

Supervisor Gary Dickson called the meeting to order at 6:00 P.M.

<b>ROLL CALL:</b>	Present -	Gary Dickson	Supervisor
		William Bauer	Councilman
		Joseph Cantafio	Councilman
		William P. Hanley, Jr.	Councilman
		Jeff Piekarec	Councilman

Supervisor Dickson read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

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Motion by Supervisor Dickson, seconded by Councilman Hanley to adopt the following rules regarding the conduct of the public hearing:

1. Applicant and the public will address all comments to the Town Board. There will be no dialog between the applicant and the public.
2. The Town Board will question the applicant about the public's expressed concerns or questions at the appropriate time.
3. Statements by the public will be conducted in "rounds." Except for Round 1, every member of the public will have an opportunity to speak in each round.
4. Except for Round 1, members of the public are allotted two minutes to speak in each round. After time is up, a speaker should take their seat and wait for the next round to continue speaking.
5. After two minutes have expired, the Supervisor may, unless and until any Town Board member objects, allow additional time for the speaker to finish his or her thought or to engage in a dialog with the Town Board.
6. After the applicant has presented and answered any questions from the Town Board, the order of public comments will be as follows:
  - a. Round 1: Clinton Street: 3780, 3786, 3796, 3850, 3799, 3809, 3815, 3825, 3855.  
These parcel owners determine if a supermajority of four Town Board votes is required for a special use permit.
  - b. Additional rounds for all speakers.

### **LEGAL NOTICES**

1. Proofs of publication and posting of legal notice: "FOR A REZONING & SPECIAL USE PERMIT FOR PROPERTY LOCATED AT 3786 & 3808 CLINTON STREET, CHANGING ITS CLASSIFICATION FROM R-65/R-65A AND C-2(S) TO R-50(S), FOR CONSTRUCTION OF A MULTI-FAMILY DEVELOPMENT WITH THREE (3), 2-STORY BUILDINGS CONTAINING 12-UNITS EACH, AND ALL RELATED SITE IMPROVEMENTS" in the Town of West Seneca received and filed.

Motion by Supervisor Dickson, seconded by Councilman Hanley, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

Jeffery D. Palumbo of Barclay Damon, LLP, the attorney for applicant Devonshire Apartments LLC, introduced himself and Andrew Pandolfi of Carmina Wood Morris, the engineers for the project. The applicant is requesting the rezoning for 3786 and 3808 Clinton Street to R(50) and Mr. Palumbo stated his client is proposing to build

three (3), 2-story buildings containing 12-units each. Each building will have four (4) two-story townhouse units, two on each end, with the apartments in the middle consisting of four (4) two-bedroom units and four (4) one-bedroom units. The multi-family dwelling also requires a special use permit.

Mr. Palumbo stated he would like to address several issues raised at the Planning Board meeting and petitions and emails submitted regarding the project. The first item of concern is an unsigned letter from a member of the Town Planning Board and made the following comments: the allegation that Councilman William Bauer has something to do with the LLC proposing the project is false; refers to the development as a low income project which is also untrue; and the remainder of the contents have no significance to the project and cannot speak to their factuality.

Mr. Palumbo referred to the Planning Board meeting and stated the Planning Board Chairman should have recused himself at the start of the meeting and left the room; he should not have run the meeting or discussed with his contact at the DEC and only recuse himself from the vote.

Mr. Palumbo referred to the statements made by the public that the project was for low income units and stated the rent for the townhouses will start at \$1,800 per month; the two bedroom apartments will be \$1,500; and the one bedroom units to be around \$1,300 per month. Mr. Palumbo displayed pictures of the planned units and stated the finest materials will be used.

Mr. Palumbo addressed the question about garbage and stated the dumpster will be enclosed.

Mr. Palumbo addressed the objectives of the 2016 Comprehensive Plan and stated the application has listed the ways the project aligns: the introduction of multi-family housing answers a need in the community for a variety of living options to residents and only 1% of the town's residences are considered multi-family; the project will increase tax revenue with the anticipated assessment of each unit to be \$100,000, for a total of \$3.6M. Another objective this project meets is aging in place or "generational housing" as individuals sell single family homes and wish to remain in the town.

Mr. Palumbo challenged the comments that the buildings will become rundown, and rat infested and stated his clients are investing approximately \$4M and it is not in their best interest to allow them to become rundown.

Anthony Pandolfi, project engineer of Carmina Wood Morris DPC, stated he is addressing the technical issues that have been posed:

- ✓ Existing wetlands and wildlife on the property will not be disturbed and most of the site development will occur on the existing car lot and approximately 1.1 additional acres and noted the entire property is 17.5 acres
- ✓ Development will be right in the residents back yards – listed the distances from the buildings to the property lines as follows: Northwood Avenue – 206', Meadow Drive – 654', Maplewood Avenue – 395'
- ✓ Lighting from the site will impact neighboring properties - parking lot lighting will be code compliant, will submit a lighting plan with metrics, and will follow the town code
- ✓ Screening – there is some existing natural screening, and a landscaping plan will be submitted
- ✓ Sewer and water – required to do a sewer capacity analysis and factor in what the project would add which will be reviewed by ECWA
- ✓ Traffic – compared to commercial development, residential development is far less intense and will be reviewed by the DOT. which has very stringent standards

- ✓ Stormwater – the lands will be reviewed by the Town Engineer, and they are required to reduce storm water runoff

Mr. Palumbo stated they have already contacted the DOT and Division of Sewer Management and neither department indicated there would be any problems with the project.

Supervisor Dickson asked the applicant what action they were asking of the Town Board. Mr. Palumbo stated they are requesting rezoning for a portion of the property, 3808 Clinton Street, and a special use permit for the overall property including 3786 and 3808 Clinton Street. The property at 3786 Clinton Street is currently zoned R-50. Supervisor Dickson stated that property was zoned R-50(S) in 1992 with the special conditions for a one bedroom apartment above the existing garage and no other use. Mr. Palumbo stated he was not aware of the condition, and he will need to review the actual approval letter and the final motion.

Supervisor Dickson asked Mr. Palumbo if he could address the issue with spot zoning. Mr. Palumbo stated spot zoning is a misunderstood process and residents typically think of spot zoning as putting something into an area that has no relation to the other zoning. In this instance there is R-50 zoning adjacent. Spot zoning questions if the property being rezoned is pursuant to the town's Comprehensive Plan and reiterated this project fits with the plan.

Supervisor Dickson repeated the current zoning allowed for one apartment and read the following from NYS Division of Local Government Services: "The question of whether a rezoning constitutes "spot zoning" should be answered by determining whether the rezoning was done to benefit individual owners rather than pursuant to a Comprehensive Plan for the general welfare of the community." Supervisor Dickson asked Mr. Palumbo how he would define "general welfare of a community."

Mr. Palumbo stated it follows what is stated, the project is providing a variety of living options for West Seneca residents and acting in the best interest of the community by providing generational housing. Supervisor Dickson stated the Comprehensive Plan states that as general goals but does not specify that area. Supervisor Dickson stated zoning was used prior to the Comprehensive Plan and questioned Mr. Palumbo if this was accurate.

Mr. Palumbo stated zoning is not an absolute and at that point in time zoning was reflective of the town's intentions.

Supervisor Dickson stated Clinton Street was originally zoned as residential and noted there are no apartment buildings between Union Road and Transit Road, only a few pre-existing commercial businesses. The existing R-50 zoning on the adjacent property was for one apartment, not a multi-family building; the surrounding properties have commercial zoning. By changing this to residential it would break up the self-contained commercial property.

Town Attorney Hawthorne stated she is speaking with respect to 3808 Clinton Street only: litigation in the Supreme Court in 2001 when the new owner sought to rezone 3808 and 3816 Clinton Street from R-50(S) to R-65A and C-2(S) with special use permit. Historically, Star Motor Sales has been operating as a used auto lot for over fifty years as a non-conforming use on that property. The Planning Board had unanimously recommended approval of the rezone to commercial with conditions; however, the Town Board denied the rezone noting the expansion would adversely affect the aesthetics of the predominantly residential neighborhood. The Supreme Court in Erie County found Clinton Street to be a major commercial thoroughfare with mixed use, recognized the immediate vicinity to 3808 was made up of commercial properties – a gas station, restaurant, bridal shop,

a pizzeria, and restaurant. The master plan at the time addressed that portion of Clinton Street to be utilized for commercial purposes. The court ultimately ruled the proper zoning for this property was commercial C-2(S).

Supervisor Dickson stated the court ruled the property should be C-2(S) and now the owner is coming back to change the zoning back to residential which could be considered spot zoning.

Mr. Palumbo questioned Supervisor Dickson if this is or is not a residential area as he has referred to it as both residential and commercial. Further, the court's decision has no bearing on what they are here for now, and to say it's a sin and it is spot zoning for the property owner to sell their property to someone who is looking to develop it as a residential property defies logic. Mr. Palumbo's client is requesting the zoning change and had nothing to do with the previous lawsuit.

Mr. Palumbo stated if the Town Board has decided to deny the request they should, but the fact is the apartment complex will bring in tax revenue the town needs with no apparent problems as listed before. Mr. Palumbo questioned if the Town Board was better off with a hotel, warehouse, laundry, or a restaurant on those parcels or with upgraded apartments.

Councilman Piekarec asked if previous legal rulings and precedents do not matter. Mr. Palumbo replied every decision is important based on the facts in front of the Town Board at that time.

Supervisor Dickson stated the decision was based on the adjacent properties and those facts have not changed. Mr. Palumbo questioned if anything in West Seneca would ever change. Supervisor Dickson stated every submission is reviewed based on the desired trajectory of the town and an amendment of the Comprehensive Plan could be added.

Supervisor Dickson referred to a project in Orchard Park that was completed by the developer and observed it was on a larger parcel and the design was not desirable with no windows. Mr. Pandolfi stated the design can be modified. Supervisor Dickson stated putting the first multi-family building on this stretch of Clinton Street needs to be finished and more thoughtful. Mr. Palumbo stated to say it was not thoughtful is incorrect and he would never have anticipated this much controversy putting residences on a piece of land that was selling used automobiles. Mr. Palumbo stated the demand across Western New York is for apartment use and the impacts are far less than any of the other possible commercial uses.

Supervisor Dickson stated the issue is not apartments, it is the location. Mr. Palumbo asked what the downside was to this project in this location other than the fact it is currently zoned commercial.

Councilman Piekarec stated the residents he has spoken to would prefer more commercial businesses and do not want to give up the property.

Councilman Hanley stated in the absence of a Comprehensive Plan the Town Board would refer to the NYS Zoning and Comprehensive Plan, but the 2016 Comprehensive Plan does support this type of project. Further, his definition of spot zoning is when a parcel is at odds with the town's master plan. Councilman Hanley reiterated the approvals given by EC Sewer Authority and NYSDOT and stated these were facts, not his personal endorsement.

Councilman Bauer thanked Mr. Palumbo for clarifying that he does not have anything to do with Devonshire Properties and stated the letter has been referred to the Ethics Board for investigation. Councilman Bauer stated

one of the concerns of the residents is the lack of power in the grid and frequent power outages and questioned how this would be handled. Mr. Pandolfi stated the civil plans will be submitted to the utility provider and they will indicate necessary requirements to the developer.

Councilman Piekarec questioned the storm water management plan. Mr. Pandolfi stated it will most likely be an underwater retention system and this is reviewed by the Town Engineer and the NYSDEC for compliance with stipulations and regulations.

Councilman Hanley asked the following questions about the project:

- ✓ Will there be sidewalks and a recreational area – Mr. Pandolfi replied the fully engineered plans will accommodate them
- ✓ Enough space is available for emergency vehicles – Mr. Pandolfi replied the site will be compliant with the fire code
- ✓ The plans for the existing car lot, will it be demolished and completely removed, and the electricity connected to the new buildings – Mr. Palumbo replied yes
- ✓ Are the distances to the property lines, provided earlier, subject to change – Mr. Palumbo replied no
- ✓ Will there be any lighted signs for the apartment buildings – Mr. Pandolfi replied lights will be compliant with the Town Code and they anticipate a standard sign with a few flood lights

Councilman Hanley stated the Comprehensive Action Plan states the town should provide incentives for commercial property owners to make improvements to their properties.

The following comments, concerns, and questions were received by residents:

- ✓ Has an application been submitted to the Army Corp of Engineers – Mr. Pandolfi stated it is not required because they are not disturbing the wetlands
- ✓ There are two separate wetlands – Code Enforcement Officer Schieber explained the applicant hires a soil engineer to determine the wetlands delineation and their drawings would be submitted to the NYSDEC during the site plan approval stage
- ✓ The Army Corp of Engineers outranks all other agencies – Mr. Palumbo stated the map shows what is purported to be wetlands based on ariel photography, not every site has been delineated and they will hire a wetland expert to determine whether a specific site is a wetland. Supervisor Dickson asked Mr. Palumbo if they will only be building on the areas that have asphalt or have been mowed before the ditch/creek – Mr. Palumbo stated for the most part.
- ✓ Spoke with a representative from the Buffalo DEC office who reviewed the ariel shot and was told it was a wetland – Supervisor Dickson referred to the minutes of the Planning Board and comments made by the Chairman regarding the delineation and asked Mr. Schieber to comment. Mr. Schieber stated per Planning Board Chairman Rathmann's conversations with the DEC, they do not have enough staffing to review each site. Supervisor Dickson stated the Town Board can only decide based on the facts.
- ✓ Negative environmental impact from the project on the wetlands and wildlife
- ✓ Water pressure to homes will be negatively impacted
- ✓ Find a better location for the project
- ✓ The apartment pricing is too high for the area
- ✓ Representative from Assemblyman Pat Burke's office stated he has nothing legally binding, but the DEC is pretty convinced the size of the wetlands has grown and an updated delineation should be completed. Mr. Schieber believes a 100' buffer would be imposed if the area is declared a wetland and cautioned this would also impact the existing residential property owners.

- ✓ New petition being submitted requesting the Town Board deny the project is different than the one submitted on September 13, 2021 – Town Attorney Hawthorne stated the prior petition was reviewed and there was a misprint in their petition, it is not 250' but 100' per Town Code 265; the signatures have been reviewed and the threshold requiring a super majority has been met.
- ✓ Have actual studies been completed by the NYSDOT and the EC Sewer Authority – Mr. Schieber stated the applicant provided a concept site plan and the NYSDOT has responded unofficially stating they do not foresee any issues and based on the number of apartments proposed will not require a traffic study
- ✓ Flooding and power outages are already an issue
- ✓ Traffic is already bad, will be worse
- ✓ Adjacent business and residence will not have privacy
- ✓ Salting of the parking lot will impact the freshwater – Supervisor Dickson questioned how the runoff will be mitigated. Mr. Pandolfi stated there are engineering requirements with regards to water that include a gradient plan and the collection, storage, and treatment before discharging it at a slower rate – not eliminate it. Supervisor Dickson questioned if the wetlands would dry out. Mr. Pandolfi stated they would not. Supervisor Dickson stated the homeowners should be cognizant of their impact on the wetlands.
- ✓ Which entity is applying for the zoning change – Supervisor Dickson stated Devonshire Apartments, LLC
- ✓ Devonshire is the only group that will benefit and wants to know how much the taxes will go down and a guarantee that no low income housing will go in – Supervisor Dickson stated there can be restrictions placed on the deed or approve a smaller project.
- ✓ Who is Devonshire LLC and have they made political contributions – Supervisor Dickson asked Mr. Palumbo to identify the owners and list their other developments. Mr. Palumbo stated Susan Green and George (inaudible). George has an apartment complex under construction and Susan has been involved in building for many years primarily single family residences and to his knowledge they have not made any political contributions to West Seneca. Supervisor Dickson stated the engineer has many projects in town and are very easy to work with and would like to sit down with the owners to discuss a better location.
- ✓ Believes the current property owner is making the request – Mr. Schieber stated the owner has granted permission to this entity to seek the change as a stipulation of the sale and this is standard business practice. Further, if this project is denied the property owner can sell the property with its current C-2 zoning and any permitted use, as listed for C-2 zoning, only requires Planning Board approval. Councilman Cantafio questioned if any wetlands determination would impact permitted uses. Mr. Schieber stated the wetlands could change and if they do, there will be repercussions.
- ✓ If residents fund a study by the DEC and the determination is that the property is determined to be wetlands, would the project be stopped – Councilman Hanley stated either party would have the opportunity to challenge the decision made by the Town Board. The resident clarified the question to be if this was in fact declared a federal wetland, does that shut down the request altogether – Town Attorney Hawthorne stated there are too many variables and cannot answer this question.
- ✓ Do any Town Board members have interest in Devonshire – Town Board members stated they do not.
- ✓ Any updates about archeological significance since the Planning Board meeting – Mr. Schieber is not aware of any
- ✓ Other Devonshire Apartment complaints from Michigan and Texas indicate maintenance issues
- ✓ Renters do not care about the property
- ✓ Will restrictions be imposed on the neighboring restaurant business – Mr. Schieber stated the business is required to follow the Town Code
- ✓ The Comprehensive Plan allows for green space



Councilman Cantafio stated although he has concerns about the Planning Board not following the proper procedures and possible future projects, residents have made their opposition clear, and he has not received any correspondence in support of the project.

Motion by Supervisor Dickson, seconded by Councilman Piekarec, to deny the rezoning & special use permit for property located at 3786 & 3808 Clinton Street, changing its classification from R-65/R-65a and C-2(S) to R-50(S), for construction of a multi-family development with three (3), 2-story buildings containing 12-units each, and all related site improvements due to the following reasons:

1. It is not in accordance with the town's Comprehensive Plan, and there is no evidence to support the town's Comprehensive Plan needs amendment because of community change or growth since it was adopted in 2016. There is no identified need for multi-family residences of this nature in this location considering the town's plan and those multi-family residences built since the adoption of the plan as well as other living options available to residents in the town.
2. This rezone request is spot zoning. There is nothing before the Town Board to support that the rezone would serve the general welfare of the community. Rather, it would benefit solely the applicant. The size of the area the applicant is requesting to rezone is small - 2.34 acres out of the 8.8 acre site. The nature and use of the land surrounding the requested rezone area is commercial frontage on Clinton Street, and the nature and use permitted by the requested rezone is multi-family, which is not consistent with the surrounding land uses. Further, the Planning Board held a public hearing and did not recommend rezoning and special use permit because of the invasion of wetlands, drain on resources, additional traffic patterns, negatively perceived impact on the current residents, and quality of life impacted through the town's Comprehensive Plan.
3. The Supreme Court in Erie County previously issued a ruling in *Offhaus v. Town of West Seneca* in October of 2002 with respect to parcel 3808 Clinton Street. The decision was that the parcel should be properly zoned commercial. The court opined that although Clinton Street is a commercial thoroughfare through the town with mixed use, the immediate vicinity of the parcel is surrounded by four commercial properties, which still stands today. This parcel has been zoned commercial for 10 years and was a non-conforming commercial use for 50 years prior to that, which was expanded by a decade ago.
4. Having heard the many concerns raised by the public, the Town Board, in exercising its legislative powers, finds the use is consistent with the health, safety, and welfare of the community.
5. The special use permit is denied given the location and size of the use and site, the nature and intensity of the project, and the location of the site in respect to streets giving access not being in harmony with the orderly development of the surrounding area. There are no multi-family dwellings in the surrounding area. The parcel is surrounded by commercial properties. There is only one way in and out of the site on Clinton Street. It is proposed there will be 36-units in a small area on the site.



On the question, Councilman Cantafio, inquired if the Town Attorney composed the motion and reiterated the desire to follow proper procedures. Supervisor Dickson confirmed Ms. Hawthorne had a role in drafting it.

Ayes: (4) Supervisor Dickson                      Noes: (1) Councilman Hanley                      Motion Carried  
          Councilman Bauer  
          Councilman Cantafio  
          Councilman Piekarec

**ADJOURNMENT**

Motion by Supervisor Dickson, seconded by Councilman Hanley, to adjourn the meeting at 8:52 P.M.

Ayes: All    Noes: None    Motion Carried

  
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**AMY M. KOBLER, TOWN CLERK**