

City of Lockport Partial Update of the Comprehensive Plan
RA Reserve Area District

BACKGROUND

The City of Lockport Common Council received a request to rezone a portion of the property located at 102 Davison Road to accommodate multi-family housing and provision of medical services from the property owner and its contract vendee Cazenovia Recovery Services, Inc. (collectively here “CRS”). The property is currently zoned RA - Reserve Area District. CRS’s request amounted to a case of spot zoning, which is “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners.” *Rodgers v. Vill. of Tarrytown*, 302 N.Y. 115, 123 (1951). Although the City Council could have simply refused to consider the rezoning request, it instead took steps to insure the current zoning was correct because the City Comprehensive Plan was last amended in May 1998. Therefore it referred the CRS application to the Planning Board along with a direction to review the Comprehensive Plan and the uses of property in the RA District to determine whether any changes to the Plan or the zoning code are appropriate.

Although not required to do so, the Planning Board has provided CRS an opportunity to present its application contemporaneously with the Board’s review of the Comprehensive Plan. This effort has been made more difficult by CRS’s constant attacks on the process and provision of continually changing information to the Board. CRS criticized the Board, for example, for failing to meet with them privately to review the application, instead insisting on the people’s business being conducted publicly. CRS misrepresented the extent of the purchase of the property, apparently hoping to minimize the City and Town SEQRA review.

CRS took months to answer written questions regarding contradictions in its application and its Full Environmental Assessment Form, then blamed the City for delay. CRS misrepresented information about its project, for example answering questions about the traffic impacts by solely limiting answers to the apartments while ignoring the medical services and staff use.

Because the review of the RA District is not limited to CRS's property, the Planning Board moved on despite CRS's actions. The Board considered the current code provisions, the history of the zoning of the RA District parcels, and adjoining uses. The Board conducted a public hearing on the proposed Plan update and received significant public input.

COMPREHENSIVE PLAN

A Comprehensive Plan provides a framework to guide local leaders in decisions affecting community development. The Comprehensive Plan is a process whereby the City residents can give direction to growth within its boundaries. Governed by state law, the Plan, or in this case the Plan Update, is an official document which is adopted by the City Council to serve as a policy guide for decisions about future physical development within our community. The Comprehensive Plan Update, when completed and if adopted, will provide a basis for decision making by the City Council and Planning Board, as well as the Mayor and the administration, in daily operations.

Comprehensive Plans are general, comprehensive, and long-range in nature. It is comprehensive in that it examines all geographic areas and functional elements which affect future development, in this case solely within the RA District. It is general in that it contains mainly general recommendations. It is long-range in that it considers distant problems and possibilities which will affect the locality's future. It is intended that the plan reflects the current

objectives of local officials and citizens of the jurisdiction and is used in the decision-making process to prepare for anticipated conditions occurring within the next decade, or until updated.

A Comprehensive Plan is an important step in the growth and development of a locality. Unguided urban growth can waste tax dollars and valuable land. It can overburden existing services and detract from overall environmental character. Unplanned growth can also lead to land use conflicts. Through Comprehensive Planning, a reasonable estimate of future population levels can be derived, and in turn, determination can be made as to the most suitable areas for this growth to occur, thus minimizing possible future land use conflicts. Likewise, Comprehensive planning can help point out general areas which will require higher levels of utilities, services, and community facilities, as well as indicate improvements to the transportation system that will be required.

The content and preparation of the Plan are governed by General City Law § 28-a. The law defines “city comprehensive plan” to mean the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the city. N.Y. Gen. City Law § 28-a(3). Thus, it is the code, the actual activities occurring in the neighborhood and region – in this case in particular in the Town - as well as this update that provide the updated plan for the RA District.

REVIEW OF THE RA DISTRICT

A. ZONING HISTORY FOR RA ZONE:

- **102 Davison Rd-**

- 1948 Zoning Ordinance (1957 map) Zoned R-3. R-3 allowed single family homes, public parks, golf course, municipal buildings, hospitals or sanitariums for treatment of human ailments but exclude nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patients.
- 1962 Zoning Ordinance, Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.
- 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
- 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.
- **Outwater Park & Glenwood Avenue area**
 - 1948 Zoning Ordinance (1957 map) Zoned R-4. Allowed single-family homes, public parks, golf course, municipal buildings, hospitals or sanitariums for treatment of human ailments but exclude nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patients.
 - 1962 Zoning Ordinance, Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.
 - 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
 - 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.
- **Along the Erie Canal (Prospect St. to City Line)**
 - 1948 Zoning Ordinance (1957 map) Zoned I-2. Allowed all industrial uses not strictly prohibited by the Ordinance.
 - 1962 Zoning Ordinance, Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.
 - 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
 - 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.
- **Beattie Avenue (Kenan Center and Kenan House)**
 - 1948 Zoning Ordinance (1957 map) Zoned R-1 and R-3. Allowed single family homes, public parks, golf course, municipal buildings, hospitals or sanitariums for treatment of human ailments but exclude nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patients.
 - 1962 Zoning Ordinance. Zoned R-1. Allowed single family homes, public and private schools and institutions of higher education, public libraries, municipal

buildings, hospitals or sanitariums for the treatment of human ailments. Any buildings so used shall not be less than 50 feet from the line of any adjoining property. Excluded from the permitted uses are nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patents and chronically ill.

- 1971 Zoning Ordinance. Zone R-1- Allowed single family detached dwellings, public parks and playgrounds and public schools.
- 1985 Zoning Ordinance. Zone RA. No permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
- **Grossi Park (West Avenue)**
 - 1948 Zoning Ordinance- Zoned I-1 and R-1 (Park was not installed yet)
 - 1962 Zoning Ordinance. Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.
 - 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
 - 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.
- **Willow Park (Willow Street)**
 - 1948 Zoning Ordinance. Zoned R-4, allowed single-family homes, public parks, golf course, municipal buildings, hospitals or sanitariums for treatment of human ailments but exclude nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patients.
 - 1962 Zoning Ordinance, Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.
 - 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
 - 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.
- **Kibler Park (Elmwood Avenue)**
 - 1948 Zoning Ordinance. Zoned R-4, allowed single-family homes, public parks, golf course, municipal buildings, hospitals or sanitariums for treatment of human ailments but exclude nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patients.
 - 1962 Zoning Ordinance, Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.

- 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
- 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.
- **Dolan Park (Clinton Street)**
 - 1948 Zoning Ordinance. Zoned R-4, allowed single-family homes, public parks, golf course, municipal buildings, hospitals or sanitariums for treatment of human ailments but exclude nursing or convalescent homes and institutions for the insane, feeble minded, epileptic, drug or liquor patients.
 - 1962 Zoning Ordinance, Zoned RA- allowed- public facilities (schools, parks and wooded areas) Residential, recreational and institutional uses per Planning Board approval.
 - 1971 Zoning Ordinance, Zoned RA- no permitted principal uses, special uses for parks, golf courses, athletic field and other similar uses, essential services, land reclamation operations other than refuse and garbage landfills & cemeteries
 - 1985 Zoning Ordinance (used currently) Zoned RA- same uses as 1971 Ordinance.

B. CURRENT PURPOSES AND ALLOWED USES

The Code currently provides as follows:

§ 190-76 Purpose.

The purpose of the RA District is to delineate those areas where substantial development of the land in the form of buildings or structures is prohibited due to:

A. Special or unusual conditions of topography, drainage, floodplain or other natural conditions, whereby considerable damage to buildings or structures and possible loss of life may occur due to the process of nature.

B. The lack of proper facilities or improvements resulting in the land not being suitable for development at the present time and where such facilities or improvements must be taken on an areawide rather than individual parcel basis in order to serve adequately the area at a reasonable cost to the City.

§ 190-77 Special uses.

Special uses in the RA District shall be as follows:

A. Parks, golf courses, athletic fields and other similar uses.

B. Essential services.

C. Land reclamation operations other than refuse and garbage landfill.

D. Cemeteries.

C. OTHER RELEVANT PROVISIONS OF THE CODE AND USES WITHIN THE CITY

The Board notes that certain uses currently on-going in the RA District, including private community centers and related concessions are not specifically permitted in the District. The Board has examined whether this uses should continue and the law adopted to reflect their use, or whether the non-conforming status should be amortized and removed.

The CRS property served as the Niagara County Infirmary from 1915 to 1979, when it was converted to County Social Services office use until abandonment in 2003.¹ The original property was larger and included what are now recreational uses including the ball fields and golf course. A cemetery remains on an undefined portion of the property.² Until its recent sale of a portion of the former Infirmary property (the CRS property) the property was continuously owned and dedicated to public use consistent with public and private uses allowed in the RA District, particularly the cometary use (which remains), but not in its use as an infirmary (almshouse). It has never been used for the private uses now sought by CRS.

Demographically, the City population remains stable but has been slightly declining. Niagara County's population has been declining.³ There has been no demand for new multi-family housing in the City as measured by requests for new projects or rezoning.

CURRENT COMPREHENSIVE PLAN

¹ History of the Niagara County Infirmary Part 2, Niagara's Watercooler website, available at http://www.niagaraswatercooler.com/2019/07/history-of-niagara-county-infirmary_15.html.

² History of the Niagara County Infirmary Part 3, Niagara's Watercooler website, available at http://www.niagaraswatercooler.com/2019/07/history-of-niagara-county-infirmary_16.html.

³ Joe Mahoney, NIAGARA COUNTY HIGH ON LIST AS FRESH CENSUS DATA DOCUMENTS UPSTATE'S SHRINKING POPULATION, Lockport Union Sun and Journal, April 16, 2019.

The current City of Lockport Comprehensive Plan was adopted in May 1998. In regard to the RA District, the Plan states

*review the RA Reserve Area (Article XIV) district regulations to ensure their fit with the completed Comprehensive Plan but retain this district as one which is clearly appropriate to the City's unique topographical and geological conditions;*⁴

This update process has conducted that review, and the Board concludes that each of the parcels should retain its current zoning.

The Plan also states “Preserve the residential integrity of the City's neighborhoods by limiting conversions of single-family homes to multi-family or commercial use.”⁵ This is relevant to the CRS request as the Town portion of the property is zoned single-family residential and the property rests in a single family neighborhood. During this update review process the Town rejected the rezoning request for its portion of the parcel, meaning the rezoning to multi-family would create significant more density than the Plan envisioned and the adjoining Town allows.

In regard to the CRS property and surrounding area, the Plan rejects its use as high-density residential. Specifically it calls for such uses to the south of the County Golf Course (and that property is in fact zoned R-3).

New high density housing in the form of garden apartments or town houses could be developed along Davison Road adjacent to existing high density residential areas (Parcels II

⁴ City of Lockport Comprehensive Plan at 69.

⁵ Plan at 35.

and 12). Both these sites have good traffic access to Davison Road as well as Kibler Park and the Niagara County Golf Course.⁶

The “Future Land Use Concept” Map within the Plan calls for the CRS property to be used as “Parks.”

NIAGARA COUNTY INFIRMARY PROPERTY
RFP AND RESTRICTIVE COVENANT

In regard to the CRS property, CRS has noted that County, as seller, placed restrictions on the use of the property. As a general rule the Board rejects CRS’s contention that the Board is mandated to follow the restrictive covenant in considering the rezoning application. If such were the case, buyers and sellers could override local zoning by inserting use limitations into restrictive covenants. In fact, New York law specifically separates contractual rights from zoning powers and rejects CRS’s demand that the goals embodied in the restrictive covenant be carried out.⁷

Nevertheless the Board has reviewed the restrictive covenant and notes as follows: Contrary to CRS’s assertion, the Restrictive Covenant does not limit the property to the uses CRS seeks, but instead allows a broader range, calling for the property to “be used primarily as residential housing, multi-tenant apartments, retail shops, and professional offices....” It also does not appear the restrictive covenant allows the in-patient medical services proposed by CRS

⁶ Plan at 43.

⁷ *Friends of Shawangunks, Inc. v. Knowlton*, 64 N.Y.2d 387, 392 (1985)(“The use that may be made of land under a zoning ordinance and the use of the same land under an easement or restrictive covenant are, as a general rule, separate and distinct matters, the ordinance being a legislative enactment and the easement or covenant a matter of private agreement. Thus, a particular use of land may be enjoined as in violation of a restrictive covenant, although the use is permissible under the zoning ordinance, and the issuance of a permit for a use allowed by a zoning ordinance may not be denied because the proposed use would be in violation of a restrictive covenant.”)(internal citations omitted).

to be performed on site. Further, the Board notes that the failure of the property owner to complete certain tasks in the Restrictive Covenant would cause it to lose the first right-of-refusal on other portions of the County property. Although a non-binding residential site plan was submitted, CRS made no reference to the related property in its application, nor did the Environmental Assessment Form (EAF) reference those impacts. If traffic impacts, for example, were added to the CRS impacts (which were themselves understated), the threshold to require a traffic study would most likely be exceeded. After being asked to address the additional development, CRS did not update the EAF but instead submitted an argument that the exception to the rule against segmentation should be applied here. The Planning Board recommends that the City Council consult with the Town of Lockport on whether segmentation is appropriate here, as the community is best served by a complete review.

RECOMMENDATIONS OF THE PLANNING BOARD

For the following reasons, the Board recommends that no changes be made to the parcels zoned RA, and the Code be amended as follows:

1. The RA District provisions should be expanded to permit concessions related to those uses already allowed, to support them, and to include public and private community centers. The later change reflects uses already going on as well as the importance of private recreational and community uses to the community. A copy of a proposed local law is attached.

2. For those parcels in the RA District containing wooded or other natural features, the Council is urged to examine ways to protect those resources by expanding the District, including expanding the District or limiting uses that would impair those resources.

3. The Board repeats the recommendation of the 1998 Comprehensive Plan to conduct a master plan for city parkland.

As to the CRS Application:

Board members believe the change in density is too drastic and will have a negative impact on the community. As was noted in the public record, there are significant traffic safety and pedestrian safety concerns from the significant increase in traffic (which the applicant has declined to study) and absence of paved sidewalks. The Board noted that the intersection at East Avenue and Davison Road is difficult now, increasing the number of units in the area is only going to increase the traffic flow. The Board is aware that the property is now privately owned but notes that it was purchased even though the comprehensive plan and zoning called for recreational uses (whether public or private) and any difficulty is entirely self-created. The Board notes that there has been no pent up demand for multi-family or single-family housing, and there are numerous other properties in the Town and City that could serve the proposal. CRS itself is currently operating a facility in another district that allows multi-family use, without objection or concern from CRS. The Board recognizes the County was trying to achieve the laudable goal of reusing the site, but the Planning Board was never consulted about a deviation from the zoning or the current Plan. Plans for protection of the cemetery (or even acknowledging its presence or its boundaries) seems incomplete at best. The Board notes placing multi-family at the location, given where single and multi-family family housing currently exists would negatively alter the character of the neighborhood. It would also conflict with the Town zoning on the property.

The Planning Board has examined its obligation to make reasonable accommodations to allow CRS to its target populations. The Board rejects any claim of CRS

that it is treating its clientele differently. From virtually its first interaction with the City CRS has accused the City and boards of discriminating against its clients. The City has taken no action to deter CRS. The City currently hosts CRS facilities, as does the Town, and has not rejected any application for such services in properly zoned areas – of which there are numerous parcels in the City in various zones. The Planning Board has focused solely on impacts from the proposed change in use to a parcel that has never allowed such density as proposed. Those potential tenants of CRS who are members of a protected class – and CRS has never identified how that potential population is split between Town and City – represent a minority (less than a third) of the total tenants sought for the Project. No housing is being denied because no housing was ever allowed on this property – as CRS well knew and ignored when it entered into its purchase contract. The Board has recommended the action it has because the proposal is thoroughly out of character with the current plan, historic uses, and the surrounding neighborhood. Inflicting on the neighborhood the density and impacts sought have nothing to do with who any particular resident may be.