		

MOTION CARRIED.

Meeting adjourned at 9:20 p.m.

Patricia Powers, Chairperson