

Present: Supervisor S. Reiter; Councilmen A. Bax, M. Marra, E. Palmer and R. Winkley; Dep. Sup. G. Catlin; Police Chief C. Salada; Bldg. Insp. T. Masters; Finance Director M. Johnson; Atty. M. Davis; WPCC Oper. J. Ritter; 3 Press; 7 Residents and Clerk C. Schroeder

The Supervisor opened the first public hearing. The Published Notice reads as follows:

Please take notice a Public Hearing will be held Monday, October 22, 2012 at 5:15 pm, at the Lewiston Town Hall, 1375 Ridge Road, Lewiston, NY for the purpose of considering the adoption of a Local Law, entitled "Local Law to override the tax levy limit established in General Municipal Law 3-c", providing for the ability of the Town to override the real property tax levy limit established by New York General Municipal Law 3-c. All persons interested in the adoption of said proposed Local Law will be heard. Copy of the proposed law may be viewed at the Town Hall during normal business hours.

By Order of the Lewiston Town Board
September 24, 2012
Carol J. Brandon
Town Clerk

The Supervisor asked the Finance Director to speak to this matter. Johnson said that the Supervisor's Tentative Budget was based on requests submitted by department heads to the Town Board by September 30. Johnson said expenses have gone up. After meeting with department heads they were able to come within the 2% tax-cap in the Preliminary Budget. Johnson said in the budget, as submitted right now, the Town would not need to over-ride the tax; however, Johnson recommended authorizing the 2% over-ride because of pending contractual obligations with the bargaining units. If that explodes and doesn't come in the way we projected in the budget, then the Town Board has no other choice. If you don't approve it ahead of time and you go face these other problems that we may face then you're not going to have any options for them. You're going to have to talk about drastic cuts in order to keep it within the 2%.

Again Johnson said they are not going over the 2% cap in the budget right now. I'm hoping we can stay within this budget we have in place now. The proposed budget does not have a Town tax but there are special district taxes, he said.

Reiter asked if any resident wished to speak.

Carmella Alati, 777 Fairchild Place, said she has been a resident of the Village of Lewiston since 1960. She is totally, adamantly opposed to this 2% cap over-ride. If it is increased you don't even tell us whether it will be 2% more, 5% more, 10% more or what. We all have to live within our means and I'm getting tired of having to pay my taxes that you people generate. Our taxes are exorbitant. You keep coming up with new hair-brained ideas. Now, you want to have a building for the public. Let's cut this boloney out. We have to live within our means. I don't want to see the police leaving this area because we need them. That is what I'm paying my taxes for. Let's get away from this 2% cap over-ride.

Reiter: Our original budget contained a lot of figures from the department heads and it was their wish-list. We had to entertain it in such a manner. Since then, we sat down with all the department heads. I don't want to say their requests weren't realistic but some of them were. We've gone to the point where we looked at everything very carefully and reduced the Budget planned in such a manner that we were able to stay under the 2% cap.

As Mr. Johnson just explained, there are a couple issues we have to worry about. We have some bargaining contracts coming up. I think we have planned sufficiently ahead to make sure we've met requirements in those bargaining units and that we will still be able to stay within that 2%. However, there are always contingencies we have to worry about.

As for my hair-brained schemes that you mentioned. I would go so far as to say that none of the schemes that I have planned or I have talked about... First of all it takes time. There will be public hearings; and, we will use funding outside of our tax structure which will not affect you.

Pete Gage, Page Avenue, Village of Lewiston, said he is here because of the newspaper article that morning. It was extremely confusing. It's a difficult issue to understand. I've since got the clarification to where I understand it but it sounds to me and correct me if I'm wrong - you're really asking for a carte blanche. What I want to know is what the alternative is? Why can't you go on and accept the 2% cap limit? Why can't you just restrict yourselves to it? You talk about a collective bargaining agreement. If the people you are bargaining with know that you are under a limit that is going to be in your behalf, isn't it?

Winkley: There is also arbitration. If it's put down that the arbitrator says this is what you're going to pay than that is what you're going to pay. There are other things that are out of our control also.

Gage: Then you would have to keep within that limit. It would seem it would be a worthy objective for you to do.

Palmer: What we're considering is -- if we don't over-ride now, and disaster happens between now and the end of the year in terms of revenues not coming in as projected, we wouldn't be able to do anything at all. We would be facing some sanctions from the State. That is all it is.

Paulette Glasgow, 836 The Circle, said it is her understanding that should the Town choose to pass the 2% tax cap over-ride it could be done the same night the Board passes the 2013 Budget. Reiter concurred

Palmer MOVED to adjourn the Public Hearing and enter into Executive Session to discuss a personnel issue with regard to Judge Sheeran's staff. Seconded by Bax and carried 5-0. Time: 5:35 p.m.

Executive Session:

Present: Reiter, Bax, Marra, Palmer, Winkley, Davis, Judge Sheeran

Discussion: Personnel.

No action taken.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk

Present: Supervisor S. Reiter; Councilmen A. Bax, M. Marra, E. Palmer and R. Winkley; Dep. Sup. G. Catlin; Police Chief C. Salada; Bldg. Insp. T. Masters; Finance Director M. Johnson; Atty. M. Dowd; Atty. M. Davis; Eng. R. Smith; Highway Supt. D. Janese; WPCC Oper. J. Ritter; 3 Press; 5 Residents and Clerk C. Schroeder

The Supervisor opened the Public Hearing to amend the Noise Ordinance, Ch. 19E, in its entirety. The Published Notice reads as follows:

Please take notice a Public Hearing will be held Monday, October 22, 2012 at 5:45 pm, at the Lewiston Town Hall, 1375 Ridge Road, Lewiston, NY for the purpose of considering amendments to Chapter 19 E "Noise" of the Town Code of the Town of Lewiston. The proposed amendment of this ordinance is to repeal the existing provisions related to the control of noise with the Town and enactment of new or revised provisions of this ordinance. All persons interested in said proposed amendment may be viewed at the Town Clerk's office, Town Hall during normal business hours.

By Order of the Lewiston Town Board
September 10, 2012
Carol J Brandon
Town Clerk

Atty. Dowd said he worked with Chief Salada and Councilman Winkley and came up with a proposed Noise Ordinance. Once they hear public comments the Board may adopt it as written or adopt it with amendments. Dowd said it would be his opinion to adopt it, with one provision with regard to Motor Vehicle Repair shops.

Salada said the law has been cleaned up a bit to address some issues he has had in the past with residents and businesses. Salada said it would help him with some of the situations he has confronted.

The Supervisor opened the floor to public comment.

Patricia Vinson, 5878 Buffalo Street, said she is probably the issue that Chief Salada is talking about but there has been no resolution. In May 2012, she asked that the Noise Ordinance be reviewed for its enforceability. It has not changed. What was the problem with it? On May 31, I received a letter from the Town Clerk stating that Mr. Dowd would investigate and as soon as information was forthcoming, it would be forwarded to me. I'm still waiting for the answer. Two years we've been trying to get this enforced – not changed. It was well written. It was within the guidelines for New York State. It's clearer and it's easily read. The ordinance in place is very enforceable. We just don't have a police agency willing to enforce it. We are not concerned with noise from trains, construction, repair shops, sirens or alarms. Nobody received a complaint from us about any of that. We're concerned from noise coming from a business from 10:30 p.m. to approx. 2:00 a.m., Friday and Saturday nights and 3:00 p.m. to 7 p.m., Sunday afternoons. We are not trying to control this business. We're not trying to shut it down. All we've asked is that the noise be turned down. We don't need loud speakers outside blaring across my property so that I can't use my backyard. If I go in the house, I have to close my windows. Officers come to Sanborn and sit across the street at Calkins' with their windows up with the music blaring. I go over and ask them, what's going on? We have a noise ordinance. Their reply – we don't have an audible meter... We don't need a new ordinance. We need to enforce the one we have. For six months, this Town Board has allowed this issue to go unresolved. There hasn't been any reason anybody has given me for this ordinance to be changed. The issue is not the Noise Ordinance. It's the lack of enforcement. Mr. Salada will not instruct anybody to do anything about the noise in the Town. Until it's addressed don't bother changing it because that one is not going to be enforced either.

Paulette Glasgow, 836 The Circle read a statement she prepared: Local Laws are written to regulate specific activities. A local law's purpose is to secure health,

safety, welfare, comfort, peace and repose of a citizen within a particular municipality. The purpose of this public hearing tonight is to re-write a local law pertaining to noise in that portion of the Town of Lewiston outside of the Village. The Town of Lewiston presently has a local law that addresses the noise ordinance. I wrote this law, along with Mr. Jesella and Mr. Winkley. Lewiston's Noise Ordinance is on par with other municipal noise ordinances. And, in some instances it exceeds other municipal noise ordinances. The current local law followed the step by step guidelines outlined in Municipal Home Rule Law – for enacting a local law. The guidelines set down are that a local law should contain 4 Formal Parts – A Title; an Enacting Clause; a Body; and an Effecting Date. Contained with the Title should be the intent or reason for the local law -- who would be affected by the local law. The remedies sought to correct the concern and who would be enacting the local law. Lewiston's present noise ordinance addresses these guidelines. I'm going to quote from the intent of our local law. "The Lewiston Town Board determines that creation of unreasonable noise within the Town limits of Lewiston is detrimental to the comfort, convenience, safety, health & welfare and the quality of life to the citizens of the Town. Therefore, it intends hereby to prohibit all unreasonable noise from all sources subject to police power. In order to serve, protect and promote the health, safety & welfare and the peace, quiet, comfort and repose of all citizens with the Town." Contained within the body is the meat of the local law. It defines terms and prohibited activities that must be curtailed in order for the intent of the local law to be enforced. The present noise ordinance addresses these guidelines by specifying the concern or reason for the local law, identifying who is being affected by this concern, which is defined in the body of the present noise ordinance and within the present noise ordinance are the remedies to curtail that concern. Those areas where the ordinance would not be enforced, penalties for violating the ordinance and who or what agency would be responsible for administering the ordinance. It is in that section where the present noise ordinance of the Town of Lewiston far exceeds other municipal ordinances. We have five separate departments or agencies in our present law that can enforce this law – the Town Board; Zoning Board of Appeals (through a special use permit); the Police Department; the Building Inspector; and the Code Enforcement Officer. You have five stop-gaps. If Chief Salada doesn't want to enforce it you have Mr. Masters. If he doesn't want to enforce it the Code Enforcement Officer would enforce. If that fails you come to the Zoning Board of Appeals. If that fails you go to the Town Board. Any one of these five agencies can enforce the present ordinance. The last part of a local law addresses when the law becomes effective. Does it become effective immediately on passage or is it a time period when it becomes effective?

The draft before you tonight does not follow those guidelines. There is no separate section stating the intent or reason for the proposed law. It does not state who is enacting the local law. The body of any local law should contain legislative objectives. Expressing how those objectives will be accomplished. It should be set forth clearly, concisely, and logically within those guidelines. The body of this draft fails to identify those areas of unreasonable noise and where they can occur. No where in here does it mention hospitals, schools, nursing homes, clinics or municipal buildings.

As it has been previously stated, the present noise ordinance does this and establishes a specific distance from which that noise cannot occur. This draft local law fails to mention when it will become effective. That's the most important part. If you were to pass this tonight without that in there, the State of NY would send it back and tell you to do it again. So, why are we here? Are we here to re-write a local law that is not enforceable? It would seem that the present law regarding unreasonable noise is quite enforceable. Are we here because residents wanted the present noise ordinance re-written? You just heard Mrs. Vinson. They didn't want it re-written. They wanted it enforced. You have an enforceable law. Please enforce it.

Tim Masters: That law is not in the Zoning Law. The Zoning Officer would not do that and it specifically states in the law that it shall be enforced by the Town of Lewiston Police Department.

Bax MOVED to close the Pubic Hearing. Seconded by Palmer and carried 5-0.

Dowd: This is a draft of the actual local law. There is a form that is provided by the Secretary of State that the law is attached to when we file it. There is a provision that provides what Board will be passing it and that it would become effective immediately upon filing. I don't have any problem with that whatsoever.

We were asked to update the law. It certainly does provide for distances and use of equipment, speakers, etc. that cause a noise disturbance. I worked with the Chief of Police. I hope the police are able to better enforce this local law when it's updated. For all intense and purposes it's more than adequate if the Board decides they want to adopt it on the recommendation of the Chief of Police who worked on it as well.

Palmer: It seems like we went a long way to try and resolve what appears to be a difference between one establishment in the Town and local residents nearby. Did anyone ever make any attempt to contact the owner of the establishment to try and see if he would cooperate?

Salada: We had a meeting with both parties concerned and we addressed each other's issues. It got hot at times but I think a lot of issues were aired. I don't know how much was resolved. It's my understanding the bar owner did a lot of things inside acoustically to take care of his neighbors. I also put out a memo to my staff that if the noise met the criteria for the current Town noise ordinance to issue a ticket... I think it's ridiculous to think that I would tell my guys not to write a ticket or not enforce this law. That is not the case.

Palmer: Has there been any level of cooperation from the business owner?

Salada: Absolutely, he supposedly made all sorts of changes at the bar itself.

Mrs. Vinson: Yes, the bar owner has done things but it does not control the music. He will not turn it down and it emanates from that building to my bedroom and living room. They have not reduced the level of noise.

Winkley: Mr. Dowd, what's the difference between this law and the old one.

Dowd: We did recommend using audible devices but I understand these audible devices create more problems than not. We went back to being more subjective.

Palmer: There has certainly been frustration with these meters used to measure sound. Number one, they can only measure sound from a fixed object and not a motor vehicle which has excessive noise. Number two, the machine has to be regularly calibrated; and Number 3, the person running the machine has to have certification and be updated with training. These have always posed problems to law enforcement mostly because the return of investment is not there. The level of offence is minor in nature, even though it is not minor to the person being offended. It's minor in the overall scheme of things. It's difficult to weigh the cost of maintaining this equipment and getting people trained with the end result. We were looking at more of a reasonableness standard to try to cover this – similar to a disorderly conduct statute.

Dowd: Which make sense. You don't have the difficulty of the officer trying to prove how accurate the device is, etc. It makes it easier to prosecute in the end.

Palmer MOVED to adjourn the Public Hearing on thr Noise Ordinance. Seconded by Marra and carried 5-0. Time: 6:10 p.m.

Transcribed and submitted by:

Carole N. Schroeder
Deputy Town Clerk