

OCTOBER 20, 2008

Town Board Worksession

5:30 PM

Present: Supervisor F. Newlin; Councilmen A. Bax, S. Edwards, M. Johnson & E. Palmer; Dep. Sup. E. Elgin; Atty. J. Leone; Dep. Atty. D. Boniello; WPCC Admin. T. Lockhart; Eng. D. Britton; Bldg. Insp. T. Masters; Finance Officer A. DiRamio; Clerk C. Schroeder; 3 press; 6 Residents

The Supervisor called the worksession to order at 5:45 p.m. He said they would follow the regular agenda until 6:00 p.m. after which the Board would accept public comment with respect to the proposed grass cutting law. Newlin said there are some changes to the agenda which he would address now.

Agenda:

Palmer said he would address the Mussel Subdivision and Neg. Dec. for one-lot. Edwards said he had a drainage issue to address. Bax said he wanted to include a maintenance agreement (WPCC) and to discuss the status of the Town Law for Wind Energy. Newlin said there are several items that he would present in executive session ranging from personal to litigation matters.

Palmer MOVED to approve the agenda, as amended. Seconded by Johnson. Motion carried 5-0.

Abstract:

Palmer MOVED to approve the Abstract of Claims, Nos. 3044 to 3454 and recommended payment in the amount of \$525,617.47, plus a post-audit of \$169,908.44. Seconded by Johnson and carried 5-0.

Polling Place Update:

At the last meeting, Newlin said they spoke about some changes in the polling sites. Newlin said he is still concerned with District 11 (Colonial Village Fire Hall). It is the largest polling place in the Town. Residents in the Escarpment area, i.e. Mt. View Drive, Lewiston Road, The Circle, Annover, Elm, et al would have the farthest to drive. Newlin said he will speak to the town attorneys in Executive Session about that. I'm mindful of the fact that now there is a good chance that there is a good size of the Lewiston population that will have voted in three different places this year (presidential primary, primary & general elections). As much as we would like to change that and ask the Board of Elections to do that, I'm also weary of creating more confusion than we've already had. The Board of Elections did come our way to some degree and I appreciate that but I still hope that District 11 can be resolved. Newlin thanked the Board for working in a bi-partisan fashion to make sure we can exercise the right to vote here in Lewiston in a fair and equitable manner.

Amendment to Dog Ordinance:

Palmer said this is a work in progress. He will work with Boniello to present an amendment to the local law. Boniello said he has a copy of the City's dog ordinance. He hoped to incorporate some of this language into the Town's ordinance, limiting the number of dogs in certain residential areas. Boniello was asked to forward the City's local law for distribution to the Board.

Halloween Hours:

Johnson MOVED to designate Halloween Hours as 4 PM to 8 PM, October 31, 2008 in the Town of Lewiston. Seconded by Edwards and carried 5-0.

Grinder Pump Maintenance:

Bax referred to a request from Larry Leblond for the Town to take over maintenance of his recently installed grinder pump which has been inspected by the town and deemed to be in compliance with all regulations. Lockhart said it's been the town's practice to take over the grinder pumps once they are installed on private property. It also requires an easement to allow town crews to enter private property.

Leone indicated that Mr. Leblond had contacted him at one time asking to represent him about a property line dispute. Mr. Boniello was also involved in that same case in one way or the other. As long as that is disclosed, Leone said he didn't have a problem

going forward. If the Board understands and Mr. Leblond understands, than I don't have a problem with it, he said.

Bax MOVED a resolution authorizing the Town of Lewiston to take over maintenance of the grinder pump located at 4268 River Road, subject to an easement, prepared by the town attorney, and authorizing the Supervisor to sign said easement. Seconded by Johnson and carried 5-0.

Maintenance Agreement:

Bax MOVED to authorize the Supervisor to sign a maintenance agreement with Nate's Typewriters & Computers, Inc. in the amount of \$499.00 to maintain a copy machine (Sharp AR237) located at the WPCC. Seconded by Johnson and carried 5-0.

Wind Energy:

Bax said he has been advised by Emily Latko, Chair of the Tower/Wind Energy Committee, that the final version of the Commercial Wind Energy Conservation System Law has been provided to Attorney Leone for his final review and tweaking. The committee hopes to have a public hearing on said law by year end. Bax said he wanted to advise everyone that it's on the horizon for the Board's review relatively soon. Bax said this is the commercial end of the law. The residential end will be following shortly thereafter.

Mussel Subdivision:

Palmer said the Planning Board, on Sept. 18, reviewed a one-lot subdivision request from Marion Mussel, for property located at 4320 Dickersonville Road, SBL# 75.00-2-21, and recommends approval, as presented. The Niagara County Planning Board recommends approval. The Environmental Commission recommends a Negative Declaration.

Palmer MOVED the acceptance of a Neg. Dec. on the Mussel one-lot subdivision. Seconded by Johnson and carried 5-0.

Palmer MOVED to approve the Mussel Subdivision, as presented. Seconded by Johnson and carried 5-0.

Janitorial Services: Newlin referred to a request from the Town Clerk asking to go out to bid for janitorial services for 2009. Johnson said this needs further discussion.

At this time, the Supervisor suspended the regular agenda and opened the Public Hearing on the proposed local law re grass cutting.

Public Hearing

6:00 PM

The Clerk read the notice of Public Hearing into the record.

NOTICE IS HEREBY GIVEN that a Public Hearing will be held before the Town Board of the Town of Lewiston, New York on the 20th day of October, 2008 beginning at 6:00 p.m. at the Lewiston Town Hall, 1375 Ridge Road, on a proposed local law to prohibit the growth of weeds, grass or other plants and to establish a legal procedure for removal of unhealthful plants, weeds, grass or other growth on lands in the Town of Lewiston, New York. A copy of the entire text of the law is on file in the Town Clerk's office where it may be examined during normal business hours. The persons of interest will be given an opportunity to be heard. If adopted, this will be known as Local Law No. 1, 2008.

The Building Inspector said the whole reason this law came into being is that the existing town code is too vague. It has one sentence which states -- *no person shall permit uncut grass, weeds, brush, rubble... on real property. Said property shall be made to conform with abutting properties.* Masters said there isn't any recourse the town has easily to get that property cut. What we're proposing in the new law is that the grass can't be longer

than 6-inches in any residential zone or parcel abutting any residential zone. It gives the Building Department the right to notify the owner(s) of the property to properly dispose of litter and/or weeds, grass, unhealthful plants or other growths located on such owner's property. If the owner(s) completely ignore us, the Building Inspector shall direct appropriate personnel to dispose of such litter and/or weeds, grass, etc. An itemized account of the expenses incurred for all labor and equipment, plus an administrative charge of \$100.00 will be sent to the property owner. In the event that collection is not made, the Building Department will forward the unpaid account to the Town Assessor who shall charge the cost of such expenditure on the tax rolls for that property. Right now, 98% of the people cut their grass. It's that two or three percent that don't that makes my phone ring. This will help me out greatly.

Leone said he fashioned this local law from the Town of Wheatfield's. There was some concern in that earlier, the Building Dept. received a call from the County Planning Board indicating they thought this matter needed to be referred to them in advance as they felt that it was a zoning ordinance. Leone disagreed as the proposed law covered the entire town. It is not directed towards any particular zone within the Town. As long as it is two-acres or less you're on the hook. A representative of the Planning Board confirmed what I said. Agreed with what he said. Got an opinion from the State that basically agreed with what I said. Just to make sure there was no issue whatsoever, we sent it to the Planning Board and they approved it. It was on their agenda today. As I said at the last meeting, it's a shame that we have to do this. That little sentence that is in the Town Code worked for years, but it's a question of trying to put into writing what most homeowners should know by simple common sense.

Newlin said the national housing crisis that is affecting other areas has made this problem more acute. It's the neighbors that are beset with the unsightliness and property depreciation of their home when the neighbors do not keep theirs up sufficiently. Lewiston is a nice community. We're trying to get ahead of the ball here. We certainly don't expect the same kind of housing difficulties and foreclosure like we see out west and other more developed areas. Should we be faced with a similar situation where you have increasing foreclosures the town will have the mechanisms to assure the neighbors.

The Supervisor opened the floor for public comment.

Anthony Plume, 1064 Sweethome Road, said he owns a lot on Sweethome Road that is adjacent to the power company. I cut my grass. What about the power company? On the north side, there's a ditch in front of the homes. The Town never cuts the grass. I have tenants that complain that the ditch is overgrown. The town doesn't take the responsibility to go around and cut the grass. The town was supposed to pipe this ditch. The pipe has been laying there for a year. Nothing has been done. You're going after the property owners, which I understand, people should cut their grass. But, are you going to have the power company cut their grass next to my lot? Is the town going to cut the grass in the ditch? This is my complaint.

Newlin: I can't imagine there is anyway for us to enforce the power company. Any thoughts about that Mr. Leone?

Leone: This was geared primarily for residences of two acres or less. Even though it is supposed to cover the Town as a whole, the power company property is well in excess of two acres. It wouldn't fall within the purview of this law.

Palmer: Any idea why the culvert piping hasn't been completed? I thought it was done.

Plume: I called Mr. Reiter. He said they don't have time to put it in. There's standing water all the time. Also, the property owners on Sweethome Road – their backyards facing the north side, there's a ditch there from the power line to ... It leaks all the time. It's been cleaned out once. Now it is too deep. The Town doesn't cut it. If there was a culvert pipe between the properties, the property owners or the tenants would cut the grass. The engineer was going to meet with me a couple times but he never showed up.

Eng. Britton was asked to get in touch with Mr. Plume within the next couple of days. Also, Newlin said they would contact Supt. Reiter to schedule installation of the culvert pipe.

Rob Nichols, 471 Aberdeen, questioned the penalty of *imprisonment*. Atty. Boniello responded that the local law has a fine not exceeding \$250 or imprisonment not exceeding 15 days or both. That is by State statute. Palmer said it is considered a violation like other violations in the law. It's the judge's discretion.

Secondly, Nichols questioned the \$100 administrative handling charge. How long is that administrative process? 15-minutes? I think that fee is high. The Building Inspector said he was advised by other towns that if they did not put that in that landlords would just use the town as a lawn service. It's an encouragement for the property owner to take ownership of their problem. Masters said he tried repeatedly to contact a property owner in the Sattleberg Farms development. The owner completely ignored me. The property was in the process of being sold. The owner was out-of-state. He had no intention of cutting the grass. This is what I'm faced against.

Lastly, Mr. Nichols questioned vacant lots in developments that have not sold. Would developers have to maintain that vacant lot? Masters said they would.

As referenced in Section 5, Boniello said any unpaid charges within this law would be forwarded to the Town Assessor, who would charge the cost against the owner(s) on the next regular tax bill. It could take months to get it on the tax bill. In the interim, the property could be sold, foreclosed, etc. It would be my recommendation to put a lien on the property immediately and file it with the Niagara County Clerk's office. It's against the property so if it is sold, the town would get paid immediately.

Newlin asked if they would have to schedule another hearing with the addition of this language. Leone said it is his opinion that it is a substantial change in the language. Once the language has been amended and re-submitted, the hearing notice would have to be re-published and a subsequent hearing held.

As there was no further public comment, the Supervisor asked for a motion to close.

Palmer MOVED to close the Public Hearing and resume the Town Board worksession. Seconded by Bax and carried 5-0.

Resuming the worksession, the Supervisor proceeded with the next item of business.

Grass Cutting Law: Newlin asked the attorneys to provide the new language by the end of the week. The Board will call for a public hearing on the revised local law at its regular meeting 10/27.

Resolution—Diversion of Local Government Improvement Funds:

Newlin, referring to correspondence from the Town Clerk, noted that Local Government Management Improvement funds have been diverted into the New York Budget by State Legislators. The Clerk submitted a proposed resolution opposing this action. The Board's endorsement and supporting resolution will insure that all funds will continue to be made available to municipalities, special districts and school districts throughout New York State. If adopted, this resolution will be forwarded to Governor Patterson and the members of the State Legislature.

WHEREAS, the Local Government Records Management Improvement Fund was established through Chapter 78 of the Laws of 1989; and

WHEREAS, this law provided for a \$5.00 surcharge on every document recorded in the County Clerk's office throughout New York State; and

WHEREAS, revenues collected were dedicated to fund competitive records management grants administered by the State Archives; and

WHEREAS, this grant program has had tremendous positive impacts in counties, towns, cities, school districts and special districts throughout NYS awarding \$168 million to 8,500 local governments since its inception; and

WHEREAS, in March 2008, a little known provision of the State Budget allowed \$500,000 of these dedicated funds to be “swept” into the State’s general fund; and

WHEREAS, an additional 6% of “unexpended” funds has now been reduced from grants awarded from this dedicated fund.

NOW, THEREFORE, BE IT RESOLVED, that the Lewiston Town Board asks the State Legislature to recognize that these funds are local funds raised by local clerks for local government and dedicated by the Senate and Assembly for a specific valuable purpose; and, be it further

RESOLVED, that the Lewiston Town Board requests that no further “sweeping” or other transferring of money from this valuable dedicated fund be permitted; and, be it further

RESOLVED, that a copy of this resolution be forwarded to Governor Patterson, and the membership of both the Senate and Assembly of New York State.

Johnson MOVED to approve the resolution, as written. Seconded by Bax and carried 5-0.

Resolution—Authorizing Unit Charges in Master Sewer District:

Bax said a resolution was adopted in October, 1978 to provide for the payment for the sewer system over a thirty (30) year period. That resolution expires in 2008. Bax, having consulted with Tim Lockhart, asked that this matter be deferred until the worksession, as some of the language in the resolution needs to be “tweaked”.

Niagara University: Parking Lot Expansion:

Eng. Britton said the Planning Board in March 2008, recommended approval a 5-Year Conceptual Plan for Niagara University. Part of that plan called for a parking lot expansion at the Dwyer Area. When the Town Board approved the Planning Board’s recommendation (4/14/08), a SEQR designation was never determined. The University is seeking funding for that phase and requires a SEQR determination from the Town Board.

Britton said the Board has before them a Short Environmental Assessment Form completed by Niagara University. Britton said it would be his recommendation that the Board consider issuing a negative declaration for the project.

Johnson asked if this had been reviewed by the Environmental Commission. Britton said it had not but that is an option the Board can consider.

Palmer MOVED to forward the Short EAF for the Dwyer Arena Parking Lot Expansion to the Environmental Commission for its recommendation. Seconded by Bax and carried 5-0.

2009 Budget:

Newlin said he has prepared the Tentative Budget. There is no Town Tax in his proposed budget for 2009. I’m meeting this week with each of the councilman. We’re going to go over some of the details. We’ll discuss it more at next week’s regular meeting.

Flood Map Discussion:

The Building Inspector said he is receipt of new Flood Maps for the Town. Masters said the flood areas in Wheatfield, Clarence and Amherst changed drastically. These communities sent this information for their engineers to review. It came back substantial. People who were not in a flood zone in the last 20-30 years are now in a flood zone. Masters said Eng. Britton is now reviewing the maps for the town.

Britton said FEMA re-mapped Niagara County using a variety of technology. Basically, there are three different levels of evaluation -- aerial photographs and historical data; elevation figures and ground proofing. Evaluations were done over the course of three years.

Through various communities he's been involved with, Britton said he's seen significant changes. What that means is that if you're a current homeowner and you're now considered to be in a flood plain and you weren't before, you're going to be paying flood insurance. Vacant properties – If somebody wants to come in and build on it, they're going to be looking for some relief from the Assessor. There are a variety of impacts.

Britton said for the Town to protest properties designated in a flood area, it would have to have hard data to support the protest, such as elevations being inaccurate.

Britton said he compared the new flood map with the old flood map. There were very minimal impacts in the Town of Lewiston. He estimated about a dozen homes being impacted.

Bax asked if those dozen or so homeowners should be contacted. Get them involved in the loop right now... Johnson concurred. It would be difficult for them to sell their house, he said.

Britton said they could overlay the new map to see what properties would be impacted.

Bax MOVED to notify the individuals potentially affected by the new proposed flood map. Seconded by Johnson and carried 5-0.

Britton said this work can be done in-house thru the Building Department and John Sharpe. The Supervisor asked for a list of those homeowners who would be impacted. The Board could begin the appeals process, if it chooses to pursue something further.

Sanborn Sidewalks: As directed at the last meeting, the Engineer contacted the State with respect to sidewalk repair. Britton noted that the Town is responsible to maintain the sidewalks that are within the State Highway. A highway work permit is required to be filed with the State D.O.T. Councilman Edwards said he spoke with Bernie Rotella, Grant Writer, with respect to possible funding for sidewalk repair. He will report back at the next meeting.

Drainage Issue: Bax said he received a call from a homeowner at 935 James Drive (James Forcucci) who has a problem with drainage and flowing water from the swale in the back of his yard forward. Newlin said he spoke with Mr. Forcucci and directed him to contact Supt. Reiter immediately when the flooding occurs.

The Supervisor asked for a motion to enter into executive session re a contractual matter, litigation, advice of counsel and personnel.

Bax MOVED to enter into executive session. Seconded by Johnson and carried 5-0. Time: 7:00 p.m.

***Executive Session:**

Present: F. Newlin, A. Bax, S. Edwards, M. Johnson, E. Palmer, E. Elgin, J. Leone, D. Boniello, D. Britton

Also Present: Gary Smith, President, Modern Corporation

Issues Discussed:

1. Possible Modification to Existing Modern Contract.
2. Personnel Issues – Departmental Matters
3. Proposed Tower Contract

Edwards MOVED to exit the executive session. Seconded by Johnson and carried 5-0.

Executive Session Action: None

Edwards MOVED to adjourn. Seconded by Johnson and carried 5-0.

*Executive Minutes taken by:
David Boniello, Dep. Town Attorney

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk