

TOWN BOARD WORKSESSION

NOVEMBER 10, 2008

5:30 P.M.

PUBLIC HEARING - GRASS CUTTING LOCAL LAW

6:00 P.M.

**PRESENT:** Supervisor Newlin; Councilmembers Bax, Edwards and Palmer; Deputy Supervisor Elgin; Attorney Leone; Finance Officer DiRamio; Building Inspector Masters; Town Engineer Lannon; Police Chief Salada; 4 residents, 3 Press and Clerk Donna Garfinkel

**EXCUSED:** Councilman Johnson and Deputy Town Attorney Boniello

Supervisor called meeting to order – 5:35 p.m. Supervisor asked if any Board member had additions to the agenda.

Bax requested the addition of Chemical Bids for the Waste Water Treatment Plant. Edwards requested a discussion on the Flood Plan map.

**Bax MOVED to approve the agenda, as amended, Seconded by Edwards and Carried 4 – 0.**

*Agenda Item One – Approval of Abstract*

**Bax MOVED to approve the Regular Abstract, Claim numbers 3455 - 3680 and recommends payment in the amount of \$100,645.88 with a Post Audit in the amount of \$57,489.12, Seconded by Edwards and Carried 4 – 0.**

*Agenda Item Two – Transfer Requests*

Water Foreman Nablo, requests a transfer to cover postage of the December water/sewer bills.

**Newlin MOVED to transfer \$3,000 from SW1-8340.400 – Contractual to SW1-8310.400 – Administrative, Seconded by Palmer and Carried 4 – 0.**

Receiver of Taxes Stephens requests a transfer to cover postage for the upcoming tax-bill mailing.

**Newlin MOVED to transfer \$350 from A-1330.200 into A-1330.400, Seconded by Bax and Carried 4 – 0.**

**Newlin MOVED to transfer \$160 from Star Aid - New York State into A-1330.400, Seconded by Bax and Carried 4 – 0.**

Town Clerk Brandon requests a transfer to cover the unexpected repairs to Town Hall that have been paid to the following vendors: O'Connor Mechanical - \$3,519.90; D.V. Brown - \$279.00; Cerra Electronics - \$70.00 and H.W. Bryk - \$3,215.79.

**Newlin MOVED to transfer \$7,100 from A-1990.0400 – Contingency into A-1620.0400 – Town Hall Contractual, seconded by Palmer and Carried 4 -0.**

Edwards asked Lannon where the Energy Audit of Town buildings stands. Lannon said they are waiting for the Town Hall report.

*Agenda Item Three – Polling Places*

Newlin commended Palmer on his very fine race and his representation of the best of Lewiston.

Newlin said polling places have been a matter of public discourse for months. Just about all polling places received complaints. Voter turn-out data should be available shortly. Newlin would like to see how District 11 did. Newlin will be speaking-to possibly there being another site that is more centrally located than Lewiston Fire Co. #2.

Newlin spoke of an article in the Buffalo News. Board of Election Commissioner, Scott Kiedrowski said it would have been nice if the Supervisor would have called the Commissioners. No call or written correspondence was received by either Election Commissioner. Newlin sent a letter and has a voice-mail from Scott Kiedrowski saying he is returning Newlin's call.

Newlin read the following excerpt from the article: "The only thing I have heard is that Supervisor Newlin is upset that the district he lives in votes some place that he doesn't want to drive to." Newlin said that is the most ridiculous charge he has heard yet from the Board of Elections. Newlin is sad that the basic principal, the right to vote, has fallen to this level.

Newlin objected to this polling place for the many older residents, which called all Board members expressing that they are not happy with the length of drive.

Newlin does not believe other Town Board members would have acted on this as vigorously as they did, just because the he had complained.

*Agenda Item Four – Dog Law*

Palmer requested tabling until the December 8<sup>th</sup> Worksession.

*Agenda Item Five – Unit Charges – Sewer District*

Bax received correspondence from Tim Lockhart but requests this be tabled till the November 24<sup>th</sup> Board meeting.

In the past the Town has participated in a cooperative chemical bid for water and wastewater chemicals with area treatment plants. Lockhart requests the Town cooperate with the Niagara Falls Water Board.

**Bax MOVED to authorize the Niagara Falls Water Board to award the bid on behalf of the Town of Lewiston for Plant Chemicals, Seconded by Palmer and Carried 4 – 0.**

*Agenda Item Six – Subdivision Fund Request*

Masters said Thomas Price requested to subdivide 4598 Porter Center Road, but discovered the leach-field is on the other side of the property. The cost is too great to re-do the septic system, so he is no longer interested in subdividing. Price is requesting a refund of the Recreation Fee and Subdivision Application Fee for a total of \$400.

Leone said this is a discretion of the Town Board.

**Edwards MOVED to refund \$400 to Thomas Price, Seconded by Bax and Carried 4 – 0.**

*Agenda Item Seven – Set Final Budget Meeting*

**Newlin MOVED to set the Final Budget Meeting and Adoption for the 2009 Town Budget for Monday – November 17<sup>th</sup> at 7:00 p.m., Seconded by Bax and Carried 4 – 0.**

Supervisor calls for a recess of the Worksession - 6:00 p.m.

PUBLIC HEARING – GRASS CUTTING LOCAL LAW

6:00 P.M.

Supervisor opened Public Hearing.

**PRESENT:** Supervisor Newlin; Councilmembers Bax, Edwards and Palmer; Deputy Supervisor Elgin; Attorney Leone; Finance Officer DiRamio; Building Inspector

Masters; Town Engineer Lannon; Police Chief Salada; 4 residents, 3 Press and Clerk Donna Garfinkel

**EXCUSED:** Councilman Johnson and Deputy Town Attorney Boniello

Clerk read notice into 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 10<sup>th</sup> day of November, 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, as amended, is on file in the Town Clerk's office where it may be examined during normal business hours. All persons of interest will be given an opportunity to be heard. If adopted this law will be known as Local Law No. 1 of 2008.

Leone said at the previous Public Hearing the issue of placing a lien on the property, if the owner does not comply, was discussed and has since been added to the law.

Newlin asked if any resident would like to address the Board.

Nichols, Robert - 471 Aberdeen Road. Nichols is concerned with the exemption for the Town of Lewiston. If you are going to ask someone to keep their lands trimmed then the Town should make sure its lands are trimmed. The Town should follow the same procedure.

Nichols wishes the Board would reconsider the language in regards to the property lien. When a lien is placed on a property it is a permanent record. Either remove this or use it very sparingly.

No one else wished to address the Board.

**Bax MOVED to close the Public Hearing, Seconded by Palmer and Carried 4 – 0.**  
(6:06 p.m.)

Supervisor reconvened the regular Town Board Worksession.

Leone said the Town has numerous properties. These are maintained by either the Highway Dept. or a contracted grass-cutting company. There are areas in the Town where citizens have requested the Board not cut the grass.

In regards to the lien, this addition was done by Attorney Boniello. Leone does not know that the lien should be granted under every set of circumstances. That is why the word "may" is used. Liens can be vacated when a citizen satisfies the lien. It will not change the fact the lien was originally recorded, but the satisfaction states the lien has been satisfied. Leone believes Boniello's thinking was to protect potential owners.

Masters is satisfied with the lien issue. Board members do not object to the Town being exempt or the lien issue.

Palmer said there are properties in the Town that are less than two acres. They are manicured areas and wooded areas. Does this law take that into consideration, or do the wooded areas need to be cleaned?

Masters said this is not spelled out in the law, and would be handled on a case by case basis.

Leone said an exemption can be given or a paragraph can be added. The most difficult part of this is to try and put, what should be common sense, into legal language so the general public understands it and the enforcement officer can properly enforce it.

The purpose of the law is to address un-kept lawns. Masters outlined the process. A letter would be sent to the property owner informing them of the violation; if no response is received within five (5) days, Masters would call a grass cutting company and have it taken care.

Palmer questions a possible trespassing issue. A State law may supersede the Town law. Palmer questions why this would not go before a judge first to determine if the person is in violation. Should the Building Inspector have the authority to go on someone's land and just start cutting without any type of order? Palmer is comfortable with the law the way it is written, as long as the Building Inspector does not have the authority to walk on someone's land and start cutting. There needs to be some-kind of judicial oversight. The Town Board should also give their approval. The Police Dept. should be present during the initial contact with the owner.

Town Board approval or judicial oversight can be added to the Law, or incorporated into Town Policy / Protocol.

**Bax MOVED to approve Local Law #1 – 2008 To Prohibit the Growth of Weeds, Grass or other Plants,**

Local Law to Prohibit the Growth of Weeds, Grass or other Plants

Section 1 – Legislative Intent

A. This Local law is enacted in recognition of the fact that the excessive growth of weeds, grass or other plants can constitute both public and private nuisance. Such accumulations are a source of potential harm to children and others who may find them a nuisance; they constitute a blight on the town's landscape, destroying the aesthetic qualities of the Town, and are generally unsightly and obvious sources of potential danger. The existence of such accumulations tends to depreciate not only the property on which they are located but also the property or other persons in the neighborhood and in the Town generally. They make the Town a less safe and less pleasant place in which to live and do business.

B. 1. Certain Public and Private Uses Excluded – the regulations of this Local law shall not be so construed as to limit or interfere with the dedication, development or use of any land or building for public parks, public playgrounds or public schools required for compulsory education; or with the use of land or buildings owned by the United States government, the State of New York, the County of Niagara and/or the Town of Lewiston and used for governmental purposes; or the construction, installation, operation and maintenance of public utilities; or with any highway or railroad right-of-way existing or thereafter authorized by the State of New York, County of Niagara of the Town of Lewiston.

2. The regulations of this Local Law shall not be so construed as to limit or interfere with:

- A. Normal agricultural operations.
- B. Growth of trees, shrubbery, flowers or other healthful vegetation.

The intent of the Local Law is to establish a legal procedure of removal of unhealthful plants, weeds, grass or other growths on lands in the Town of Lewiston, New York.

Section 2 – Definitions

For the purposes of this Local Law, the following terms, phrases, words and their derivations shall have the meaning given herein:

- A. "Terrace" – That area of State, County or Town property lying between and adjacent to the street between the curb or the edge of the pavement in absence of curbs and the private property line (generally referred to as the right-of-way).
- B. "Town" – the Town of Lewiston, New York
- C. "Weeds" – Refer to, but is not limited to, any organic growths which constitute a fire, health or safety hazard.

### Section 3 – Unlawful grown of Weeds, etc

It shall be unlawful for an owner, agent, lessee, tenant or other occupant of said owner to permit, on any lot, place or area the size of two acres or less which is owned within the Town, to permit the growth, to a height of over six (6) inches or more of any unhealthful plants, weeds, grass or other growth in any Residential Zone or parcel abutting any Residential Zone, as defined in the Town of Lewiston Zoning Law. It shall be the duty of any owner or any agent, lessee or tenant of any premises fronting on any public street to keep the terrace in front of the same in good order and repair. Said duty shall include but not be limited to the cutting and removing of brush, weeds or other unhealthful growth of plants.

### Section 4 – Notification of Owner

A. The Code Enforcement Officer is hereby authorized and empowered to notify the owner, agent, tenant, lessee or occupant of any open or vacant private property within the Town or the agent of such owner, agent, lessee, tenant or other occupant to properly dispose of litter and or weeds, grass, unhealthful plants or other growths located on such owner's, tenant's, lessee's or occupant's property which is dangerous to public health, safety or welfare or otherwise not in conformity with this Local Law after making an inspection thereof. Such notice shall be in writing and shall be directed to the owner of the property or directed to the owner and tenant, agent, lessee or occupant of the property, if the same is occupied, postage prepaid, at the last known post office address or, if not known, as recorded in the Town Assessor's records.

### Section 5 – Removal of Town Charges

A. Upon Failure, neglect or refusal of any owner, agent, tenant, lessee or occupant, or agent thereof so notified to properly dispose of litter or remove weeds, grass, unhealthful plants or other growths or to object in writing to the Building Department within five (5) days from the date of notice provided for in Section 4, subsection A above, the Building Inspector shall authorize and direct the appropriate Town office, department, or designee to proceed to dispose of such litter and/or cut and remove such weeds. In the event that the owner, agent, tenant, lessee, or occupant or agent shall object in writing within five (5) days, the matter shall be referred to the Zoning Board of Appeals, which shall review the determination within thirty (30) days from the date of receipt of any written objection. The determination of the Zoning Board of Appeals shall be final. The Town shall keep an accurate and itemized account of the expenses incurred for all labor and equipment time, plus a charge of \$100.00 to cover the costs and disbursements and administrative handling. The Building Department shall notify the Town Board of any such violation(s) on a monthly basis.

B. The Building Department, upon receiving the accounts described in Section 5, subsection A above, shall prepare and collect bills. In the event that collection is not made within thirty (30) days, the Building Department shall forward the unpaid accounts to the Town Assessor, who shall charge the cost of such expenditures against the owner or owners of said property on the next tax bill forwarded to said owner at the time of payment of such bill. Or as the Assessor and/or Building Inspector deem appropriate, immediately file a lien against said property in the County Clerk's office and provide a filed copy to the owner of record by regular mail and thereafter within ten (10) days of service, file an affidavit of service in the County Clerk's Office and provide a filed copy to the owner of record by regular mail and thereafter within ten (10)

days of service, file an affidavit of service in the file an affidavit of service in the County Clerk's Office.

C. The Code Enforcement Officer or any authorized Town employee shall have the right, at reasonable times, upon notification, to enter upon lands within the Town for the purpose of inspection to determine compliance with this section. The right of inspection herein granted shall apply to the exterior of the buildings and grounds only and the owner or tenant, agent, lessee or occupant may require postponement of such inspection for a period of up to forth-eight (48) hours.

D. The Town Board reserves the right by resolution to increase fines or charges herein.

#### Section 6 – Penalty Clause

Any person committing an offense against any provision of this Local Law shall be guilty of violation punishable as follows: By imprisonment for a term not exceeding fifteen (15) days or by a fine not exceeding two hundred fifty dollars (\$250.00) or by both such imprisonment and fine. The continuation of an offense against the provisions of this Local Law shall constitute, for each day the offense is continued, a separate and distinct offense thereunder.

#### Section 7 – Severability

If any article, section, subsection, paragraph, sentence, clause or provision of this Local law shall be adjusted by any Court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the article, section, subsection, paragraph, sentence, clause or provision thereof directly involved in the controversy in which such judgment shall have been rendered.

#### Section 8 – Repeal of Inconsistent Laws

All Local Laws or parts of Local Laws and/or Ordinance or parts of Ordinances, inconsistent with the provisions of this Local Law are hereby repealed.

#### Section 9 – Effective Date

This Local Law shall take effect immediately upon its due filing in accordance with the provisions of law.

**Seconded by Edwards and Carried 4 – 0.**

**Bax MOVED to adopt the following Protocol: The Building Inspector is required to receive Town Board approval, phone poll being acceptable, prior to entering private property in regards to Local Law #1-2008, Seconded by Edwards and Carried 4 -0.**

Flood Plan map - Masters received documentation from the DEC and FEMA in regards to updating the Flood Plan map. There will be several meetings giving municipalities the opportunity to ask questions. Board members are invited. Masters will attend.

**Bax MOVED to enter into Executive Session to discuss two (2) litigations matters, personnel and three (3) contractual matters, Seconded by Palmer and Carried 4 – 0.**  
(6:45 p.m.)

**PRESENT:** Supervisor Newlin; Councilmembers Bax, Edwards and Palmer; Deputy Supervisor Elgin; Attorney Leone and Building Inspector Masters

**Bax MOVED to exit Executive Session, Seconded by Edwards and Carried 4 – 0.**

**Bax MOVED to pay, no greater than \$500, Enterprise Rent-A-Car for damages incurred by a Town vehicle on July 31, 2008, Seconded by Edwards and Carried 4 – 0.**

**Bax MOVED to close the Worksession, Seconded by Edwards and Carried 4 – 0.**

Executive Session minutes taken by Attorney Leone.

Respectfully Transcribed and Submitted by:

Donna Garfinkel  
Deputy Town Clerk