

**WEST SENECA TOWN OFFICES**  
**1250 Union Road**  
**West Seneca, NY 14224**

**WEST SENECA PLANNING BOARD**  
**Minutes #2014-08**  
**August 14, 2014**

Chairman Robert Niederpruem called the meeting to order at 7:00 P.M. followed by the Pledge of Allegiance to the Flag led by Donald Mendola.

**ROLL CALL:** Present - Robert Niederpruem Jr., Chairman  
Donald Mendola  
Joseph Ciancio  
Gerald Greenan  
Anthony Nigro  
Jim Rathmann  
Jeffrey Schieber, Code Enforcement Officer  
Charles Grieco, Attorney for the Town

Absent - Joseph Sherman

Chairman Niederpruem read the Fire Prevention Code instructing the public where to exit in case of a fire or other emergency.

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#### **APPROVAL OF PROOFS OF PUBLICATION**

Motion by Rathmann, seconded by Ciancio, to receive and file the proofs of publication and posting of legal notice.

Ayes: All

Noes: None

Motion Carried

#### **APPROVAL OF MINUTES**

Motion by Mendola, seconded by Ciancio, to approve minutes #2014-07 of July 10, 2014.

On the question, Mr. Greenan referred to the motion at the previous meeting recommending approval of the Clinton Street rezoning and stated the R-50(S) conditions he recited were not fully set forth in the minutes. He asked that the minutes be amended to include the attached motion.

Motion by Greenan, seconded by Mendola to amend minutes #2014-07 of July 10, 2014 with the attached resolution concerning an R-50(S) zoning for property located at 3859, 3863 & 3869 Clinton Street.

Ayes: All

Noes: None

Motion Carried

Motion by Greenan, seconded by Rathmann, to approve minutes #2014-07 of July 10, 2014 as amended.

Ayes: All

Nces: None

Motion Carried

**OLD BUSINESS COMMUNICATIONS**

**SPR2014-08**

A request for site plan approval for property located at 4592 Seneca Street for a 26-unit townhouse development.

Chairman Niederpruem stated the petitioner had advised their drawings were not ready and asked that the item be tabled.

Motion by Greenan, seconded by Mendola, to table this item until a complete plan is submitted.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS COMMUNICATIONS**

**2014-09**

A request for a rezoning for property located at 117 French Road, being part of Lot Nos. 13 & 33, changing its classification from R-100A to C-1, for a commercial development.

Chairman Niederpruem stated the Planning Board had received an application for rezoning detailing the location and size of the property, a letter from the property owner, a short environmental assessment form, a rendering of a section of the building, a legal description, and two plans.

Colby Smith, consultant for Buffalo Geothermal, stated their proposal to develop a little less than an acre of the two acre parcel at 117 French Road. He submitted information acknowledging the easement for the existing roadway, renderings of the building and a basic site plan. Buffalo Geothermal is a custom heating business.

Chairman Niederpruem stated the Planning Board members had some difficulty with the drawing and trying to figure out the scale. He questioned where the bar at the corner was on the plan and why the building was being placed in the front corner, 10 feet off the property line.

Mr. Smith responded that the bar is zoned commercial and is not part of the property. There is an old barn, a workshop, and Pines Garden Center that face French Road, and their project will be located on the two acres that face Clinton Street on the other side of the natural barrier/berm. Mr. Smith further stated the building was placed in the front corner of the property due to the county sewer easement. It will be located 128' from the sewer right-of-way.

**NEW BUSINESS COMMUNICATIONS**

**2014-09** (continued)

Jens Ponikau, owner/designer for Buffalo Geothermal, stated their current business is located at 2125 William Street, Cheektowaga. They have been in business for five years and are looking to expand because business is doubling and tripling each year. The new facility will be single story, environmentally friendly, have a green roof and display different kinds of geothermal technology that capture stored solar energy in the ground. The facility will be used to fabricate and test ground loops and gather data for NYSERDA. Mr. Ponikau explained that ground loops are a system of plastic pipes buried in the ground that catch solar energy and harvest stored heat by means of circulating water through it. Anti-freeze is used to keep it from freezing. The anti-freeze is alcohol based or food based glycol which is environmentally friendly by EPA standards. The pipes are made of high density polyethylene, but even if they broke nothing would happen. Mr. Ponikau further noted no permits are needed from the DEC or EPA for installation of these systems.

Mr. Greenan questioned if "green roof" meant there will be grass on the roof. Mr. Ponikau responded that the roof will be grass and will retain rain water, a design aspect of the building.

Chairman Niederpruem commented on the growth of the business and questioned how long it will be before they outgrow the proposed building.

Mr. Ponikau responded they are investing in this building long term. Their current building is 1800 sf and the new building will be 15,000 sf. There is very little data about how ground behaves in WNY and they are trying to pioneer this technology. The EPA, NYSERDA and the Public Service Commission are asking for this info. Their intention is to display who they are and the building will represent them. The building will be partially underground and they will be raising the ground level around the building but keep the drainage pathways to the drain underneath the street the same.

Mr. Ciancio commented on the water problems in the area and on this site.

Mr. Smith understood that improvements were made over the last few years. He further stated that proper engineering will be done and the retention/detention will mitigate the water issue. The green roof will also help.

Mr. Ponikau stated the business will actually appreciate the water because it is a good conductor of heat.

Mr. Ciancio commented the setback on Clinton Street should be 40' rather than 10'.

**NEW BUSINESS COMMUNICATIONS**

**2014-09** (continued)

Mr. Ponikau stated the building department had suggested the 10' setback for ease of access to the easement.

Mr. Mendola questioned if they will be experimenting with a system to be used in other places.

Mr. Ponikau responded there will be a maximum of two to four people assembling ground loops, one system each week or two, depending on the time of year. There will also be ground loops in the ground on the property so they can get the data they need. The ground loops are 5' or 6' in diameter and are essentially a ball of plastic pipes wrapped up together so they can be unrolled on site and put in the ground. There will be three to five people working at the facility with one or two customer visits per day. The operation generates no emissions, there is no gas line and no noise.

Mr. Rathmann questioned the elevation of the building which appeared to be 25 feet above grade.

Mr. Ponikau presented the site plan to the board members and indicated the location of the building and the retention pond that will mitigate water issues, noting they will also put loops on the bottom of the pond.

Eugene Jerge commented on the retention pond at Canisius High School's athletic field on Clinton Street which has cattails and algae and invites geese to the area. He questioned what will happen to the building if the zoning is changed to manufacturing and they outgrow it in the future. Mr. Jerge thought the zoning should remain agricultural and commented on water problems causing basements to flood and septic systems to back up.

Gary Mackiewicz presented a section of the existing Comprehensive Plan that states the specific area should be used for residential and agricultural purposes. He thought rezoning the property will be spot zoning and against the Comprehensive Plan and commented that change should only take place when it is in conformity with the surrounding area. Mr. Mackiewicz further stated the petitioners were made aware of the water problems in the area a few months ago at a neighborhood meeting held at the Burchfield Center.

**NEW BUSINESS COMMUNICATIONS**

**2014-09** (continued)

William Tokasz represented his mother who has lived on Clinton Street for 50 years and commented on past attempts by Majeski's, Earsing's and Mr. Young to rezone the property, noting the same problems exist. Sump pumps in the area run constantly and Buffalo Creek fills to the top. There are no storm sewers and NYS is not planning to install any. Mr. Tokasz stated when it rains the residents have to turn off the tubs in their basements or they have water backing up.

Ed Doruszewski commented on the severe water problems in the area, especially during heavy rains, and felt the project will add to the problem. He agreed the rezoning is against the Comprehensive Plan and stated the majority of the area is residential/agricultural and the businesses located there have been there since the 1940's and 1950's which is prior to the zoning ordinance. Clinton Street is flat grass land and the proposed building will be 19' high with a glass wall that does not fit in the neighborhood. Mr. Doruszewski asked that the neighborhood be kept residential to protect the residents.

James Choinski, owner of Pines Garden Center, stated he grew up in the area and two detention ponds and a retention pond were installed where his house is and they have never had any problem with water. There are no algae or cattails in the ponds because he maintains them with environmentally safe products and they are beautiful. He thought they should look at the positive instead of negative and stated the Lakeside Drive residents are  $\frac{3}{4}$  mile from the project so he didn't understand their concern. Mr. Choinski stated this business chose West Seneca to invest in and they will take flooding concerns away from the area. There are numerous businesses on Clinton Street and there has been a business on this site for 55 years. The proposed business will be only a few feet away. Mr. Choinski was in favor of the proposed green business that will provide jobs and take part of the water issue away.

Mr. Ponikau presented pictures of the existing drainage system indicating a 3' drain underneath the road from the lowest corner draining directly into Buffalo Creek.

Attorney for the Town Charles Grieco stated the town received a letter from the DEC stating this is an archaeologically sensitive area. He questioned if an archaeological survey was provided and stated the Town Board will need to make a SEQR determination and an archaeological survey will be helpful. Mr. Grieco further questioned if an engineer had looked at the property and plans and did any calculations with regard to the drainage.

**NEW BUSINESS COMMUNICATIONS**

**2014-09** (continued)

Mr. Ponikau responded he had no problem providing an archaeological survey if required. If there is a drainage problem the building will not change it, because it only involves a small portion of the two acre site.

Mr. Rathmann questioned the number of jobs the business will create.

Mr. Ponikau stated they will be adding three or four people along with additional people to install systems throughout WNY.

Mr. Rathmann referred to other property in the area that is available and is zoned for manufacturing and questioned why this particular parcel was chosen that needs rezoning.

Mr. Ponikau responded that Clinton Street is a very busy street and they want the exposure to showcase their technology. Also, they like the location of the property, it is a green site and they want to keep it that way.

Susan Kims questioned if they are applying for tax exempt status.

Mr. Ponikau responded that an application was filed with the Erie County Industrial Development Agency to see if they qualify for tax exempt status under a payment in lieu of taxes (PILOT) program. The application is on hold pending zoning and permit approval.

Mrs. Kims further questioned what type of testing will be done and the type of anti-freeze to be used.

Mr. Ponikau responded they will be testing how the loops perform in this area of WNY and at different depths. An alcohol based anti-freeze and food grade glycol anti-freeze are used which are both approved for systems in NYS, are environmentally friendly and no permit is needed.

Motion by Greenan, seconded by Mendola, to close public hearing.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS COMMUNICATIONS**

**2014-09** (continued)

Motion by Greenan to recommend approval of the request for a rezoning for property located at 117 French Road, being part of Lot Nos. 13 & 33, changing its classification from R-100A to C-1, for a commercial development, conditioned upon there being an archaeological study showing no negative archaeological impact and no permits being issued until the engineering department is satisfied it will not contribute excess water following a rainstorm.

The motion was lost due to lack of a second.

Motion by Mendola, seconded by Ciancio, to recommend denial of the request for a rezoning for property located at 117 French Road, being part of Lot Nos. 13 & 33, changing its classification from R-100A to C-1, for a commercial development, based on the proposal not conforming with the Master Plan and due to drainage problems that have existed in the area.

Ayes: (5) Mr. Mendola, Mr. Ciancio, Mr. Nigro, Mr. Rathmann, Chairman Niederpruem

Noes: (1) Gerald Greenan

Motion Carried

**2014-10**

A request for a rezoning for Queens Landing Subdivision, being part of Lot Nos. 426 & 427, changing its classification from R-65 to R-65A to allow for construction of two-family homes.

Chairman Niederpruem stated that along with the application the Planning Board had received a letter of request from the owner of 1000 Queens Grant LLC, a legal description, a short environmental assessment form and a current map cover filed two years ago by Nussbaumer & Clarke.

William Tuyn of 1000 Queens Grant LLC stated plans were approved and a map cover was filed for the Queens Landing Subdivision and they were in position for obtaining public improvement permits to begin putting in the infrastructure. They did not want to interrupt the process, but after looking at the character of the neighborhood they thought it will be challenging to build homes and hit the market at the price it costs to build a new home today. Mr. Tuyn referred to other two-family homes in the area and thought their proposal to build two-family homes was in keeping with the character of the neighborhood. He presented a letter from the City of Lackawanna in support of their proposal.

**NEW BUSINESS COMMUNICATIONS**

**2014-10** (continued)

Mr. Greenan stated the zoning ordinance requires a 75' lot for a two-family home.

Mr. Tuyn responded they would like to change the zoning to R-65A and then use Section 278 of the Town Law concerning cluster developments to apply for that type of development. If that is not acceptable, they will apply for an area variance for lots that are narrower, but they will first need approval of the zoning change. Mr. Tuyn stated they do not want the houses to appear as two-family homes and he commented that their proposal is doable and quite attractive.

Mr. Greenan stated if the request is granted, each lot will have to be either R-75, a variance established, or utilize the cluster ordinance. He referred to Carriage Park Subdivision which is a prime example and stated the park was dedicated in the center of the subdivision which cut down on the frontage of the lots.

Attorney for the Town Charles Grieco stated the subdivision law allows for this at time of subdivision approval, but the code says nothing about modifying a subdivision. He understood the petitioner doesn't want to change anything that was approved; they just want to change the use to allow two-family homes. There is a conflict with the requirement for R-75 and the approved zoning at R-65. If at the time of subdivision approval they had chose to build doubles on 65' lots it would be fine, but the question is can it be modified so they can do it now. Mr. Grieco stated they could seek variances at this point.

Mr. Tuyn stated that if needed, they would like to apply for the area variance. He further commented that the character of the neighborhood will not be changed with their proposal, and it will not affect the rest of West Seneca because the proposed development is severed from West Seneca by Route 219.

Mr. Mendola stated the density will be changed which will change the neighborhood.

Mr. Ciancio commented that this subdivision has been before the Planning Board for several years and keeps coming back with changes. He further commented that with two-family homes there will be three or four cars at each home.

Chairman Niederpruem referred to the number of sewer taps approved when the subdivision was originally approved and questioned if that number will be increased since it will double the capacity.

**NEW BUSINESS COMMUNICATIONS**

**2014-10** (continued)

Mr. Tuyn responded the capacity will be increased by 66 percent rather than double.

Chairman Niederpruem stated he was surprised the City of Lackawanna would support the proposal because it will double the traffic on their streets.

Mr. Tuyn did not believe it would because he has seen a number of people that use the bus for transportation in this neighborhood. He further stated this will provide multi-generational housing and it is a perfect neighborhood for it.

Mr. Nigro questioned how many two-family homes there will be.

Mr. Tuyn responded it will be market dependent and he did not know the final mix.

Mr. Nigro questioned if the sewer line was increased to 8" to Fisher Road.

Chairman Niederpruem responded the watermain on South Drive and Grant Blvd. are six inch mains and Mr. Pidanick of Nussbaumer & Clarke was talking about modeling the system with possible improvements that have to go back to Abbott Road to run an 8" main for water supply.

Mr. Tuyn stated that modifications were submitted to the town engineer and it demonstrated water and sewer facilities can handle the change.

Gary Mackiewicz thought putting two-family homes on 65' frontage is ridiculous and they should be put on a double lot to make the property more appealing. Mr. Mackiewicz commented on the need to make healthy changes in town driven toward the residents and stated he is tired of people coming into West Seneca and bullying their way.

Lana Hames, 260 North Drive, stated the area has been devoted to wildlife for many years. The subdivision was previously approved, but the neighborhood is opposed to it and building two-family houses will make it become a transient community. The lots were first 90', then 75' and now 65' with doubles is being proposed. Doubles will cause additional traffic and take away green space. Ms. Hames further stated the drainage issue is not completely resolved and residents should not have any more taken away than they already have.

Mr. Tuyn presented pictures of other doubles in the area that fit on lots that are not 75' wide.

**NEW BUSINESS COMMUNICATIONS**

**2014-10** (continued)

Motion by Mendola, seconded by Rathmann, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

Motion by Greenan, seconded by Mendola, to table this item until a plan is presented showing a two-family subdivision that meets the current ordinance of 75' of frontage per lot.

On the question, Mr. Grieco stated the Planning Board needs to act on the current application and send it to the Town Board with or without a recommendation. If the Town Board approves the rezoning, there is a cluster development built into the subdivision ordinance so they will need to figure out if and how it can be retroactively done. With a cluster development, they cannot increase the density over the underlying zoning, so they will need to rezone the property to a zoning classification that will support the density. The property must be rezoned first and they will then have to come back to the Planning Board to modify the subdivision approval.

Mr. Greenan stated if a plan is presented that meets the ordinance, he would not be opposed to doubles, but the cluster development is not available if they want to have the property rezoned. The Planning Board can only recommend on the R-65 zoning; the rest of the questions are not before them.

The motion was withdrawn.

Motion by Greenan to recommend approval of the request for a rezoning for Queens Landing Subdivision, being part of Lot Nos. 426 & 427, changing its classification from R-65 to R-65A, to allow for construction of two-family homes.

The motion was lost due to lack of a second.

Motion by Mendola, seconded by Rathmann, to recommend denial of the request for a rezoning for Queens Landing Subdivision, being part of Lot Nos. 426 & 427, changing its classification from R-65 to R-65A to allow for construction of two-family homes, based on the proposal causing a greater density and creating problems with parking.

On the question, Mr. Mendola questioned how far off the property line a driveway has to be.

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**NEW BUSINESS COMMUNICATIONS**

**2014-10** (continued)

Code Enforcement Officer Jeffrey Schieber stated the R-65 zoning requires a building setback of 30' and rezoning to R-65A will require a building setback of 40'. The Town Code requires that vehicles be parked in the driveway outside of the setback.

Ayes: (5) Mr. Mendola, Mr. Ciancio, Mr. Nigro, Mr. Rathmann, Chairman Niederpruem

Noes: (1) Gerald Greenan

Motion Carried

**ADJOURNMENT**

Motion by Mendola, seconded by Rathmann, to adjourn the meeting at 8:35 P.M.

Ayes: All

Noes: None

Motion Carried

  
**JACQUELINE A FELSER**  
**TOWN CLERK/PLANNING BOARD**  
**SECRETARY**

## RESOLUTION

I move that we recommended to the Town Board that the application for a change in the current zones of R-65 and R-100A to R-50(S) of premises on the south side of Clinton Street be granted.

The “S” in the recommendation stands for a Special Use of the premises as a subdivision for the construction of **multiple single family “patio home style” residences** on a public road or in the alternative on a **private** road with appurtenant Homeowners Association. If a private road, the road is to be maintained by a Homeowners Association at no expense to the Town.

Each lot in the subdivision shall have:

A minimum lot square footage of 6000 square feet,

A minimum frontage of 50 feet at the building set back line,

A minimum 30 foot front yard set back from a 60 foot wide road or the perimeter of a cul de sac with a 60 foot radius,

A minimum 20 foot rear yard set back.

A minimum 900 square foot dwelling exclusive of built in garage area.

The recommendation is conditioned upon no permits being granted for dwellings until the developer obtains variances from the Zoning Board of Appeals for the entire subdivision changing:

The minimum rear yard set back from 30 feet to 20 feet, and

The minimum lot area from 8000 square feet to 6000 square feet.

A part of the Special Use zoning is a condition that no building permit be issued for dwellings whose lowest opening (e.g. basement windows or exterior doors) be lower than one foot above the 100 year flood plain elevation.

A part of the Special Use zoning is a condition that all storm water detention ponds be surrounded at their perimeter by a barrier which is at least one foot above the 100 year flood plain elevation.

If the changes in zone are approved by the Town Board, this resolution serves as the preapplication approval and conditional approval of the preliminary layout found in town’s Subdivision Ordinance (West Seneca Code §§ 103-3 and 103-5).