

PRESENT: Supervisor Broderick; Deputy Supervisor Conrad; Councilmembers Bax, Geiben, Jacoby and Morreale; Finance Director Agnello; Attorney Seaman; Engineer Lannon; Building Inspector Masters, WWTP Chief Opt. Ritter; Water Foreman Zahno; Police Chief Previte; 2 Press; 18 Residents and Clerk Donna Garfinkel

Supervisor opened the meeting with the Pledge to the Flag followed by a moment of silent reflection.

Supervisor opened the Public Hearing – Local Law 2019 - #1

Clerk read Notice into record:

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Town Board of the Town of Lewiston on the 25th day of February, 2019 at 6:00 pm, at the Town Hall, 1375 Ridge Rd, Lewiston, NY, on the adoption of a proposed Local law removing certain limitations for members of the Zoning Board of Appeals and Planning Board.

Said Local Law would eliminate the prohibition from Zoning Board of Appeals and Planning Board members holding other Town offices.

At such Public Hearing, all persons interested, who wish to be heard, will be heard.

Dated: January 28, 2019

Supervisor invited residents to speak.

Glasgow, Paulette – The Circle Drive – Glasgow asked why this is being done now.

Seaman said it was discovered in the Code. It is not ordinarily in a Town Code. In researching whether or not an office is compatible, there are certain ones that are compatible under State Law that were prohibited by Town Law.

Seaman believes the Board didn't realize it was in the Code, so it is being changed to align with State law.

Glasgow has a problem with the wordage. It states "Said Local Law would eliminate the prohibition from Zoning Board of Appeals and Planning Board members holding other Town offices". Glasgow asked Seaman to give an example of Town office.

Seaman said Glasgow read an abstract which gives the public an idea of what the law is. The actual text removes just a couple sentences. The sentence to be removed is "hold any other public office in the Town". It doesn't mean that offices that are not compatible can be held.

Bax MOVED to close the Public Hearing, Seconded by Morreale and Carried 5 – 0. (6:20 pm)

REGULAR TOWN BOARD MEETING

February 25, 2019

(6:20 pm)

AGENDA APPROVAL

Agenda Additions: Broderick – Police swearing in; Village of Lewiston Mayor Ann Welch presentation – Mason's Mission Playground; Local Law approval; Water Dept. – Employee hire

Bax MOVED for approval of the Agenda as amended, Seconded by Morreale and Carried 5 – 0.

OFFICER SWEARING IN CEREMONY

Chief Frank Previte welcomed and thanked the Town Board and family of the officers for attending tonight. This is an important time for an officer to be sworn in and start their career.

Previte swore in the following officers: Law Enforcement Captain Joshua Cane; Officers Michael P Milbrand, Adriano G. Medici, Mitchell A. Pegan.

VILLAGE OF LEWISTON PRESENTATION – MASON’S MISSION PLAYGROUND

Mayor Welch requests the Town’s support for a Greenway Application for the All-Inclusive playground at Marilyn Toohey Park, to be located next to the Village Offices.

Village Engineer Mike Marino spoke about the project. Working with the group that designed the facility in Pendleton, Architects and Welch, reviewed park options. This will allow children of all ages and abilities to enjoy.

Playground equipment and a splash park have been designed into the park. There is greenspace behind Village Hall, so there is plenty of room. The splash pad is more of a wish item, if there is funding.

The park layout design will allow for accessibility from multiple sides. There are hard surfaces along with rubberized surfaces, and wood chips. Geiben questioned the parking situation. Welch said this is being addressed on Onondaga Street.

The playground could be in excess of \$700,000, totally built out, with material, construction, and including the splash pad. Equipment is close to \$255,000. A fund raising campaign has started. Requests have been sent out for corporate sponsors or donations.

Village is counting on volunteers and donations to provide the labor. Welch said Mark Cerrone has stepped forward with funding and for general contractor.

RESIDENTS STATEMENTS

Lyle, Steve – Lower River Road – Lyle feels the last 30 minutes have been a Norman Rockwell moment. The swearing in of officers and now the Town working with the Village for the park.

Broderick said this has never been done before. Chief Previte requesting doing this for the officers.

Lyle received a letter from Arcadia Power. Lyle encourages anyone that received it, to strongly read it very careful. They are offering/promising energy savings that Lyle doesn’t feel will come true.

For the second time Lyle did not received his water bill. This seems to be a problem with Lower River Rd, Riverwalk, Wolf Run and Pletcher Road. Something needs to be done. Lyle spoke to the Post Office and they ensured him they will fix it. Does the Town have any plans to address this?

Broderick reached out to the Post Office; they said they will fix it. Broderick is looking into another program to allow online billing and online payments. The Building, Clerk and Tax office use them. The Town can’t get away from mailing the post-card. The Town has been dealing with this for three years.

DEPARTMENT HEAD STATEMENTS

Chief Frank Previte - Notified the Board the Active Shooter drill at Lewiston Porter was very successful. There will be a drill at Niagara Wheatfield on March 15, 2019.

Building Inspector Masters – In regards to BAS, installation date for the Building Dept. is March 13. This does include the Fire Bureau office.

WWTP Chief Opt. Ritter – Ritter requested approval to hire Ryan Fry - Wastewater Treatment Plant Operator Trainee starting on March 18th per union contract. Fry is off the Niagara County Civil Service list.

Bax MOVED to hire Ryan Fry as WWTP Operator to start March 18, 2019, Seconded by Geiben and Carried 5 – 0.

Ritter will purchase a forklift per the Town purchasing requirements in the amount of \$15,900. Several quotes were reviewed and this was the best offer. The current forklift has exceeded its practical life span, and became a safety liability. Once it arrives, the old one will be declared excess equipment and placed on Auctions International. Broderick asked if this has been sent out for bid. Ritter said yes.

Bax MOVED to approve the forklift purchase in the amount of \$15,900, Seconded by Jacoby and Carried 5 – 0.

APPROVAL OF MEETING MINUTES

Geiben MOVED to approve the Town Board Work Session – 2/11/2019 meeting minutes, Seconded by Morreale and Carried 5 – 0.

AUDIT PAYMENT

Jacoby MOVED to approve the Regular Abstract of claims for fiscal year 2018 numbered 4214 to 4230, and for fiscal year 2019 numbered 320 – 452 and recommend payment in the amount of \$553,486.07, plus a Post-Audit of \$16,448.07, Seconded by Bax and Carried 5 – 0.

OLD BUSINESS - None

LOCAL LAW ADOPTION

Geiben MOVED to adopt the following Local Law Subsection A. of §360-162 of the Town Code is hereby amended by removing the words “hold any other public office in the Town or” from the first sentence thereof. Subsection A. of §360-160 of the Town Code is hereby amended by removing the words “hold any other public office in the Town or” from the first sentence thereof, Seconded by Bax,

Roll Call: Councilman Bax – Yea
Councilman Geiben – Yea
Councilman Jacoby – Yea
Councilman Morreale – Yea
Supervisor Broderick – Yea

Motion Carried 5 – 0.

PENDING

Boards & Commission appointments - Zoning Board of Appeals, Senior Advisory, ZBA vice chairman

Broderick MOVED to appoint Marjorie Maggard to the Zoning Board of Appeals, term expiring December 31, 2023, Seconded by Jacoby and Carried 5 – 0.

Broderick MOVED to appoint Anita Muzzi to the Zoning Board of Appeals as an Alternate, Seconded by Jacoby and Carried 5 – 0.

Geiben asked Seaman if no Town resident applies for the Senior Advisory Board, can the vacancy be filled by a non-resident. Seaman to research.

NEW BUSINESS - None

SUPERVISOR BRODERICK

Liaison Report

Broderick MOVED to appoint Daniel Zahno - Water Dept. Foreman per agreement of November 19, 2015, \$33.14/hour, per union contract, Seconded by Bax and Carried 5 – 0.

Zahno requests to appoint Jeffrey Dell as Crew Chief.

Bax MOVED to appoint Jeffrey Dell as Crew Chief - Water/Wastewater Maintenance Person I, \$28.55/hour, per union contract, Seconded by Morreale and Carried 5 - 0

Fischer - Water Issue. Broderick will recue himself. Mr. Fischer was married to his aunt who has since passed.

Seaman said there was a water break in a portion of the service line. Fischer paid a plumber. It was questioned if it was the Town's responsibility. The Town Code was reviewed and it was determined it was Town responsibility. Fischer submitted a bill and is requesting reimbursement. Based on the wording in the Code, Seaman recommends payment.

Geiben MOVED to reimburse Fischer – 441 Fort Gray Drive, for payment to Roy's Plumbing in the amount of \$3,863.17, Seconded by Jacoby and Carried 4 – 0. (Broderick abstained)

Legal

Seaman requests Board approval to settle 2 Article 7/Tax Assessment claims.

Monsalve, Carlos – 707 Mt. View Drive - Town assessed property at \$600,000. Seaman recommends the Board reduce the assessment to the amount that equates to the value they sold the house for, fair-market value, which is \$469,000.

Geiben MOVED to approve settling an Article 7 with Monsalve, Carlos – 707 Mt. View Drive for \$469,000, Seconded by Morreale and Carried 5 – 0.

Avery, Craig – 699 Mt. View Drive – Town assessed property at \$700,500. Seaman recommends the Board reduce the assessed value to \$408,700.

Geiben MOVED to approve settling an Article 7 for Avery, Craig – 699 Mt. View Drive for \$408,700, Seconded by Jacoby

Morreale asks how the amount is calculated. Seaman said there was an actual sale, from one person to another. The sale price, the Town's equalization rate and assessed value are factored in.

Carried 5 – 0.

The Town has been served, challenging the Town Board's decision on the Borrego Solar Farm Project on Swann Road. Seaman started to work on this, but is requesting the Board authorize Seaman Norris LLC to handle the matter.

Bax MOVED to authorize Seaman Norris LLC to handle Borrego Solar Farm Project suit, Seconded by Morreale

Jacoby asked what the suite is for. Seaman said the suite is challenging the action of the Board, basically saying certain procedural things were not done correctly.

Carried 5 – 0.

Engineering

Lead & Asbestos Quote – Outfall Building

At the February Work Session the Board authorized Lannon to request a quote for an Asbestos and Lead Paint Building Survey on the Outfall Building. Sienna Environmental Technologies proposed \$4,625 to perform the survey.

Geiben said this building has good bones. The Board needs to decide if it wants to preserve it and if it's worth the expense.

Lannon said the roof is in bad shape. There are concerns about the decking (what it is actually made of) and this is a necessary step to see if the Town wants to put on a new roof.

Geiben MOVED to approve GHD to hire Sienna Environmental Technologies at \$4,625 for the Asbestos and Lead Paint Building Survey, Seconded by Bax and Carried 5 – 0.

Riverfront Park

Lannon distributed and is prepared to discuss the SEQRA documents and Riverfront Park Site Characterization Report (RPSCR). Morreale requests holding off on any vote, he wants the opportunity to review.

Lannon would like to go through the SEQRA process. Issuance of Lead Agency coordination letters; responses received, what was contained in the responses, Long Form Part 1, Long Form Part 2 have been done. The conclusion of this is, the completion of Part 3. This is the documentation and report on what Lannon believes will be a Negative Declaration.

There has been a lot of discussion and concern over the environmental condition at the site, with the presence of two on-site lagoons. They were used for dewatering the Outfall Building in the early 80's. This was subject to three separate distinct rounds of soil sampling and analytics to determine what the characteristics of the soil would be when encountered.

The Riverfront Site Characterization report has five pages of text and about 400 pages of analytics. Kathy Galanti, Environmental Scientist - GHD is present, and can speak to the report.

Jacoby asked if waiting two weeks would be detrimental to the project. There is no harm in waiting, the Board just received this.

Geiben said when the conversation of the park started, the Board wanted to make sure all agencies were going to sign-off before spending any money. Geiben asked if the Town is close to that. Lannon said the Lead Agency coordination letters have been sent to NYS DEC, NYS DOT, NYS Dept. of State, NYSOPHP, Niagara County DPW, Army Corps. Engineers, Niagara River Greenway Commission and the Western NY Land Conservancy. The following responded with no objection: Army Corps. Of Engineers, Land Conservancy and NYS DEC.

Lannon said GHD contacted Gary Sutton. Sutton is a retired member of NYS DEC Engineer and Hazardous Waste Group. Sutton was not on the site when the lagoons were constructed. He was near the site; he was doing the construction at the Lewiston WWTP.

Sutton referred Lannon to Stan Radon, the current NYS DEC regulator in this case. Radon provided the location of the lagoons.

Lannon said bottom line is, Part 375 in the regulations, are most concerned with the top two feet. Need to make sure the public does not come in contact with anything in the upper two feet.

After a lot of analytics were performed, there were two locations where there were slight incidences of arsenic. First at SB9, in the center of the eastern lagoon. Second at SB2, which is furthest to the east. There is no telling how it got there. The regulations require putting two feet of clean fill over the top of those locations. GHD has proposed a pavilion with a concrete floor. This would prevent contact.

After months of analytics and discussions with DEC personnel, they have received the report. DEC sent a letter to the Town stating they received the report, reviewed it and it doesn't qualify for State Superfund Funding. This is DEC's way of saying "you are good to go".

At the first round of testing, it was not known where the lagoons were. Soil samples were taken in various places, with on-site observation by GHD. There were various concentrations of various constitutions, chemistry it is called. If there is chemistry eight feet down, there is no concern because it is not on the top two feet. Therefore, the second round of testing focused on the top two feet.

Once Radon gave the lagoon locations, a third testing was performed. It turned out with the initial grid pattern; sampling was conducted where the lagoons were.

This has been an interaction process where there has been a lot interaction. Broderick would love to have this park. If it came back that Hooker Chemical dumped chemicals, there would not be a Town park there.

Village Park – Greenway Money

Broderick would like to support \$200,000 of Greenway Funding for the all inclusive park at the Marilyn Toohey Park in the Village of Lewiston.

Broderick MOVED to support \$200,000 of Greenway Funding for the all-inclusive Park at Marilyn Toohey Park in the Village of Lewiston, Seconded by Geiben and Carried 5 – 0.

Finance - Budget Adjustments

The following are 2018 Budget revisions.

Dog Control Budget - Request to move \$324 to Dog Control Contractual - A00-3510-0400-0000 to cover dog shelter charges by taking \$324 from Dog Shelter revenue - A00-1000-1550-0000. This revision will increase both the expense and revenue budgets.

Bax MOVED to transfer \$324 from Dog Shelter Revenue - A00-1000-1550-0000 to Dog Control Contractual - A00-3510-0400-0000, Seconded by Morreale and Carried 5 – 0.

Town Garage - Request to move \$1,128 from Highway Administrative Contractual - A00-5010-0400-0000 to Town Garage Contractual - A00-5132-0400-0000, to cover contractual expenses.

Morreale MOVED to transfer \$1,128 from Highway Administrative Contractual - A00-5010-0400-0000 to Town Garage Contractual - A00-5132-0400-0000, Seconded by Bax and Carried 5 – 0.

PIP Engineering - Request to move \$1,765 from Engineering PIP Revenue - B00-1000-1589-0700 to PIP Engineering - B00-1440-0440-0100, to cover expenses paid for engineering review. This revision will increase both the expense and revenue budgets. Fees are paid to the Town by the applicant, and then the Town pays the invoice.

Morreale MOVED to transfer \$1,765 from Engineering PIP Revenue - B00-1000-1589-0700 to PIP Engineering - B00-1440-0440-0100, Seconded by Bax and Carrie 5 – 0.

Police Department - Request to move \$100 from Police Equipment - B00-3120-0200-0000 to Police Contractual - B00-3120-0400-0000, to cover contractual expenses paid through the 2018 year.

Morreale MOVED to transfer \$100 from Police Equipment - B00-3120-0200-0000 to Police Contractual - B00-3120-0400-0000, Seconded by Jacoby and Carried 5 – 0.

Highway Department – Request to move \$280 from General Repairs Seasonal Personal - DB0-5110-0100-0200 to General Repairs Personal - DB0-5110-0100-0000, to cover regular payroll expenses in General Repairs.

Morreale MOVED to transfer \$280 from General Repairs Seasonal Personal - DB0-5110-0100-0200 to General Repairs Personal - DB0-5110-0100-0000, Seconded by Jacoby and Carried 5 – 0.

Highway Department - Request to move \$1,931 from General Repairs Contractual - DB0-5110-0400-0000 to Snow Removal Contractual - DB0-5142-0400-0000, cover contractual expenses in Snow Removal.

Jacoby MOVED to transfer \$1,931 from General Repairs Contractual - DB0-5110-0400-0000 to Snow Removal Contractual - DB0-5142-0400-0000, Seconded by Morreale and Carried 5 – 0.

Highway Department – Request to move \$1,318 from General Repairs Contractual - DB0-5110-0400-0000 to Machinery Contractual - DB0-5130-0400-0000, to cover contractual expenses in Machinery.

Jacoby MOVED to transfer \$1,318 from General Repairs Contractual - DB0-5110-0400-0000 to Machinery Contractual - DB0-5130-0400-0000, Seconded by Morreale and Carried 5 – 0.

Highway Department - Request to move \$255,000 from Transfer To Other Funds - DB0-9901-0900-0000 to Transfer to Capital Projects Funds - DB0-9950-0900-0000, this revision places the funding in the correct account to cover Highway BAN payment.

Bax MOVED to transfer \$255,000 from Transfer To Other Funds - DB0-9901-0900-0000 to Transfer to Capital Projects Funds - DB0-9950-0900-0000, Seconded by Morreale and Carried 5 – 0.

The following are 2019 Budget revision.

Stormwater Department – Request to move \$550 from Stormwater Site Planning Contractual - B00-8140-0400-0100 to Stormwater Contractual - B00-8140-0400-0000, to cover the increase in the WNY Stormwater Coalition membership dues.

Bax MOVED to transfer \$550 from Stormwater Site Planning Contractual - B00-8140-0400-0100 to Stormwater Contractual - B00-8140-0400-0000, Seconded by Morreale and Carried 5 – 0.

COUNCILMAN BAX – Nothing to report

COUNCILMAN GEIBEN

Accept Auctions International bid – Senior Refrigerator

Bax MOVED to accept the bid of \$1,525 for the T-49 Reach-in Refrigerator located at the Senior Center, Seconded by Morreale and Carried 5 – 0.

The bidder that purchased the refrigerator was not happy with the time frame the Board took to vote. Therefore he is requesting a refund. Auctions International will reach out to second bidder.

COUNCILMAN JACOBY – Nothing to report

COUNCILMAN MORREALE

Liaison Report – Morreale will be meeting with NYPA on Thursday to move forward with the streetlights.

RESIDENTS STATEMENTS

Witryol, Amy – Lower River Road – Witryol wants to understand Lannon correctly; there were two rounds of sampling prior to locating the lagoons on the Riverfront Park.

Witryol asked Lannon if Stan Radon walked the property and discussed the seasonal changes in the water table. Lannon said the site was discussed with Radon and he suggested the Town take additional samples. Lannon said the water table was not discussed.

Witryol said today, she received her FOIL response from DEC, where she requested any communications the DEC had with GHD or the Town since September 1, 2018. Their response was they had no records of any communication with GHD or the Town.

Witryol requests the report and all communications with DEC be placed on the Town website. Witryol assures all she will read the report, particularly to distinguish what sample was done before the contaminants were located and after.

There is a lot more than arsenic there. If Witryol understands Lannon, the question from the DEC is whether or not it is within 2-feet. Since the DEC is asking the Town to be Lead Agency and take the risk for assessing potential exposure, Witryol wants to look at that very carefully.

Witryol again recommends to the Town Board, whether the Town is Lead Agency or not, provide all the information which quantifies the types and volumes of contamination found in a report.

Witryol wants the Town to get something in writing from the DEC and the Dept. of Health. Dept. of Health has a different standard, they take a precautionary approach. Precautions are very appropriate for a property where children will play and probably dig in the soil.

Glasgow, Paulette – The Circle – Glasgow asked if the purchaser of the refrigerator and how much, can be known.

Broderick said it was sold for \$1,525 and the buyer is not listed.

Glasgow said the refrigerator was purchased by the Lewiston Seniors and she would like to report back.

Glasgow said contrary to what people believe, there is a Town Park, it's called Pletcher Park, now we will have two. The second one will be in arsenic.

When this Park was first discussed the Board decided to hold a Public Information Meeting. Will this still be? Broderick said there is no sense in having a Public Information Meeting if no park will be put there. These are the first steps.

Geiben said the information meeting would be for the design of the park. The Town wants to have all these items resolved prior to designing the Park.

Glasgow understands that pricing has already been done for equipment. Broderick said that is not correct. Glasgow has paperwork at home that shows this has been done. Lannon said a cost-estimate has been done.

Lannon will forward PDF of the Riverfront Park Site Characterization Report for the Town website.

Glasgow asked if the Greenway Commission is aware of the arsenic. Broderick said the arsenic is not really a concern. The bigger concern was toxic waste, and the Greenway Commission is aware. Witryol came to the Greenway Commission and spoke.

Witryol wouldn't say the Greenway Commission was informed as to the hazardous waste. At that time the Town told them sampling had been conducted and there were no problems. That was before the existence of the lagoons was acknowledged by the Engineer.

Lannon offers some caution on the use of the term hazardous waste. It has a very strict definition and Lannon does not believe the Town is there.

In 1980, when the outfalls were cleaned, it was done under a permit issued by the NYS DEC. Construction of the lagoons was permitted by DEC and the direction was given to put 18-inches of cover over the fill materials. Lannon finds it difficult to believe the DEC will allow for hazardous waste to be placed on site with 18 inches of fill.

The RPSC Report was sent to Stan Redon on January 25th, and the Town received a letter response, dated February 5th. There has been document correspondence between the Town and the DEC.

Witryol reminds the Board that the hazardous waste definitions that exist today, were put into place in 1984, after this was conducted.

The Board thanks Mayor Welch for the hard work done on the purchase of the Frontier House on Center Street.

Transcribed and
Respectfully submitted by:

Donna R. Garfinkel, Town Clerk