

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

**WEST SENECA PLANNING BOARD**  
**Minutes #2012-01**  
**January 12, 2012**

Chairman Robert Niederpruem called the meeting to order at 7:00 P.M. followed by the Pledge to the Flag.

**ROLL CALL:** Present - Robert Niederpruem Jr., Chairman  
Donald Mendola, Vice Chairman  
Joseph Ciancio  
Gerald Greenan  
Anthony Nigro  
Joseph Sherman  
John Gullo, Code Enforcement Officer  
Shawn Martin, Town Attorney

Absent - Jim Rathmann

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 Ciancio, seconded by Mendola, to approve the proofs of publication and posting of legal notice.

Ayes: All

Noes: None

Motion Carried

### **APPROVAL OF MINUTES**

Motion by Mendola, seconded by Greenan, to approve Minutes #2011-11 of December 8, 2011.

Ayes: All

Noes: None

Motion Carried

### **ELECTION OF OFFICERS FOR 2012**

Motion by Greenan, seconded by Ciancio, pursuant to §28-1 of the Town Code that Robert Niederpruem Jr. be appointed Chairman of the West Seneca Planning Board until a successor is approved.

Ayes: All

Noes: None

Motion Carried

Motion by Niederpruem, seconded by Greenan, to appoint Donald Mendola as Vice Chairman of the West Seneca Planning Board.

Ayes: All

Noes: None

Motion Carried

**ELECTION OF OFFICERS FOR 2012** (continued)

Motion by Niederpruem, seconded by Nigro, to appoint Joseph Sherman as Sergeant-at-Arms of the West Seneca Planning Board.

Ayes: All

Noes: None

Motion Carried

**OLD BUSINESS COMMUNICATIONS**

**2010-05 & SPR2010-07**

A request from Upstate Cellular Network d/b/a Verizon Wireless, for a special permit and site plan approval for property located at 2801 Seneca Street, being part of Lot No. 198, changing its classification from C-1 to C-1(S), for a 100' monopole tower and wireless communications antennas, a 12' x 8' rooftop equipment shed, together with other site improvements as set forth in the application materials and site plan.

Chairman Niederpruem stated that Verizon had expressed a need for coverage in this area of town and the Planning Board had suggested alternative sites; however, the site at the southwest corner of 2801 Seneca Street seems to be the consensus.

Robert Bergdorf of Nixon Peabody represented Upstate Cellular Network d/b/a Verizon Wireless and stated that in July 2010 they submitted an application for a 100' monopole tower at 2801 Seneca Street. The Planning Board reviewed the application and discussed the project in detail at that time and suggested that alternate sites be considered, including the Ironworkers site on Orchard Park Road. They were unable to reach an agreement on the Ironworkers site, but after a year of negotiating did reach an agreement on the site adjacent to it at 216 Orchard Park Road. Mr. Bergdorf stated that Verizon has limited flexibility with regard to location of the tower but either site would satisfy them.

Mr. Mendola thought the fire department site at 2801 Seneca Street was an ideal location for the monopole.

Mr. Bergdorf stated that they like to place the towers on town property or at fire departments so they are giving money to the community.

Chairman Niederpruem questioned the setbacks for fall protection.

Mr. Bergdorf stated that the tower meets the setbacks. He further commented that the tower also has structural stability as is built to very tough and exacting design standards, more than the light poles that people drive under. The tower is built to withstand 100 mph winds while coated with ½ inch of radial ice. Under these conditions, the pole falling would be the least of any problems.



**SPR2012-01**

A request from Craig Dietrich for site plan approval for an ATV track at 500 Seneca Creek Road.

Chairman Niederpruem stated that along with the application the Planning Board received a topographic survey of the property.

Craig Dietrich, Seneca Creek Road, stated that the blueprint was revised to show the ATV track designed for personal use on residential property. The property will be posted for no trespassing and anyone that uses the ATV track will access it from Mr. Dietrich's property and be supervised by him.

Mr. Mendola questioned how many people will be using the ATV track, if Mr. Dietrich has been using the property for this purpose prior to this application, if ATV's are hauled in on a trailer, and where they will park.

Mr. Dietrich responded that no more than six people will use the track and it will not be turned into a professional use track. He has used the property to ride ATV's prior to this application and the proposal is for constructing something to ride on other than flat ground. Mr. Dietrich stated that he was operating equipment on the property and changed the layout of the ground which could affect drainage, etc. He has not had a final inspection yet and needs to comply with the Town Code. Mr. Dietrich stated that only a select few from the neighborhood will use the track. They will either trailer the ATV's or access the land from trails if permitted. Mr. Dietrich stated that his driveway can support 8 to 10 vehicles but probably will never have that many.

Mr. Mendola stated that Mr. Dietrich will need permission from the adjoining property owners to use their property for access. He questioned if Mr. Dietrich planned on putting in additional parking or if any additional buildings or structures were planned.

Mr. Dietrich stated he did not plan to install any additional parking and will not be adding any buildings or structures to the property.

Mr. Ciancio questioned the liability in allowing other riders to use the property.

Mr. Dietrich responded that the track will be for personal use but he will allow others to use it and he will carry liability insurance if necessary. As a landowner he understood he was responsible.

Mr. Sherman stated that Mr. Dietrich's personal homeowner's insurance will cover him as long as the track is not used for commercial use (i.e. collecting money for its use).

**SPR2012-01** (continued)

Mr. Nigro thought the town could be held responsible if they approve the track.

Town Attorney Shawn Martin stated that anyone significantly injured on an ATV will be seeking damages far in excess of the average homeowner's policy. This was a concern if the Planning Board were to give their approval of the project.

Mr. Niederpruem questioned what will prevent trespassers from entering and exiting the property.

Mr. Dietrich stated he was not requesting permission for access through anyone else's property. The property will be properly posted and the neighbors keep an eye out for each other's property.

Mr. Martin noted that neighbors have had some issues since the ATV track opened.

Mr. Mendola questioned what time the ATV track will be used.

Mr. Dietrich stated that the track will be used 9:00 A.M. until 7:00 P.M.

Scott Leuthe, 510 Seneca Creek Road, stated that in 2005 he built his home in a peaceful, quiet neighborhood with no ATV track and only an occasional trespasser, but that changed in 2009 when Craig Dietrich took over the property at 500 Seneca Creek Road. He presented "before" pictures of the property showing no ATV track and pictures from 2010 when the ATV track was built without any permits. Mr. Leuthe had called the town in May 2010 and former Code Enforcement Officer Robert Pinnavaia visited the site and stopped Mr. Dietrich from changing the topography of the land. Mr. Leuthe stated that Mr. Dietrich was also dumping illegally and in May 2011 he obtained a dumping permit. He referred to §117 of the Town Code concerning ATV's and noted that the peace, health, safety and welfare of the public is to be preserved, including the preservation of property. Mr. Leuthe commented that the ATV's are very noisy and tear up his property going to and from the track, which has elevated jumps and is substantial in size. They ride at 11:30 P.M. and he has called the police, but by the time they arrive the ATV's are gone. Mr. Leuthe presented petitions signed by residents of Seneca Creek Road and Pleasantview Lane that are opposed to the ATV track. He further presented a recent appraisal he had done on his property that states because of the ATV track his property is degraded 20 to 25 percent. Mr. Leuthe also called his homeowner's insurance and was informed that if someone is injured on his property, even though it is not his fault he is still responsible and they could cancel his insurance. He further presented numerous pictures of the ATV's crossing his property and riding at the ATV track, including a neighbor riding an ATV with a child and they both were without helmets.

**SPR2012-01** (continued)

Anthony Gabamonte, Pleasantview Lane, stated that he bought the vacant land behind his home for peace and quiet, but there are ATV's, motorcycles and snowmobiles that trespass on his property. They put ruts in the yard and Mr. Gabamonte was concerned that he would be held responsible if someone is hurt. He commented that this was an unsafe situation and a nuisance to everyone in the neighborhood. Mr. Gabamonte understood there were protected wetlands in the rear yard and nothing could be built on it. He further commented that the ATV's belonged in a rural area, not in a residential area like this.

Mr. Dietrich presented a petition signed by neighbors that do not object to him riding on his own property.

John Olivante, 887 Seneca Creek Road, opposed the ATV track and stated that the property at 450 Seneca Creek Road goes back to the industrial park and they ride in the back and make ruts in the land. There are ATV's and motorcycles that ride at 2:00 A.M. and every day of the week including Sunday's 10:00 A.M. until 11:00 P.M. Mr. Olivante stated that he is not able to sit outside and enjoy the summer because of the noise.

Mr. Mendola questioned if all the ATV's were going to Mr. Dietrich's property.

Mr. Olivante did not know if they were all going to Mr. Dietrich's property but stated there is a trail that starts directly across the street from him.

Greg Drabik represented his mother and sister who live on Seneca Creek Road and stated his concerns about someone getting injured on their property. He presented pictures of the trail coming from Mr. Dietrich's property indicating the grass that has turned to mud and ruts and the path that is getting destroyed by the ATV's. Mr. Drabik stated that the ATV's adversely affect health and safety and cause property damage and noise pollution in the neighborhood. He noted that he had posted "No Trespassing" signs but they were removed.

Baird Hageman, Seneca Creek Road, did not think it was right that Mr. Dietrich was being blamed for all the ATV's and noted that the trail that was referred to is not directly across from Mr. Dietrich's property. Mr. Hageman further stated that many people moved to Seneca Creek Road so they would have land to ride their ATV's. They have been riding in the back since they were kids and Mr. Drabik also had a dirt bike track years ago. Mr. Hageman stated that Mr. Dietrich's track has not been ridden on so that did not cause the volume of ATV's to increase.

Mr. Martin stated that the Town Code authorizes the use of ATV's but does not authorize, sanction or encourage an ATV track with jumps, obstacles, etc.

