

March 8, 2010

Town Board Worksession

6:00 PM

Present: Supervisor S. Reiter; Councilmen A. Bax, M. Marra, E. Palmer & R. Winkley; Atty. M. Gabriele; Legal Consultant M. Dowd; Dep. Supervisor G. Catlin; Bldg. Insp. T. Masters; Finance Director M. Johnson; Engineer R. Smith; WPCC Ad/Op T. Lockhart Recreation Director M. Dashineau; Clerk C. Schroeder; 3 press; 7 Residents

The Supervisor called the worksession to order at 6:00 p.m. Councilman Winkley led the Pledge of Allegiance followed by a moment of silence in remembrance of Michael O'Toole, father of Susan Ehmke and friend of Mike Johnson.

The Supervisor asked if anyone had any items to be added to the agenda. Palmer asked to add a purchase from the Police Department. Bax asked to include a letter from Atty. Mark Gabriele. Reiter said he would address the following: 1) Proclamation for World Kidney Day; 2) Funding for the Lewiston Garden Club; 3) Information on Highway Supt. Interviews; 4) Submission of the Quarterly Financial Report; and 5) address the infamous green highway truck.

**Palmer MOVED the agenda, as amended. Seconded by Winkley and carried 5-0.**

Abstract:

**Palmer MOVED to approve the Regular Abstract of Claims, Nos. 418 to 754 and recommended payment in the amount of \$235,793.89, plus a Post Audit or \$272,159.50 and to include payment to HSBC Bank, N.A. for post audit payment in the amount of \$1,578.97, Seconded by Bax and carried 5-0.**

Highway Equipment: Reiter referred to a memo from the Deputy Highway Supt. that stipulated that due to its current condition, the 1999 Chevrolet ½ ton pick-up truck #9901 is no longer deemed serviceable for use at the Highway Department.

As everyone is aware, Reiter said he has been using the truck and paying for gas out of the Supervisor's contractual account. He further asked that he officially be allowed use of this vehicle to be used strictly for town business. It would be parked at the Highway Garage every night and on weekends.

Referencing a newspaper article published over the weekend on this issue, Palmer said he did not have a problem with this. The cost the Town is paying for gasoline is probably less than any voucher for mileage submitted would be.

From a logistic standpoint and to avoid any additional criticism Bax said the truck should be decommissioned out of the Highway Department and turned over as Town Hall property.

**Palmer MOVED to authorize the de-commission of the 1999 Chevrolet ½ ton pick-up truck from the Highway Department. Seconded by Winkley and carried 5-0.**

**Palmer MOVED to allow the Supervisor to use said vehicle for official town purposes only, in-lieu of paying mileage. Seconded by Marra and carried 5-0**

Further, the Supervisor referred to a request from the Deputy Highway Supt. for approval of monies for the purchase of a tractor-trailer. He solicited three bids for each. The tractor-trailer is necessary to move heavy equipment such as rollers, pavers, bulldozers, excavators, etc. This condition of the present tractor-trailer renders it completely unusable.

Bids were submitted from Hunter Buffalo Peterbilt -- \$99,800 for 2010 Tractor with Wetline; Regional International of WNY -- \$108,000 for 2010 Tractor w/o Wetline; and Hunter Sales & Service -- \$110,000 for 2010 International Truck w/o Wetline.

Reiter said he checked with the Finance Director who said that funds are available within the Highway Department budget. We'll have to move some monies around within the department to make it work, he said.

**Winkley MOVED to authorize the purchase of a 2010 Tractor with Wetline from Hunter Buffalo Peterbilt in the amount of \$99,800. Seconded by Marra and carried 5-0.**

Along with the Tractor, the Highway Department received three quotes for a trailer to carry the equipment. Bids were received from Hydra Detach Lowboy -- \$44,527 for a 2009 (New) ETNYRE; STS Trailer & Truck Equipment -- \$45,380; and Five Star Equipment, Inc. -- \$50,000.

**Bax MOVED to accept the low bid for a 2009 ETNYRE from Hydra Detach Lowboy in the amount of \$44,527. Seconded by Marra and carried 5-0.**

Saddlewood Lighting: Palmer said this item was deferred to the Town Engineer at the last meeting. Reiter said he received some information today but had not glanced at it. He would forward copies to Board members.

Cable Commission: Reiter said he would like to assign Town Attorney Mark Gabriele to the Cable Commission. The Town has not had a cable franchise renewal agreement for more than 10 years. The Commission is currently working on a new contract. Mr. Gabriele will be able to provide legal counsel to the Commission on the franchise agreement.

**Bax MOVED to assign Mark Gabriele to the Cable Commission. Seconded by Marra and carried 5-0.** Councilman Bax offered his assistance also.

Set Meeting w/John Dax: Reiter said that Attorney John Dax, Cohen & Dax, P.C., represents the Town in connection with the NYPA Relicensing Agreement. The charge for this legal service is a monthly fee of \$3,000. Reiter said he asked Atty. Dax to meet with the Board on March 22 @ 5:00 p.m. to discuss some of the services they are providing for the Town.

Set Moratorium on Commercial Wind Energy Towers: Reiter noted that in November 2007, the Town Board extended a moratorium on Wind Energy Towers thru 2008. The Chairman of the Wind Energy Committee asked that it be extended.

**Bax MOVED to renew the moratorium on Commercial Wind Energy Towers in the Town of Lewiston for six months, Seconded by Palmer and carried 5-0.**

Recognition of Frank Silvernail: Reiter asked to send a letter of appreciation to Frank Silvernail for his extensive service and dedication to the Tower/Wind Energy Research Committee.

Police Contract Meeting: Reiter said the Village is requesting a joint meeting with the Board to discuss the Police Contract. Palmer recommended setting the meeting for April 12<sup>th</sup> @ 5 p.m. at Town Hall.

Letter of Endorsement to eliminate Public Safety Hazards at former LOOW site: Reiter said the Board is in receipt of a letter from the Department of Army (Corps of Engineers) regarding the appropriation of funds to eliminate public safety hazards at the former Lake Ontario Ordinance Works (LOOW) Water Treatment Plant (WWTP) which is currently owned by the Town of Lewiston.

Reiter said there are a lot of pits and old concrete framework of a building there. The pits will be filled in or have steel gratings over them. It is a very dangerous situation he said, as there is evidence that children are riding four-wheelers or walking back there that could potentially fall into these pits. The Corps, thru the help of Congresswoman Louise Slaughter's office has come up with some funds to eliminate these hazards. A letter from the Town of Lewiston to Congresswoman Slaughter is required before funds are released endorsing the Corps scope of work for the LOOW WWTP.

**Palmer MOVED to authorize the Supervisor to send a letter to Congresswoman Slaughter and the Army Corps of Engineers in support of this project. Seconded by Marra and carried 5-0.**

Amy Witryol asked to comment on said letter of endorsement. Reiter said he would allow her to speak at the conclusion of the meeting.

Parks and Recreation: Marra said he would come back with some information about the process of obtaining greenway funds for some parks and recreation projects. The submission deadline to the Greenway Commission for the next project review cycle is March 16, 2010. It is followed by a 30-day public comment period with a determination date of May 18, 2010. A presentation of Town of Lewiston Projects will be given on that date and a vote taken by the Commission. Pending approval of that committee, projects will be voted on by the Host Communities Group which has representatives from the NYPA Stakeholders.

Marra asked to present resolutions for two Town of Lewiston Projects to submit to the Greenway Commission.

1. *Resolved: That the Town of Lewiston will submit to the Niagara River Greenway Commission a proposal for recommendation of the Town of Lewiston's; Lewiston Plateau Dog Park Project Grant funding request.*

**Marra MOVED the foregoing resolution. Seconded by Palmer and carried 5-0**

2. *Resolved: That the Town of Lewiston will submit to the Niagara River Greenway Commission for recommendation of the Town of Lewiston's; Kiwanis Park Playground Structure Replacement Project Grant funding request.*

**Marra MOVED the foregoing resolution. Seconded by Palmer and carried 5-0**

Shared Services Lease w/Village: Marra said he received a document from Village Counsel, Paul Grenga which was forwarded to Atty. Dowd and Atty. Gabriele. It is a lease and shared services agreement between the Town and Village of Lewiston.

**Marra MOVED to authorize the Supervisor to sign an agreement with the Village of Lewiston regarding shared services and lease of 1.5 acres of Lewiston Plateau for use as a Lewiston Plateau Dog Park, subject to counsel's approval. Seconded by Bax and carried 5-0.**

When asked to comment, Atty. Dowd said he was able to review the lease and had the opportunity to discuss it with the Village Attorney. Dowd said he had an issue with the term and duration of the lease. Atty. Grenga forwarded a revised draft which Dowd said he would take a look at and circulate for the Board to review.

Pletcher Road Bathrooms Project: Marra said the Parks Director went out to bid for cosmetic upgrades and repairs to the restroom space at Lewiston Town Park. Four Bids were opened. Two bidders did not adhere to the prevailing wage (Gross Contracting and Valery Contracting) and the bids were ultimately rejected. The lowest responsible bid was from Niagara Construction Co. in the amount of \$18,997.00. The fourth bid was Smith Bros. at \$21,900.

**Marra MOVED to accept the bid from, Niagara Construction Co., Inc. in the amount of \$18,997 to complete the restroom renovations, as per specifications. Seconded by Winkley and carried 5-0.**

Police Matters: Palmer said the Police Department accepted bids for furniture (training table & chairs) for the new police building and lectern for the emergency operations center. Bids were received from School Specialty - \$3,385.25 and Mid City Office Equipment - \$5,670.50.

**Palmer MOVED to accept the bid from School Specialty in the amount of \$3,385.25. Seconded by Bax and carried 5-0**

Bax read the following letter from Town Attorney Mark Gabriele:

*I would like to take this opportunity to advise you of the following circumstances that in my professional opinion requires me to recuse myself as legal counsel concerning the CWM Chemical Services, LLC matter currently under consideration by the Town of Lewiston.*

*In addition to my part-time position as a Town Attorney, I am also engaged in the private practice of law at Harris Beach, PLLC. I have never personally represented CWM Chemical Services, LLC in any matter in the past. However, in performing due diligence review, I was advised that the Firm has represented Waste Management in other matters in New York State unrelated to the current Lewiston matter.*

*Despite the fact that the Firm's representation was not related to the current Lewiston matter, out of an abundance of caution, I believe it is appropriate for me to recuse myself from this matter as counsel for the Town. Furthermore, Harris Beach, PLLC will not be representing CWM Chemical Services, LLC in the Lewiston matter.*

In other matters, Reiter said he received a letter from the National Kidney Foundation of WNY asking for a resolution recognizing March 11<sup>th</sup> as "World Kidney Day" in the Town of Lewiston.

**Bax MOVED the resolution. Seconded by Marra and carried 5-0.**

Reiter asked to contribute \$1,000 to the Lewiston Garden Club for 2010 with funds allocated from the Celebrations Account, A-7550-0400.

**Winkley MOVED for approval. Seconded by Marra and carried 5-0.**

Reiter said he and the Dep. Highway Supt. would be conducting interviews for the Highway Superintendent's position on 3/13 and 3/20 from 10 – 1:30. Board Members are invited to sit in on these interviews.

Lastly, Reiter said the Finance Officer would be distributing to board members following the meeting a quarterly report of spending of each department in the Town.

At this time, Reiter allowed Amy Witryol to address the Board regarding the safety hazards at the LOOW site.

Witryol spoke in respect to the endorsement letter on the Lewiston Property Project. She said she would offer to review the Army Corps request for the Board to ensure that the endorsement would not be construed as a release of responsibility or liability on the part of the Federal Government. There are two different programs operating out there, she said. The Army Corps has submitted a proposal for demolition of a building very close to Lewiston property and there have been some gaps in the preparations that the Army Corps has made for that particular building.

She said she would go thru the legal history of this particular property. I'm very concerned given the activity on that site and other ongoing investigations. The Army Corps is concerned about protecting the Army Corps' liability. I just want to ensure that they haven't overlooked any information that the Town might want to evaluate on its liability.

In addition, she thanked Mr. Gabriele on this "abundance of caution" recusing himself on CWM related issues with the Town of Lewiston.

Palmer said this has been under discussion for several months last year trying to fence in some of these areas. It should be of immediate concern. It's extremely hazardous out there especially for trespassers who might wander in that area. We have a real sense of urgency as far as getting this thing done.

Reiter said he had an item to discuss in executive session concerning a contractual matter.

**Marra MOVED to enter into executive session on a contractual matter. Seconded by Bax and carried 5-0.** Time: 6:35 p.m.

Executive Session: S. Reiter; A. Bax; M. Marra; E. Palmer; R. Winkley; M. Gabriele; Ryan Smith; Tim Lockhart; Carole Schroeder

Issues Discussed:

1. Amy Witryol's comments
2. Contractual Matter re Modern

**Bax MOVED, Seconded by Palmer to exit executive session and reconvene worksession, Carried 5-0.** Time: 7:45 P.M.

Action Taken:

**Bax MOVED to withdraw the prior motion authorizing the letter of endorsement to the Army Corps of Engineers until obtaining further advice of counsel. Seconded by Palmer. Carried 5-0.**

Transcribed and  
Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk