

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

**WEST SENECA PLANNING BOARD**  
**Minutes #2012-02**  
**March 8, 2012**

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

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

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

Ayes: All

Noes: None

Motion Carried

#### **APPROVAL OF MINUTES**

Motion by Greenan, seconded by Mendola, to approve Minutes #2012-01 of January 12, 2012.

Ayes: All

Noes: None

Motion Carried

#### **OLD BUSINESS COMMUNICATIONS**

##### **SPR2011-02**

A request from Kideney Architects for site plan approval for property located at 300 Harlem Road for construction of a new SPCA facility.

Chairman Niederpruem advised that the petitioner had requested this item be tabled until the April meeting to allow time for preparation of full engineering plans as requested by the town.

Motion by Mendola, seconded by Greenan, to table this item until the April meeting pending submission of full engineering plans.

Ayes: All

Noes: None

Motion Carried

**2012-01**

A request from Edbauer Construction Company for a rezoning for property located at 2735 Clinton Street, being part of Lot No. 37, changing its classification from R-100A to C-2, for a warehouse and storage of construction related equipment and materials.

Motion by Greenan, seconded by Mendola, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

Chairman Niederpruem stated the project was tabled from the January meeting because the petitioner was not prepared at that time.

Eric Bauer stated he is part owner of Edbauer Construction Company along with his father, William Bauer, and Edward Pellman. They are requesting a rezoning of six acres at 2735 Clinton Street for storage of construction equipment and materials.

Patricia Bittar, an engineer with Wm. Schutt & Associates, represented the petitioners and stated the 21 acre parcel at 2735 Clinton Street is presently owned by Michael Serafini and zoned R-100A. Edbauer Construction is interested in purchasing six acres and continuing their current use of construction equipment storage which requires a rezoning to C-2. The remaining 14.6 acres is proposed to be sold to adjacent neighbors and the town. The 13.2 acres to the town includes the oxbow/wetlands area. Ms. Bittar presented an aerial view of the site along with a boundary and topographic survey indicating the 100 year flood plain for Buffalo Creek and wetlands. There is also a cell tower located at the south of the property and accessed by a permanent easement. Ms. Bittar gave a history of the site and presented pictures from when Majeski's owned the property and greenhouses were located on site and the progression since that time. The site is bordered on the west by Lakeside Drive which is zoned R-75, on the north by Clinton Street which has a mix of residential, commercial and manufacturing zoning within a 1/2 mile radius, the oxbow/wetland area to the east, and Buffalo Creek to the south. Ms. Bittar presented various views of the property from Clinton Street and Lakeside Drive and stated the petitioner was proposing to plant trees along the west property line to form a greater vegetative buffer and install a landscaped berm. She stated there are very limited improvements proposed for the site. A large portion is occupied by NYSDEC wetlands BU17 and the southern two-thirds of the site is occupied by the flood plain of Buffalo Creek. The wetlands, floodplain and hardscape area will remain and the drainage plan will be designed so there will be no shed on adjacent properties. Trees will be planted in the wetlands buffer area if approved by the NYSDEC and Army Corps of Engineers (ACOE). Ms. Bittar stated that a SEQR long form was submitted and three responses were received. The NYSDEC was concerned that the wetlands boundary be staked and mapped. Those boundaries have been restaked, the site has been surveyed, and the appropriate map was resubmitted to the NYSDEC for their final approval. The NYSDEC then issued a legal notice stating that the boundary of state wetlands BU17 and the other wetlands was amended based on the information provided. The NYSDEC was also

**2012-01** (continued)

concerned that storage of fuel on the site not exceed 1100 gallons and that the proposed activity not disturb the wetlands. Ms. Bittar stated there is no intent for storage of fuel on site and the proposed tree plantings and aesthetic improvements will not disturb anywhere near an acre which would require obtaining a permit. The NYS Office of Parks, Recreation and Historic Preservation was concerned if there would be any significant ground disturbance on the site because there is a potential for archaeology significance. A borrow pit was initially proposed for the site for creation of the landscape berm in the northwest corner. Due to their concern over disturbance levels the borrow pit was omitted and they intend to bring in fill to create the landscape berm. After this information was forwarded to the NYS Office of Parks, Recreation and Historic Preservation, they issued a secondary letter stating they had no concern of any impact upon cultural resources. The ACOE also had no concerns. Ms. Bittar stated that Edbauer Construction has invested in West Seneca, they receive no tax breaks, and two of its three owners are residents of the town. She presented pictures of 2790 Clinton Street where their office building is located and stated they have been working with the West Seneca Environmental Commission and Buffalo Riverkeepers on environmental issues at that location. Ms. Bittar stated the use of this site as a warehouse and storage area is consistent with past use and she requested recommendation for approval of the rezoning and a SEQR negative declaration.

Chairman Niederpruem questioned the square footage of the existing storage area and if there were any plans for expansion. Ms. Bittar responded that the existing storage area is 7500 sf and they had no plans for expansion.

Mr. Greenan questioned if the petitioner would be agreeable to the rezoning with a stipulation there be no further storage within a designated number of feet of the rear lots on Lakeside Drive to protect those neighbors. Mr. Bauer stated Mr. Greenan's proposal would be acceptable.

Mr. Mendola questioned if the outside storage of equipment will be to the east of the building and Ms. Bittar confirmed that storage will be on the east of the existing warehouse and the operation will be the same as always.

Mr. Ciancio questioned if the building is currently being used and if there are any repairs done on the property. Mr. Pellman stated that the building is being used for indoor storage of equipment and materials. The only repairs done are to their own equipment. The structure has been there since Majeski's owned the property and it is the only facility they use.

**2012-01** (continued)

Mr. Nigro questioned if they will be doing any blacktopping or if the number of trucks will be increased. Mr. Pellman responded they will not be blacktopping any area and they had no plans for increasing the number of trucks. They will be purchasing 20 acres and selling off all but six acres.

Chairman Niederpruem questioned the plan for the barren area. Mr. Pellman stated there were no plans for that area and it will be left as is.

Rick Rutkowski presented letters signed by residents of Lakeside Drive objecting to the rezoning request and stated he believes there is erroneous information being presented in the environmental assessment form and site plan. He referred to the Comprehensive Plan and stated it called for this area to be agricultural, not commercial, noting there are 15 special focus areas identified in the Comprehensive Plan to protect open space and this parcel is located entirely within that. Mr. Rutkowski stated that this area was an agricultural use when Majeski's greenhouses were located there, but it has been used as commercial since Mr. Serafini purchased the property and this is in violation of the R-100 zoning. He noted that the environmental assessment form indicates a ¼ mile radius from the site is residential and questioned how the Planning Board could properly determine the significance with erroneous information.

Carrie Kwartta owns property to the east of the proposed site and questioned if the property to be sold will be R-100A or C-2. She was concerned that a warehouse will be built on the other property and stated that anything to the east will be visible from her property. Ms. Kwartta questioned if the machinery will be parked on the east or on the access driveway and what will be used for screening along with how much traffic and noise will be generated.

Chairman Niederpruem stated the petitioner was proposing to plant ten 6' to 7' blue spruce trees along the east side.

Ms. Bittar stated only the area designated in yellow on the plan is being proposed for rezoning and the access driveway will only be used for access, no storage.

Mr. Mendola suggested more plantings on the north property line for additional screening and Ms. Bittar stated the petitioners would agree to additional screening on the north.

Eric Bauer stated the property is mostly used as winter storage. Traffic in the summer is minimal because equipment is stored on job sites. Any activity during the day is usually in the morning around 7 AM, but it is not heavy equipment going in and out. There are usually two or three pick-up trucks that leave the site in the morning and return around 3:30 P.M. Occasionally they pick up a piece of equipment, but that traffic is minimal and trees will be planted to provide screening for the trucks.

**2012-01** (continued)

Ed Doruszewski stated he bought his property on Lakeside Drive because it is a peaceful & quiet neighborhood and many of the residents are original property owners that want to protect their property values. Mr. Doruszewski stated the storage of construction equipment on this site is in violation of the current zoning and he commented on the noise and smell from the trucks. He further questioned what type of materials will be stored and commented on the amount of dust and dirt it will create. Mr. Doruszewski stated there is truck activity on the site at 5:00 and 6:00 A.M. and trees do not screen everything or block all the activity. He suggested they buy additional land near their office building up the road.

Evelyn Hicks supported the rezoning and stated that interpretation of the Comprehensive Plan is the question, but she felt the land use maps were seriously outdated and the zoning is bad. The 7500 sf building has been on the property for 20 years and the greenhouse was a commercial use but it was a nursery so it was allowed in the residential zoning. Mrs. Hicks stated that if the town purchases the 13.2 acres starting at Clinton Street up to the creek they will own about 30 acres of open space, wetlands, flood plain and forest on the Buffalo Creek. The Buffalo Riverkeepers applied for and received a grant for \$60,000 and with the help of the Environmental Commission and the town began restoration in the oxbow wetlands. The Environmental Commission has another \$61,000 grant to continue the work and improve the wetlands and they will continue to remediate property which will appreciate the value of homes along Lakeside Drive. Mrs. Hicks further referred to Edbauer Construction's warehouse project on Clinton Street and stated they have been great to work with and very cooperative with issues concerning the feeder stream near the warehouse.

Paula Minklei cautioned about changing the intent of the Comprehensive Plan. She questioned how much equipment will move in and out of the property and commented that six acres is a lot for storage of equipment. Mrs. Minklei further stated she was not aware of the full SEQR until this meeting and she thought the public should have time to review it.

Gary Mackiewicz stated the building was put up by Dan Majeski and it was never authorized as a residential building. It was used strictly for a tractor and greenhouse plotting material. Since Mr. Serafini bought the property it has been used outside the zoning and it is illegally being used for this business. Mr. Mackiewicz noted this is the third time someone has tried to rezone this property. He stated that heavy equipment is brought onto the property and it is started at 4:00 or 5:00 AM. Fill has been pushed into the wetlands area and the outlet of the wetlands was cleared without a permit. This activity was reported to NYSDEC and the noise has also been reported to the Code Enforcement Officer. Mr. Mackiewicz stated that ATV's have also been driven on the parcel. He further presented an EPA health report on exhaust fumes.

**2012-01** (continued)

Amy Carpenter commented on the sight of the construction equipment and stated that businesses wanting to operate on weekends and evenings creates a problem for the residents.

Chairman Niederpruem stated there is a conflict with the operation being described by the petitioner and what the neighbors are describing. He further referred to the cell tower and questioned if there was an agreement with Mr. Serafini and if they will still have access to site.

Eric Bauer stated the trucks do not operate before 7:00 AM or after 3:30 PM and they have nothing to do with the ATV traffic. The cell tower has a permanent easement so even if the zoning changes they will still have access to the site.

Mr. Greenan noted the cell tower is already rezoned but it is not on the map.

Mr. Ciancio questioned if this was considered a non-conforming use.

Code Enforcement Officer Jeffrey Schieber stated that the greenhouse was a conforming use in the R-100A zoning, but that has not been the use over the last few years.

Mr. Mendola referred to the storage of materials on site and questioned if there was a need for further screening.

Eric Bauer stated there is no storage of materials on site and noted they cannot bring outside materials into the flood plain. The only storage is construction equipment, road signs, parking cones, etc. Mr. Bauer stated he had asked the residents for suggestions on additional screening but received no replies. They want to be good neighbors and will plant additional trees, install a berm with trees, and have trees and fences around the storage area.

Kathryn Kulczyk stated the employees are out there at 6:00 AM and the equipment is visible from her back yard. She further noted that the property is kept neat lately but that is not always the case.

Mr. Rathmann noted the environmental assessment form indicates there are no wetlands on the site.

Chairman Niederpruem stated the SEQR is not adequate and should be amended.

Motion by Greenan, seconded by Mendola, to table this item until the SEQR application is corrected and letters from the NYSDEC, ACOE and NYS Office of Parks, Recreation and Historic Preservation are reviewed.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS COMMUNICATIONS**

**SPR2012-02**

A request from Benderson Development Co. LLC for site plan approval for property located at 800 Harlem Road for a 3450 sf addition to an existing strip plaza and associated parking.

Chairman Niederpruem stated that along with the application the Planning Board received a short environmental assessment form, an architectural rendering, a concept plan, and a parking plan. They also received correspondence from the Erie County Highway Department concerning this application.

Matthew Oates of Benderson Development stated their proposal to construct a 3450 sf addition to the Tops Plaza located at 800 Harlem Road. The addition will be used with the existing 5000 sf vacancy of Blockbuster for a Dollar Tree store. Mr. Oates stated the dumpster enclosure will be relocated from the side of the building facing Mineral Springs Road to the back of the building. A 10' concrete sidewalk will be installed on the south side of the building and the remainder of the parking lot will be resealed and restriped to make the parking work with the new expansion space. An existing underground detention system will be relocated 20' to the south to avoid any conflict with the building foundation. The storage volume and outlet pipes will remain the same, so the Erie County Highway Department has no concern with the project. No variances are required. Parking will be reduced by 10 – 12 spaces; however, there is more parking than required. The entire plaza requires 420 parking spaces and they have 474 spaces.

Mr. Mendola questioned if the building is fully sprinkled and Code Enforcement Officer Jeffrey Schieber advised that it meets the code requirements.

Linda Toy questioned if the Dollar Tree store at the Seneca Street city line will be relocating to this plaza and expressed concerned that another store might be vacant at the city line.

Mr. Oates did not know if Dollar Tree intended to close another store to open this location on Harlem Road.

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

Ayes: All

Noes: None

Motion Carried

Motion by Greenan, seconded by Mendola, to grant site plan approval for property located at 800 Harlem Road for a 3450 sf addition to an existing strip plaza and associated parking.

Ayes: All

Noes: None

Motion Carried

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**ADJOURNMENT**

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

Ayes: All

Noes: None

Motion Carried

  
**JACQUELINE A FELSER**  
**SECRETARY**