

Public Hearing – Adoption of Code  
Regular Town Board Meeting

6:15 pm  
6:30 pm

July 28, 2014

**PRESENT:** Supervisor Dennis Brochey; Councilmembers Conrad and Winkley; Deputy Supervisor Edwards; Town Attorneys Davis and Seaman; Building Inspector Masters; Highway Superintendent Janese; Town Engineer Lannon; Finance Officer Kloosterman; Internal Claims Auditor Johnson; Police Chief Salada; 2 Press; approximately 7 Residents and Clerk Donna Garfinkel

**EXCUSED:** Councilman Bax

The Supervisor opened the Public Hearing.

The Clerk read notice into the record.

**TOWN OF LEWISTON  
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE that, for the purpose of adopting a codification of the local laws, ordinances and certain resolutions of the Town of Lewiston, said codifications to be known as the “Code of the Town of Lewiston”, a public hearing will be held by the Town Board at the Lewiston Town Hall, 1375 Ridge Road, on the 28<sup>th</sup> day of July, 2014 at 6:15 pm, to consider the enactment of the proposed local law described and summarized below:

**PROPOSED LOCAL LAW**

A LOCAL LAW TO PROVIDE FOR THE CODIFICATION OF THE LOCAL LAWS, ORDINANCES AND CERTAIN RESOLUTIONS OF THE TOWN OF LEWISTON INTO A MUNICIPAL CODE TO BE DESIGNATED THE “CODE OF THE TOWN OF LEWISTON”

This local law:

- \* States the legislative intent of the Town Board in adopting the Code.
  - \* Provides for the designation of the local laws, ordinances and certain resolutions of the Town of Lewiston as the “Code of the Town of Lewiston”.
  - \* Repeals local laws and ordinances of a general and permanent nature not included in the Code, except as provided.
  - \* Saves from repeal certain local laws and ordinances and designates certain matters not affected by repeal.
  - \* Retains the meaning and intent of previously adopted legislation.
  - \* Provides for the filing of a copy of the Code in the Town Clerk’s office.
  - \* Provides for certain changes in or additions to the Code.
  - \* Prescribes the manner in which amendments and new legislation are to be incorporated into the Code.
  - \* Requires that Code books be kept up-to-date.
  - \* Provides for the sale of Code books by the Town and the supplementation thereof.
  - \* Prohibits tampering with Code books, with offenses punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or both.
  - \* Establishes severability provisions with respect to the Code generally.
  - \* Provides that the local law will be included in the Code as Chapter 1, Article I.
- Copies of said local law and the Code proposed for adoption thereby are on file in the office of the Town Clerk of the Town of Lewiston, and available for public inspection during regular office hours.

All interested persons will be given an opportunity to be heard on said proposed local law at the place and time aforesaid.

June 23, 2014

BY ORDER OF THE TOWN BOARD

The Supervisor asked if any resident wished to speak.

**Winkley MOVED to close the Public Hearing, Seconded by Conrad and Carried 3 – 0.**

**PRESENT:** Supervisor Dennis Brochey; Councilmembers Conrad and Winkley; Deputy Supervisor Edwards; Town Attorneys Davis and Seaman; Building Inspector Masters; Highway Superintendent Janese; Town Engineer Lannon; Finance Officer Kloosterman; Internal Claims Auditor Johnson; Police Chief Salada; 2 Press; approximately 7 Residents and Clerk Donna Garfinkel

**EXCUSED:** Councilman Bax

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.

Craft, Ron – 105 North 4<sup>th</sup> Street - Craft is disappointed that in November he was asked to complete an application for the CWM – CAC, which he did, was appointed, was sworn in and then it took six-months to find out he is not on the Committee. No notice was received and Craft didn't expect that from Brochey. Craft is not sure if one can be removed once they are sworn in. Craft asked the Board to take this into consideration. Craft feels some of the individuals have their own agenda and don't have the community's interest.

Craft is collecting signatures to have the Lewiston Police Dept. merge with the Sheriffs Dept., he has 240. Craft suggests the Board take a look at who they're hiring for the Police Dept. It is his intention to get the necessary number of signatures to have a referendum. Out of the 240, 10 people did not want to sign. This is not personal it is dollars and cents.

Craft spoke to the Mayor of North Tonawanda. They saved over a million dollars consolidating with the County. It will take Lewiston 4 years to save the money. Slowly, but surely the expenses will be in the County budget and out of Lewiston.

#### AGENDA APPROVAL

Brochey requested an Executive Session to discuss personnel and legal. Davis requested discussion on potential/on-going litigation.

**Winkley MOVED to approve the Agenda, as amended, Seconded by Conrad and Carried 3 – 0.**

#### ADOPTION OF LOCAL LAW #4 – Adoption of Code

**Winkley MOVED to adopt Local Law #4 – Adoption of Lewiston Town Code, Seconded by Conrad, and Carried 3 – 0.**

#### TOWN AUDITOR – PATRICK BROWN PRESENTATION

Patrick Brown, Brown & Co. LLP in attendance to review the December 2013 Financial Statement and Audit Report.

Financial audits are procedures conducted by CPA's with the objective and purpose of expressing an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. An auditor's opinion applies to and is based on the year that it is auditing. It is not an assessment, endorsement, commentary, and/or other opinion by Brown as to future years, budgeting, financial management or fiscal health of the Town. This is not the purpose or criteria developing a finders report.

The Town received an unqualified audit opinion for the year end 12/31/13 with no significant exceptions, findings, errors, or omissions. It means the Town's financial statements are in compliance with generally accepted and government accounting principles and reporting

requirements. An unqualified opinion is the desired and highest opinion form for financial audits.

Financial audits report which financial statements are covered by the audit, the responsibility for the financial statements, and Brown & Co, responsibility.

The report has several statements required under Government Accounting Standards. One is the Statement of Net Position which outlines the Assets and Liabilities. The Statement of Activities outlines all expenses and revenues of the Town.

The report also has several pages of footnotes. Brown urges the Board to read these. It provides a detailed explanation of all the statements and a lot of backup for the numbers in the financial statements.

Brown reviewed each fund for the year 2013. Much of the remaining information has been reviewed with Supervisor Brochey, Mike Johnson and Paul Kloosterman in May and with Board members Winkley and Marra in June. Again at the end of June, with Supervisor Brochey, Deputy Supervisor Edwards, Councilmembers Marra and Bax, Paul Kloosterman and Town Attorney Seaman. These meetings were to get a closer look at just what the audit is saying.

The Town's total financial position of all operating funds decreased by \$695,322 (operating deficit for all funds combined) compared to budgeted decrease of \$1,155,863 for all operating funds which was a \$460,541 favorable budget variance.

General Town-Wide (A-Fund) operated at an unfavorable budget variance of \$203,598; Sewer Pollution Control (SS1 fund) operated at \$205,572 unfavorable budget variance and South Sewer (SS3) operated at \$19,565 unfavorable budget variance. These are being pointed out because they operated at deficits more than what was budgeted. All other funds; B-fund, water, highway, etc... operated either at a surplus or deficits less than what was budgeted so they were favorable.

The 2013 year end results for the Town are mixed, much has been spoken of the Town finances and both views are correct. The budget process and approach to setting services are a function of the Supervisor and board and may result in differences of opinion. As of 12/31/2013, the Town was in stable and good financial condition with all operating funds having adequate fund surpluses except for Highway and Water Pollution (SS1). All of the Town's other funds have adequate unrestricted/undesignated fund balances of over 10% of 2014 budget except Highway and Water Pollution Control. The 10% is not set by law but a goal. As a professional, Brown strives for undesignated/unrestricted fund balance of at least 10% - 15%.

Unrestricted/Undesignated fund balances are just about where you want to have and maintain them giving adequate surplus fund balances to address unforeseen/emergency situations. There is some concern with General Fund townwide (A) when projecting 2014 operating deficit due to use of fund balance for operations the past several years. The Town had rather large fund balances available for use in balancing their budgets. It is understandable, to Brown, why the fund reserves were used over the past couple of years as the alternative of expense/service reductions and/or town tax didn't seem appropriate when the Town had these reserves to use.

The unrestricted/undesignated fund balances are:

General Fund – Whole Town – 11.9% compared to 27.9% for 2012 of 2013 budget

General Fund – Park Town – 19.0% compared to 20.6% for 2012 of 2013 budget

Highway Fund – 2.7% compared to 6.9% for 2012 of 2013 budget

Fire Fund – 10.8% compared to 10.3% for 2012 of 2013 budget

Lighting Fund – 131.2% compared to 152.0% for 2012 of 2013 budget

Water Pollution Control (SS1) – 2.0% compared to 0% for 2012 of 2013 budget

Master Sewer Fund (SS2) – 96.9% compared to 105.7% for 2012 of 2013 budget

Water Fund – 12.4% compared to 9.5% for 2012 of 2013 budget

Highway and Water Pollution Control Center have some work to do to get up to the desired 10% while General Town-Wide may be in similar position by end of 2014.

For 2013 and 2014, the Town was able to remain under the state property tax cap. While the Town's debt has been called manageable by Moody's Investor Services, future borrowing must

be closely scrutinized and only as absolutely required. Debt service for principal and interest was \$995,508 for 2013 compared to \$896,498 for 2012, an increase of \$99,010 (11% increase) and makes up 6% of the 2013 budget.

In 2012, when reviewing the 2011 audit report, the message was very similar as it is today. The 2015 budget will be challenging as fund balances for general funds are pretty much used up. Revenues are pretty stagnate/fixe and dependent on sales tax and expenses rise with many contractual items and debt service. The Board will need to closely analyze expenses for all departments, especially employee benefits/personnel costs which make up much of the budget (45%) as the Town will need to comply with State property tax cap. This was reported back in 2012 when the Board was doing the 2011 audit looking forward to 2013.

Fees for all departments should be examined and should be at least equal to surrounding towns to help offset costs. If fees are too low, the cost of the department is being subsidized by others.

Brown reviewed the General Fund Town Wide.

Total revenues for 2013 were \$375,817 under budget, it was an unfavorable budget variance. This was primarily due to Modern tipping fees/Recreation - \$200,468 under budget. Joe Davis Park, the JDC/Greenway reimbursements - \$428,612 under budget.

Total expenses for 2013 were \$244,193 under budget so favorable budget variance. This was primarily due to all expense lines under budget except for the following, which were over budget by \$1,000 or more: Supervisor Contractual - \$2,038; Town Clerk Personnel Service and Contractual - \$15,079 & \$1,031 respectfully; Attorney Contractual - \$35,131; Buildings Contractual - \$3,111; Judgments and Claims - \$15,000; Traffic Control - \$1,717; Highway Admin. Personal & Contractual - \$2,849 & \$3,783 respectfully; Recreation Personal Services - \$16,388; Recreation Contractual, Special Events and Concessions - \$60,622 (offset by revenues exceeding budget); and State Retirement - \$32,537.

Net transfers to other funds were \$71,974 over budget.

The result of all this, for the General Fund – 2013, the Fund Balance decreased by \$451,669 as compared to budgeted decrease of \$248,071, so it was an unfavorable budget variance of \$203,598.

The total revenues for 2013 compared to 2012 were \$723,235 lower. This was primarily due to Joe Davis Park reimbursements of \$601,257 and Modern tipping fees of \$215,037. Without Joe Davis revenue 2013 revenues were \$121,978 less than 2012 or 4.5% decrease.

The expenditures for 2013 were \$151,208 lower than 2012 of which \$431,216 due to Joe Davis. Again taking Joe Davis expenses out, 2013 expenses would have been up \$280,008 over 2012 or 10.7% increase.

Brown reviewed the General Part Town.

Total revenues were \$175,531 over budget, so a favorable budget variance primarily due to: Sales Tax; Mortgage Tax; Franchise fees being over budget with Police Special Revenue (Artpark) being under budget.

Total expenditures were \$311,406 lower than budget which is a favorable budget variance. This was primarily due to all expense lines being under budget. There were a couple exceptions that were over budget. Police Equipment - \$9,353; Fire Contractual - \$1,212; Parks Personal Services - \$72,441; Planning Contractual - \$12,430; State Retirement - \$12,596; and Police Retirement - \$30,179.

Fund balance remained unchanged from 2012 and operated at \$467,183 favorable budget variance.

Revenues for 2013 were \$45,480 higher than 2012 – 1.8% increase mainly due to franchise fees and Police consolidation with the Village.

Expenditures for 2013 were \$146,812 higher than 2012 – 5.7% increase.

Total revenues \$136,124 over budget so favorable budget variance primarily due to:

- Sales Tax \$174,782 over budget
- Departmental Income \$70,198 under budget
- Chips \$30,127 over budget

Total expenditures were \$53,381 under budget so favorable budget variance primarily due to all expense lines under budget except for following which were over budget by \$1,000 or more:

- General Repair Contractual \$11,864 over budget
- Snow Removal/Brush Weed Control Personal Svces \$71,693 over budget
- Snow Removal/Brush Weed Control Contractual \$11,638 over budget
- State Retirement \$30,186 over budget
- Social Security \$3,918 over budget

Result: Total Fund Balance decreased as budgeted by \$100,000

Total Revenues for 2013 \$185,356 over 2012 (9% Increase)

Total Expenditures were \$248,581 over 2012) (11.1% Increase)

Sewer Fund-Water Pollution Control (SS1)

Revenues were \$133,305 under budget due to usage

- Village Of Lewiston \$43,460 under budget
- Town Of Porter \$58,432 under budget
- Miscellaneous and Storm Water revenues \$43,974 under budget

Expenditures were \$117,608 under budget with all lines under budget except:

- State Retirement \$29,013 over budget
- Ban/Bond Principal \$40,000 over budget

Transfers to/from other funds were \$189,875 under budget

Result: Fund balance decreased by \$205,572 which was unfavorable budget variance mainly due to revenues under budget from metered usage.

Revenues and transfers for 2013 were \$410,494 under 2012 (20.3% Decrease)

Expenditures were \$125,392 higher than 2012 (7.4% Increase)

Sewer-Master Sewer Improvement Area (SS2)

Total Revenues Were \$67,064 under Budget So Unfavorable Budget Variance Due To Sewer Charges \$89,503 (Usage Down)

Total Expenditures Were \$165,061 under Budget So Favorable Budget Variance with All Lines under Budget Except:

- Administration Personal Services \$2,699
- State Retirement \$5,046

Transfers to/from were \$205,875 under budget as less transferred to SS1 than budgeted due to usage

Result: Fund balance decreased \$8,543 compared to budget of \$312,415 so favorable variance of \$303,872

Revenues and transfers for 2013 were \$234,134 below 2012 (31% Decrease)

Expenditures were \$58,950 over 2012 (12.5% Increase)

Sewer Fund South Sewer (SS3)

Revenues were \$22,111 under budget so unfavorable variance due to sewer charges and fees

Expenditures were \$2,546 under budget so favorable budget variance

- Sanitary sewers personal service \$2,075 over budget
- Sanitary sewers Contractual \$2,348 over budget
- State Retirement \$1,261 over budget
- Bonds Principal \$10,000 over budget

Result: Fund balance decreased \$27,759 which was \$19,565 unfavorable variance with budget.

Revenues for 2013 were \$8,553 below 2012 (3.2% Decrease)  
Expenditures were \$10,977 Over 2012 (3.9% Increase)

#### Water Fund (SW1)

Revenues exceeded budget by \$97,883 so favorable variance  
Expenditures were under budget by \$170,988 so favorable variance

Result is fund balance increased 54,048

Revenues for 2013 \$40,894 over 2012 (2.3% Increase)  
Expenditures for 2013 \$46,130 below 2012 (2.5% Decrease)

#### APPROVAL OF MINUTES

**Conrad MOVED to approve the minutes of 6/23/2014, Seconded by Winkley and Carried 3 – 0.**

Special Meeting minutes of 7/16/2014 will be on the agenda at the next meeting. Board members in attendance tonight not at this meeting.

#### POST AUDIT PAYMENT

**Conrad MOVED to approve the following vouchers for post audit payment: Home Depot - \$12.25; Key Bank - \$1,091.31; Sanborn Area Historical Society - \$175,000, Seconded by Winkley and Carried 3 – 0.**

#### OLD BUSINESS

Fireworks on Lower Mountain Road. Brochey said Fire Inspector - Patrick Martin is requesting Town Board approval with the understanding all necessary documents will be given to him prior to the event scheduled for August 2, 2104.

**Conrad MOVED to approve the fireworks permit for 2636 Upper Mountain Road, under the recommendation of Fire Inspector Patrick Martin, Seconded by Winkley and Carried 3 – 0.**

#### NEW BUSINESS - None

#### SUPERVISOR BROCHEY

Legal – Davis will address his item in executive session.

#### Engineering

A site meeting is planned for Thursday to address the drainage easement issue at 741 Chicora Drive.

There are two additional homes in the Riverwalk Subdivision that are experiencing a drainage issue. The two homes on Riverwalk Drive South both have existing rear yard drainage systems. Lannon will take a look at these two properties on Thursday also. Highway Superintendent Janese offered to speak to the property owners. This could be something that the Town could deal with.

The storm sewer at Riverwalk / NYS Parks / Joe Davis Park will be cleaned, flushed and televised on July 31<sup>st</sup>. It is hoped a favorable report will be submitted to New York State Parks. If the pipes are structurally sound, the next step is to design the pipes and move forward. Janese said he can install the drain lines and tie it in.

Payment of the recreation fee of \$250/unit is still outstanding for Legacy Drive. Masters and Lannon met with the developer and this was discussed. Massaro has requested the recreation fees be paid at the time the Occupancy Permit is issued, on a unit by unit basis. This will pose very complicated / involved record keeping for the Town. The other option would be to request

the full allotment of recreation fees be paid for upon the issuance of a Building Permit. Each building has 8 units; this would be \$2,000 per building permit.

The Town Code states, payment of recreation fees in full, coincide with the filling of the Final Plat. The Final Plat has been approved. This would be a total of 80 units. The Board needs to respond to this so fees can be paid.

Lannon said this project has been what is considered extenuating circumstances. The developer is looking for some consideration in the timing of the submission of the recreation fee. Conrad asked if Massaro has given a proposal of payment. Lannon said he wants to pay per occupancy permit. The building is built with 8 units so as each unit is given an occupancy permit the recreation fee would be paid.

To date, four permits have been issued, but no recreation fee has been paid. Masters said the easiest way to track it is, when requesting a building permit for a building and pay the recreation fee for the 8 units, or obey the Town Code and pay the whole dollar amount up front.

Lannon will tell Massaro the Town will follow the Code regarding the recreation fees.

Lannon prepared a preliminary cost estimate for the Muckland Pump project as requested. The full estimated project cost is \$333,960. This includes two pumps, pump level controller, pump motor control cabinets and bar screen replacement. These are conservative figures. This is for plans, advertising and construction.

Janese said it is up to the Board, but Janese believes with one pump still functioning, it is not necessary to replace them both. This has been functioning on the one older pump for well over a year. Also if repairs need to be done, this pump would be a stand-by. If anything happens to either one of the pumps, there will still be one there. Janese does not believe it is necessary, at this point and time, to put two brand-new pumps in. The new pump can do all the work; the second can be an auxiliary when there are high levels. Or if the primary pump needs to be shut down, the other is there. If the Town has the money, by all means, but if not the old pump will do with a new one.

Conrad questioned if the new pump can operate with the older one. Lannon does not know.

Lannon suggested the Board approve the contract documents such that there is a base bid for one pump and an alternate bid item for an additional second pump. When the bids come back, the Board can review and make the decision to either go with one or two.

**Winkley MOVED to go out for a base bid on one pump and an alternate bid item for an additional second pump for the Muck Pump Station project, Seconded by Conrad and Carried 3 – 0.**

Lannon has communicated with Yarussi Construction in regards to the PRV Pits project close out. Yarussi responded that the work will be completed in October 2014.

Conrad asked who will make them accountable and inspect the work when it is finished. Lannon said he would be happy to do this, either during or after. Winkley asked Water Forman Robert Nablo. Nablo said a punch list was given to the Board. Lannon said he spoke to Yarussi about this and is in agreement with all the items on the list.

Brochey said these people have been waiting a long time for this.

#### Water Improvements

Lannon has spoken to Robert Nablo regarding the three waterlines brought to the Board's attention by Bureau of Fire Prevention Chairman Les Myers. Lannon and Nablo will work together to scope out the projects and if the Board chooses, Lannon can prepare construction cost estimates.

#### Finance

Finance Director Paul Kloosterman received a letter from Senior Director Jeanette Collesano requesting any remaining funds in the Senior Contractual and Equipment be transferred into the Senior Van Reserve account. At this time there is \$8,000 in the fund. This will help them to prepare for the purchase of a new van.

Grant Writer Rotella said funds will be available in September or October for a van. The Town can apply, it could take 9 months.

Kloosterman would like to meet with Board members one on one and review the budget. This would allow the Councilmembers to understand what is happening and how the money is being used.

Kloosterman has met with department heads. The Board could call for a spending freeze or ask the department heads to really pay attention as to what they are spending money on. 2015 is going to be a very difficult budget.

In the General accounts, the fund balance has been used up. The Board needs to look into cuts and additional revenues so the Town can move forward.

Kloosterman distributed information on a BAN renewal. He recommends one more year. \$175,000 will still need to be budgeted for in the Highway Dept. for the principal payment.

**Winkley MOVED to allow Municipal Solutions, Inc. to take the \$175,000 BAN out for an additional year, Seconded by Conrad and Carried 3 – 0.**

Appointment of Board Liaison to the Board of Ethics

**Brochey MOVED to appoint Al Bax as the Town Board Liaison to the Board of Ethics, Seconded by Winkley and Carried 3 – 0.**

Seaman said the Board needs to appoint a town employee to this Board. Kloosterman asked to discuss this at the next department head meeting.

Quasar - Supervisor read an article from the Tonawanda News.

“In Pendleton to the relief of many concerned citizens, the Pendleton Town Board passed a new law restricting the use of sewage sludge and related byproducts on land in Pendleton, including Quasar Energy Group’s fertilizer equate.

Over the past months, many residents have come forward in Town Board meetings, voicing their concerns about application of equate, which is a by-product of anaerobic sewage sludge digestion.

Ten farms in Niagara County currently have DEC permits to spread equate, including Milleville Brothers Farm in Pendleton.

Concerns about the product being used as a fertilizer ranged from offensive odors to possible health risks, as well as local farmers concerns with losing business due to proximity to equate-fertilized fields.

The new law will force farmers seeking to apply equate to go through a permit process, including a mandatory public hearing after which the Town Board makes the final decision. The law includes a \$250 fine for violations.

The law also includes a buffer zone of 2,000 feet between where the material can be spread and any homes, as well as a 1,000-foot buffer between the product and any wells or bodies of water.”

Brochey questioned the Board if the Town should look at this and see if something similar could be used to protect the Town of Lewiston.

**Winkley MOVED to hold a Public Hearing on August 25, 2014 at 6 pm, to enact a Moratorium applicable to solid waste and recycling and the disposal of sludge, sewage**

**sludge and septage, to ensure that no approvals for such land use application be granted or permitted until the Board can complete its planning studies, Seconded by Conrad and Carried 3 – 0.**

Police Appointment

Salada requested to fill an existing part-time vacancy. Interviews were held and Salada recommends Jeffrey Swick.

**Winkley MOVED to hire Jeffrey Swick as a Part-time Police Officer, Seconded by Conrad and Carried 3 – 0.**

COUNCILMAN BAX

Excused from meeting.

COUNCILMAN WINKLEY

Winkley and Brochey will be meeting with the Haz-Mat Board on Thursday.

**Winkley MOVED to enter into Executive Session, Seconded by Conrad and Carried 3 – 0.**

**PRESENT:** Supervisor Dennis Brochey; Councilmembers Conrad and Winkley; Deputy Supervisor Edwards; Town Attorneys Davis and Seaman; Building Inspector Masters; Town Engineer Lannon; Finance Officer Kloosterman; Chief Oper. Ritter

Discussion on Personnel, Legal and Potential Litigation.

**Conrad MOVED to exit Executive Session, Seconded by Winkley and Carried 3 – 0.** (10:15 pm)

No action taken.

**Conrad MOVED to adjourn the meeting, Seconded by Winkley and Carried 3 – 0.**

Transcribed and Respectfully Submitted by:

Donna Garfinkel  
Acting Town Clerk