

PRESENT: Supervisor Dennis Brochey; Councilmembers Bax, Conrad, and Winkley; Deputy Supervisor Edwards; Town Attorney Seaman; Building Inspector Masters; Highway Superintendent Janese; Town Engineer Britton; Finance Officer Kloosterman; Recreation Director Dashineau; Police Chief Salada; 3 Press; approximately 100 Residents and Clerk Donna Garfinkel

The Supervisor opened the meeting, followed by the Pledge of Allegiance and a moment of silent reflection.

TWO-MINUTE STATEMENTS BY RESIDENTS

The Supervisor asked if any resident wished to address the Board.

Penzotti, John –Pletcher Road Penzotti is Chief of Lewiston Fire Co. #1. Penzotti is here to represent the 60 members and their families that comprise Lewiston Fire Co. #1 and is seeking the Town Boards support for the radio tower on Upper Mountain Road.

In 1977, when Penzotti joined the Fire Dept., they were using low-ban radios. The reception was poor at best. The radios were used for ten - fifteen years with less than 50% coverage at the first call area. That meant if the fireman was inside the house, they would have to go outside to call for help or talk on the radio. Along the ridge or escarpment, down below the hill or in the gorge, there is no reception at all.

The system in use now, gives about 70% coverage. If the firemen go to the basement there is no contact with dispatch. There is still no coverage along Hillside Drive, Route 104, the gorge or portions of Art Park.

Penzotti has been told by experts that if the tower is relocated, it will probable be moved out of the Town of Lewiston. What that will mean for the fireman and police is, not that they will stay where they are at, but chances are pretty good the coverage will go back to like that in the 70's.

Radios are very important; they are a tool that's used as part of the job. It is also a life saving tool. They are used to call for help, not only for firemen but for the residents. It is a sinking feeling to be at a house where you are calling for advanced life-support on the radio, and all that is heard back are scratches. This happens more often than not, depending where we are within the Town.

During 9/11, it was learned just how important is to be able to talk among agencies. During Tuesday Art Park, 10,000 people are added to the population in the Village. With all the different companies present at the park, if there was a catastrophe, and without this new system, it would be impossible to speak to each other.

This new system will give firefighters a huge advantage. There is a red may-day button on the current radio. It is used if a firefighter is in danger, they can push that button and it will send a radio transmission to our dispatchers. This is not on the current radios, but available on the new system. It would be a crime if a firefighter was trapped in a basement in Lewiston, pushing that button for help, and no one heard it.

Other residents have been quoted as asking the Board to not be bullied, and stand up. Brochey said in an article in the Gazette, that he wants to do something that will make the residents happy. Penzotti stands here today, on behalf of the 234 members of the four Lewiston Fire Companies and their families, who are also residents of Lewiston, and asks the Board to stand up for them and do something to make them happy. Support the Upper Mountain Radio Tower.

Brochey is not sure about the article stating that he wants to make the residents happy; Brochey is trying to come up with an agreement to make both sides happy. All Board members understand the importance of this tower. The last thing Brochey wants to see is a volunteer or resident getting hurt.

Sitek, Greg – 1003 Elliott Drive – Sitek is the President of Upper Mountain Fire Company. Everyone that is here tonight Sitek did not have to phone them, they phoned him. By blocking the tower and putting on a stop-work order, has actually set back the program a full six-months. The mandated deadline for this project was 2012. The County already applied for two

extensions, and now for a third which they may not get. All this means to Sitek is that we pushed communications off another six months.

New Years Eve, three years ago, an ice storm was coming and fireman closed Indian Hill due to black ice. Sitek tried to call fire control to get a salter and all he got was static.

This system will allow the firemen to also speak to the Police Dept. At this time there is no way to communicate.

There is a black hole here in Lewiston where this communication tower is needed the most.

Hoover, Rob – Chief of Sanborn Fire Company Hoover said the County has been working on this tower for years. The job as Chief is to make sure that the men and women get the best equipment, from apparatus to gear. This tower is another piece of the puzzle.

Three years ago at a house fire a pumper truck went down; two firefighters had to bail out of the building. A crew was chosen to go into the house and see what the extent of the fire was. On the second floor the firemen lost the water and the stairs started to give way. The call to the firefighters outside was not heard. This communication is needed.

Sanborn also has dead areas where this tower will help. The hardest part of being Fire Chief is not being able to communicate with his firefighters.

Erwin, Earl – 857 Upper Mountain Road Erwin lives across the street from the tower and it is an eye sore. We understand that the tower is needed for communications, we all realize that. But throw it up on a Friday, Saturday and Sunday, boom the tower is up. Then work right through the stop work order. It is ridiculous to throw it up right through a stop work order and it is more than out of line its illegal. Talk about safety, what if this tower fell. What about the houses near, ice storms, things falling off. It would land on the houses and the street if it ever fell. The property value of these homes has to have decreased.

Glasgow, Paulette – 836 The Circle – In 1996 Glasgow, as a Board member, was invited by Upper Mountain Fire Company to go into the smoke house in full gear. A bell went off, and the keeper that was with her told her they need to get out, there is not a lot of oxygen left. Glasgow can only imagine the feeling of not being able to communicate.

The Town Board is in a very difficult situation that is not of their making or the firemen's making. Somehow this needs to be taken care of. No one has ever said they are against the tower; it is the process in which it did not follow.

In regards to the interview of applicants for Michael Marra's seat, some say the process must be conducted in executive session. Glasgow contacted the Attorney General and the Committee on Open Government and asked "does executive session cover the interview process of a future Town Board member"? The following answer was received. "With respect of the substance of the matter by way of background for meetings law based on the presumption of openness. Stated that open meetings with public bodies must be conducted in public, except to the extent of the criteria specified in executive session applies. Of this criteria one could probably assume the validity of holding executive session involving a matter leading to the appointment of particular person would apply. Nevertheless, in the only decision dealing with the propriety of holding an executive session to discuss the filling of a vacancy of an elected office, New York State courts have held via two law suits which is Board of Trustees – Cornell and Board of Trustees – Village of Manichello the following: The reliance of the portion of Section 105-1F, states the Board in executive session may discuss the employment of a particular person is misplaced." Another words, Glasgow said, you can't do it.

Given the liberty of which the laws requirements of openness are to be interpreted, and given the obvious importance of protecting the voter's franchise, this section should be interpreted as applying to only employees who are employed presently by the municipality and not to appointment to fill an un-expired term of an elected office. Certainly the matter of replacing an elected official should apply and that it must be open to the scrutiny to the public and for the observation of the public. Another words, Glasgow said, it can not be done in executive session, it needs to be done in the public.

Waggoner, Jonathan – 854 Onondaga Street – Waggoner is here on two sides, one as an officer of Lewiston Fire Co. #1 and the other, a Lewiston resident. The fire companies do have a major communication problem without this tower.

As a resident, the tower is up, and with the financial problems Lewiston is facing, Lewiston should not pay to have it moved, that would not be fiscally responsible.

The best place to put the tower is where the engineer states it is good and make it happen.

Levine, Dan – Chief of Upper Mountain Fire Company – This radio tower is a County-wide project, not just the Town of Lewiston. This is affecting firemen and residents in Somerset, Royalton, Lockport, and Hartland.

This is a top priority for the Town to square away. The Board is putting residents all across Niagara County in a bad situation. This tower will give 95% coverage for all.

Fortino, Pete – 874 Upper Mountain Road – Fortino has the utmost respect for first responders.

Fortino grew up in Love Canal and has seen what happens when rules and regulations are not followed. He moved to Lewiston to get away from towers and all the crazy crap that he lived near. He has busted his butt to get where he is. His two young children were not able to enjoy their home but for a couple months, before the tower sprouted up over a weekend. Rules and regulations were not followed. After the tower was up, a letter was in the mailbox asking residents to “talk about the proposed site”.

The way this was done was improper and the tower is an illegal structure. Safety is not of concern here because it is right in our backyards. Fortino is not fighting the firemen’s need for the tower, but at the price of what?

Lamacchia, Franco - 863 Upper Mountain Road – Lamacchia is an inactive volunteer fireman. He built his home 7-years ago and the tower is located next-store. While having a conversation with his neighbor they turned and saw this guy on the top of the tower. The residents were not notified the tower was going up. Could they not have put it somewhere else, further back where there are no homes? It is an eye sore. Every year taxes increase. Are the affected residents going to get a reduction on their taxes?

Deal, Barry – 850 Upper Mountain Road – Everyone here is in favor of the hard work the volunteer firemen have shown the residents over the number of decades. The residents are not here to belittle them and their work, but here as being against an unsafe location of the tower; 60-foot from homes is not safe. Residents would like the councilmen to enforce the current Town Code for towers in regards to the safety issue. The Tower Code was enacted to protect people in times of catastrophe. It is extremely important, with this code violation, is if the violation is ignored, this is setting precedence for someone else to do the same.

During a wind storm three years ago, a 60-foot, 100 + willow tree blew down in 40-mph winds. This is a 219 foot tower. Can’t imagine what would happen if the tower blew down.

The NYS Power Authority told the County they could put their equipment/transformer on the Power Authority’s tower. But nothing was ever followed up with this option.

When the Board is sworn in, it is sworn in to uphold the codes of the Town of Lewiston.

Bradfield, Bill – 864 Upper Mountain Road – Bradfield supports the firemen all the way. But trying to get the firemen out of harm’s way is putting the residents in harm’s way. Bradfield’s house along with the fire hall is in striking distance if it falls. Towers do fall down.

Bradfield can’t believe the FAA is allowing this tower, with the Mercy Flight helicopter landing near there. There is a lot safety involved here and there seem to be a lot of things in harms way, to get them out.

Whoever engineered this, whoever is in charge of the project as far as financial responsibility, screwed up. Not the residents of Lewiston or the firemen.

AGENDA APPROVAL

Winkley requested removal of Town Board interviews. Brochey wanted to be able to talk to the applicants with the public present. Winkley said it is not the Board's duties to hold a public forum with the applicants.

Bax MOVED to approve the Agenda as amended, Seconded by Conrad, and Carried 4 – 0.
APPROVAL OF MINUTES

Bax MOVED to approve the following minutes: PH – Moratorium – 7/28/2014 and RTBM – 7/28/2014, Seconded by Conrad and Carried 4 – 0.

POST AUDIT PAYMENT

Bax MOVED to approve the following vouchers for Post Audit payment: Home Depot - \$590.34; Key Bank - \$475.86; Sam's Club – \$1,523.52; DeLage Landen - \$120.50 and Leaf - \$656.86, Seconded by Winkley and Carried 4 – 0.

OLD BUSINESS

Swann Road – Pipe – Highway Superintendent Janese working with the residents.

NEW BUSINESS – CLERK'S CORRESPONDENCE

Unpaid Water and Sewer

The Receiver of Taxes and Assessments submitted a request for unpaid water sewer accounts to be placed on 2015 Town and County Taxes.

Winkley MOVED to place unpaid water and sewer accounts in the amount of: Water - \$47,968.88; Sewer (Master) - \$80,499.34; Sewer (South) - \$8,035.68 for a total of \$136,503.90, Seconded by Conrad and Carried 4 – 0.

Dickersonville Cemetery Survey

The Town Clerk requests funding for surveying of the Cemetery. This will help with the identity of the boundary lines of the cemetery along with each individual plot.

Conrad MOVED to authorize the Assistant Town Engineer to proceed with the hiring of a survey company, not to exceed \$1,500, to survey the Dickersonville Cemetery, Seconded by Bax and Carried 4 – 0.

Sewer Refund

Mazzitelli – 1035 Ridge Road requests a sewer credit for water used to refill pool after a repair.

Conrad MOVED to refund the sewer amount on the Mazzitelli water bill in the amount of \$60.00 for 2000 cubic feet, Seconded by Winkley and Carried 4 – 0.

Notice of application to the New York State Liquor Authority

Niagara University is notifying the Town Board they have applied for a Liquor License from the NY Liquor Authority.

Bax MOVED to acknowledge receipt of the renewal application for Dwyer Arena and Perboyer Hall to the NYS Liquor Authority, Seconded by Bax and Carried 4 – 0.

SUPERVISOR BROCHEY

Liaison Report

Town Board interviews - Bax asked to clarify what it was he believes Councilman Winkley was trying to say regarding this at the beginning of the meeting. With elections in November it is thought that if someone is appointed by the Board, it would give the appointed individual an undo advantage in the election, given the time between the appointment and the election. Given the fact there is a vacancy, the Board will appoint the elected individual at the Board following the election.

Asbestos Abatement – Joseph Davis State Park

Kloosterman said the Town had a price for the abatement but due to the amount, the Town needs to go out to bid.

Bax MOVED to refer the bid preparation to the Engineer, Seconded by Winkley and Carried 4 – 0.

Engineering

Britton reviewed Robert Lannon's Project Status Report.

Riverwalk / NYS Parks/ Joe Davis Park - Storm sewer has been televised; CDs and GPS Report provided to NYS Parks. NYS Parks is reviewing internally and will advise next steps.

Oak Run Phase 3 - Phase 3 is nearing completion. They have finished paving and curbs and are in the process of final restoration. Looking for dedication towards the end of October.

CRA is looking through the Town Standard Specifications. Recommendations will be back to the Town Board in hopes of finalizing next month.

Legacy Drive - Is moving forward and is in hopes of closing this up soon.

Resident spoke out from the audience and asked if a permit was issued by the Town for the tower on Upper Mountain Road. How can they put up a tower without a permit? Bax said that is the issue at hand. Bax said the fact is, none of the people in this room created the problem, but it is up to the people in this room to fix it. As much as the Board supports everyone on all sides there is not going to be an easy resolution, by any stretch. Bax does not believe the Town should foot the bill to move the tower; however it may cost money to get the person who should be responsible, to pay the bill. The Town does not want to put anyone in jeopardy, although there are people in jeopardy now based on the tower's own engineering specs.

It was questioned what the next step is. Brochey said this may go to litigation and the Board is not able to discuss this.

Bax said as residents any Board member can be contacted and discuss it individually as to what the Town's position is. The Town has a set of laws and certain protocol, residents have to follow but somehow that communication was railroaded. Not negatively but here we have a tower that is to serve a function to keep thousands of people safe. The key is to not pile people on one side of the scale and people on the other side to see who wins.

Finance

RFP's - Kloosterman reviewed budget updates and asks for questions to be addressed. Kloosterman proposes seeking RFP's for all professional service for 2015. This is something that should be done yearly to assure that the Town is being provided the best service at the most affordable cost. This would include Town Attorney, Auditing Firm and Engineering. This is no reflection on those currently holding these positions.

Hydropower monies - As of August, there is \$1.5 million in the account that is the residents. Kloosterman is asking for guidance on what the Board's thoughts are on giving the money back to residents. Seaman has advised the Board extensively, in writing and verbally, on what the options are. If the Board wants to allocate money to its own bills, they need to name itself as an ultimate user. Bax requested to add this to the executive session.

Budget Update and Meetings - Kloosterman requests meeting with the Board on October 6th to review the budget in detail. The Tentative Budget is filed with the Clerk on September 30th, discuss it at an October 16th Worksession, with the Public Hearing on October 27, 2014.

Board to hold a Budget Worksession on October 7, 2014 at 1:30 pm at Town Hall.

Water Billing – Kloosterman has been working with the Water Department to move the billing cycle to quarterly billing. By doing this the Town would save significantly over the years on postage and the cost of collecting the data.

All Board members think this is a great idea and makes good sense. The Board has discussed with the Village of Lewiston about possibly consolidating efforts in respect to billing and collections.

Bax MOVED to authorize Kloosterman to convert the Town water billing system from a bi-monthly cycle to a quarterly billing cycle to coincide with the Village of Lewiston, Seconded by Winkley and Carried 4 – 0.

Niagara County Health Care Consortium Update – Kloosterman has attended several meetings. The union representatives are starting to be involved. This is a great opportunity and hopefully it will move forward.

Modern Sign bill for Art Park – A \$2,380 bill for signs was forwarded to Art Park and then returned unpaid. Kloosterman is looking for guidance on what to do with it.

Bax MOVED to table for further review, Seconded by Conrad, and Carried 4 – 0

TOWN HALL

Concrete Repair – The concrete in front of the main entrance door needs repairing. Janese said he will put a cone out there tonight so no one will get hurt. Brochey asked Janese if he could repair this. Janese said yes, he will report back to the Board the cost of material and labor.

COUNCILMAN BAX

Liaison Report – Janese informed the Board the sidewalks at Riverwalk are complete. Curbing has been repaired along with one catch basin. Landscaping will start in the next couple of days.

Janese has a company coming to help with the partial repair of Moore Road.

Employee Policy Manual – The Board forwarded Janese’s request for a change to the manual to the Board of Ethics. Brochey received their response and they see no reason for the change.

Janese questioned if what he has heard, that the Town has to remediate asbestos for the State, before the Town is allowed to tie-into the drain, is true. With all the money problems the Town has, why would Lewiston donate \$30,000 to \$50,000 to the State of New York for buildings Lewiston didn’t even build or need?

Lannon has met with the State and with him not present tonight, answers aren’t available.

Janese updated the Board on the Muckland pumps. One pump should be in before the next meeting.

Bax updated the Board on Joseph Davis State Park, as submitted by Recreation Director Dashineau. Dashineau has been working with the State on many improvements. It is Dashineau’s plan to winterize and close the park by October 15th. Bax commends Dashineau on the efforts that he has accomplished in the Park. It is a 100% difference.

COUNCILMAN CONRAD

Pond Request – 1901 Ridge Road – Conrad said according to Town Law 150-5G which reads “Construction of a farm pond or farm lagoon, provided that the farm and farmer meet the definition and that the plans are prepared by a licensed professional engineer and/or have been designed by the Agricultural Stabilization Conservation Service”, a permit is not required.

Sanger was present due to recent outcry on ponds. The pond has been designed by Niagara County Soil & Water Conservation District and meets all the requirements under the law.

Conrad MOVED to grant a permit for the 3.6 acre pond at 1901 Ridge Road as submitted, Seconded by Bax

Bax asked Sanger if she knows how much dirt will be removed from the property. Sanger does not believe a lot. There are low spots that need to be filled and that is the purpose of the pond. A home will be built on Swann Road and the fill will be used on this lot. Sanger owns six adjoining lots, and the fill will be used here.

Carried 4 – 0.

Light Request – North Hewitt Drive – No response has been received from the Lighting Advisory Board.

Congratulate Employee – 40 years – Conrad said Barb Joseph, Town switchboard operator has celebrated 40-years of employment with the Town. Conrad read the proclamation that was presented to her.

Winkley has been with the Town for 33 years, and Barb has always been there. She guides all through the abstract and is very pleasant answering the phone. If she doesn't know the answer, she will find it. She has done an outstanding job and has been a pleasure to work with.

Modern Storage Tank – Set Public Hearing - Modern has applied to construct a concrete pad and install one 20,000 gallon diesel and one 2,000 gallon above ground fuel tank at property located at 4746 Model City Road. A public hearing is required.

Conrad MOVED to hold a Public Hearing on October 6, 2014 at 6:15 pm, Seconded by Winkley and Carried 4 – 0.

COUNCILMAN WINKLEY

Liaison Report – At a recent meeting with Village Trustees, it was requested the Town request a speed reduction for Ridge Road from Creek Road to the Village line. This will slow traffic down as they enter the Village.

Winkley MOVED to request a speed limit reduction study for Ridge Road from Creek Road to the Village line, Seconded by Bax and Carried 4 – 0.

Winkley MOVED to enter into Executive Session to discuss litigation and personnel, Seconded by Bax and Carried 4 – 0. (8:00 pm)

PRESENT: Supervisor Dennis Brochey; Councilmembers Conrad, Bax and Winkley; Deputy Supervisor Edwards; Town Attorney Seaman and Finance Officer Kloosterman

Discussion on litigation and personnel.

Bax MOVED to exit Executive Session, Seconded by Conrad and Carried 4 – 0. (10:05 pm)

Bax MOVED to authorize Brian Seaman to defend the Town in Center Plaza LTD Article 7 action, Seconded by Winkley and Carried 4 – 0.

Conrad MOVED to adjourn the meeting, seconded by Bax and Carried 4 – 0. (10:10 pm)

Transcribed and Respectfully Submitted by:

Donna R. Garfinkel
Town Clerk