

PRESENT: Supervisor Brochey; Councilmembers Bax, Ceretto, Conrad, and Winkley; Deputy Supervisor Briglio; Town Attorneys Davis and Seaman; Building Inspector Masters; Town Engineer Jarrell; Finance Officer Blazick; Highway Supt. Janese; Chief Operator WWTP Ritter; Police Chief Previte; 3 Press; 42 Residents and Clerk Donna Garfinkel

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

AGENDA APPROVAL

Additions: Brochey - Executive session – employment of a particular individual.

Brochey MOVED to approve the agenda as amended, Seconded by Winkley and Carried 5 – 0.

TWO MINUTE STATEMENT – RESIDENTS

Correa, Nancy – 439 Riverwalk Drive – read the following letter into the record.

Dear Supervisor Brochey and Council Members Bax, Ceretto, Conrad and Winkley:

I am writing to you on behalf of an informal group of Town of Lewiston residents who own property in the vicinity of the proposed French Landing Subdivision, including Nancy and Ellen Correa, Margaret Montante, Virginia Parks, and Karen and Steve Lyle.

It is my understanding that this evening's Town Board meeting agenda includes a determination whether to approve, approve with conditions, or disapprove the Final Plat for the French Landing Subdivision. My schedule prevents me from attending the meeting, but I respectfully ask each of you to consider the following comments prior to rendering a decision:

1. State Environmental Quality Review Act (SEQRA). It appears from the public record that this Board, by a vote taken on June 8, 2015, chose not to issue a Positive Declaration under SEQRA and require preparation of a Draft Environmental Impact Statement (DEIS). My clients respectfully disagree with that determination, and contend that, at a minimum, there is a potential for significant adverse impacts relating to drainage, flooding and erosion, impacts on wetlands, and traffic safety. The decision to exclude preparation of a DEIS for this action reduced the ability of this board and the public to address, in an informed and objective fashion, these areas of environmental concern, as well as reasonable alternatives and mitigation measures. Furthermore, it appears that the written Negative Declaration (which was not signed by the Supervisor until July 21, 2015) is, in effect, a Conditioned Negative Declaration adopted without compliance with the procedures set forth at 6 NYCRR 617.7(d).

2. Fire Prevention Bureau concerns. This board is well aware of the concerns raised by the Chairman of the Town of Lewiston's Bureau of Fire Prevention, Les Myers, regarding the potentially dangerous situation that will be created if the proposed French Landing Subdivision is approved without either the west and east section of Riverwalk Drive being permanently connected, or the road for Mr. Wolfgang's subdivision being completely installed from Riverwalk Drive to Lower River Road. [See, for example, Mr. Myers' April 14, 2014 letter to the Town Board, and June 5, 2015 letter to the Town Planning Board, as well as Fire Inspector Patrick Martin's March 18, 2015 letter to the Town Planning Board.] Additionally, the Fire Bureau Chairman has also expressed "a potential issue with water supply" and water volume if the developer's intention is to merely extend an existing line and utilize a dead-end water main. [See Mr. Myers' June 5, 2015 letter to the Town Planning Board.]

The State's Town Law, at Section 277(2) (a), expressly requires that the streets of a proposed subdivision "be suitably located to accommodate the prospective traffic ... to facilitate fire protection, and to provide access of firefighting equipment to buildings." Additionally, Lewiston's Town Code, at Section 306-5(A), requires that a subdivision be developed in such a manner so that the land "can be used safely without danger to health or peril from flood, fire or other menace." Given the fact that the Lewiston Fire Prevention Code [see Lewiston Town Code, Chapter 130, Article I – Fire Prevention Code] delegates to the Bureau of Fire Prevention the authority and power "to execute, effect the purpose of and enforce" the town's Fire Prevention

Code, it is imperative that the proposed French Landing Subdivision not be approved unless and until the fire safety issues and solutions asserted by the Fire Bureau Chairman are fully incorporated as mandatory conditions to development of Mr. Wolfgang's subdivision (or, any phase thereof).

3. Utilization of State or Town funds or property to resolve fire safety concerns. The New York State constitution prohibits the Town of Lewiston from utilizing any state or town money or property to eliminate the traffic safety concerns raised by the Fire Bureau Chairman. Such use of funds and/or property would constitute an unconstitutional gift or loan "to or in aid of any individual ... or private undertaking." [See NYS Constitution, Article VIII, Section 1; Article VII, Section 8.1.]

4. Depth of Lot 15. Please note that Lot 15 appears to be in substantial violation of the maximum two-and-a-half to one ratio of lot depth to width ratio required by Section 306-5(c) (5).

5. Performance and Maintenance Bonds. State Town Law mandates that the owner of a proposed subdivision furnish a performance bond or other security – as an alternative to the installation of infrastructure and improvements – in an amount "sufficient to cover the full cost of same" PRIOR TO APPROVAL of the subdivision or a section thereof. Such requirement may not be waived. [See, for example, *Friends of The Pine Bush v. Planning Bd. of the City of Albany*, 59 NY2d 849 (1983), affirming 86 AD2d 246 (3d Dept. 1982); *Christie v. Phoenicia Water District*, 194 AD2d 912 (3d Dept. 1993).] Additionally, Section 306.7(J) (1) (g) (15) of the Town of Lewiston Town Code mandates the following:

Maintenance Bond. In submitting the final plat to the Town Board the subdivider shall submit a maintenance bond in the amount of 50% of the construction costs to guarantee the maintenance and repair of the streets in the subdivision for two years after construction thereof has been approved by the Engineer.

Thank you for your thoughtful consideration of these comments and concerns. Sincerely, Arthur J. Giacalone

Brochey said he received this letter at approximately 3:00 pm today. After reviewing with Masters, #4 – minimum requirement of the depth of the lot has been met.

Arnold, Jack - 5256 Hewitt Parkway – A member of the Historic Preservation Committee. The Committee is aware they are very slack in what needs to be done with the preservation board. There are four (4) members, seven (7) are needed for a quorum. Anyone in the audience that is interested or if the Board knows of anyone interested, please join.

There have been no changes to the Charter for the Committee since 1978, and a lot has changed. There are approximately 30 properties in the Town of Lewiston that have been listed as historical. The Committee would like to have plaques placed on buildings & lots. It was suggested the Town approach some of the local community groups or local business for their support. Nothing has been done to either expose them or even protect them.

It needs to be determined what is historical. The Board needs to be aware that the Town Codes need to be designed to direct what can be done with the designated buildings. Things are going to change and its history needs to be designated.

Communication in the different neighborhoods help. There are areas in Sanborn that have older families and places that need to be designated. Speaking with elderly residents and collect information. Maybe involve high schools, colleges and different organizations. A lot of it will be the community, to report what is out there.

Brochey said he attended the Committee's meeting and found highly intelligent, gifted people that really understand the history of Lewiston.

Sitek, Greg – President of Upper Mountain Fire Company - Sitek notified the Board of the Fire Company Open House, Saturday – October 3, from 10 am – 3 pm. In the past the Company has placed a sign on Upper Mountain Road to advertise. Last year they were notified it was a code violation. Sitek is asking the Board for an exemption to place the sign out.

Winkley will address under his Liaison Report.

Brandt, Mary Dean – 470 Pletcher Road – As a taxpayer, Brandt wants none of her tax dollars to be spent to help a developer get his property going, or to help the residents who developer did not do their job and backed out; Riverwalk. In the history of that subdivision the residents and Town spent a lot of time and dollars trying to get the Town to get Mr. Deck to do the right thing. That did not happen. Tax dollars are being spent to mediate the water drainage problem.

Wolfgang is an individual that should have to abide by all codes. Mr. Sitek is worried about a sign, and this development has to follow the code.

Glasgow, Paulette – 836 The Circle – In the August 24th minutes Conrad stated, in regards to the French Landing development, “it looks like the Town is sitting and not doing its job”.

Within the Town Code there is no entity called the Stormwater District. For such a district to be created the Town must first vote to have a local law written creating such a district. Once written, a public hearing is set to present the local law to the public. Throughout the Planning Board minutes, it suggests a Stormwater District be created for this development. Yet no local law has been written and no public hearing set. No proposed local law has been filed either. Why is the Board entertaining approving a Final Plat for an entity that has yet to be created?

Under SEQRA, there are three parts. Part A is completed by the applicant; Part B & C is completed by the Lead Agency. Last February, when the application appeared before the Environmental Commission, Parts B & C weren't included for review. These parts would contain information regarding any studies of all Town review boards. With these two important parts missing, for some reason the Environmental Commission gave this development a Negative Declaration. It was not until after it was given the Negative Declaration, that suddenly Parts B & C appeared.

If you read the minutes of the Planning Board with regards to this development, you would discover that no issue that came before them was ever resolved. It was merely discussed and moved down the road.

There was never a definitive decision made with regard to lighting, road, drainage, ponds, etc... How can the Planning Board recommend approval of a development when all they did was discuss the items and never gave approval?

Around September 14th, correspondence appeared from the developer's attorney; informing the Town Board of a conversation he had with Highway Superintendent Janese regarding using Town funds to finish the Riverwalk portion of the Deck development. The use of public money to benefit a private citizen is a direct violation of the New York State Constitution. It is deemed, under the Constitution, to be an unconstitutional gift or loan to a private citizen. Articles 8 & 7 prohibits municipal governments or their agents, here being the Highway Superintendent, from misusing public monies for such a purpose.

\$20,000 - \$30,000 to put in a new road, the cost for maintaining sidewalks, mowing around the sidewalks, lighting for this development, maintenance for drains and a pond system. The residents have been told there will be no taxpayer expense with regard to this development, and yet there is.

Oakhill, Four Seasons, Big Vista, Legacy Drive, the list of developments that for some reason or another have been given special treatment, goes on and on. When developments get special treatment, the character of the Town loses. When does it stop? When is enough, enough?

If the residents are to believe the Board shares their concerns, about not wanting to repeat the past, then end this tonight.

Weis, Alexia – 708 Ridge Road & 4379 Porter Center Road – Weis wants Brochey to know he will be missed.

Weis attended a meeting in January and spoke of the Solid Waste Code pertaining to Quasar and their lagoons and the placement of equate into the farm land. Weis asks if this Code has been rewritten.

Brochey received copies of the codes of five or six different townships and passed them on to the Attorneys. Davis has been reviewing to see where Lewiston can strengthen it.

Brochey received word that New York State overruled the Towns of Marila and Wheatfield. Brochey spoke to one of the farmers, and he basically promised him he is not going to be using equate on his land. The Town is fortunate to have the farmers working with it.

Weis watched a meeting that took place in Lockport, and a gentleman speaking for Quasar said the equate has been in the digester so long that it is now considered a Class A bio-solid. Weis is concerned if the farmers know what their role is in this? They have to have the soil tested every year, they are accountable. When selling their land, they need to disclose this is on their land.

Lyle, Carol - 4227 Lower River Road – Lyle believes all can agree that Riverwalk was not done properly, and don't want the same thing. It was well outlined in Mr. Giacalone's letter and Mrs. Glasgow's comments outline where residents stand. Mrs. Bradt's comments also; why would we ever, ever provide money to a developer?

With all that aside, Lyle asked the Town Board to respectfully listen to the residents.

Geriach, Jean – 473 Riverwalk Drive – Geriach and her husband moved back to Lewiston after 28 years away. They built a home, and at that time they were told they could not add an additional 2-feet to the design of their home. Yet the Board is letting Mr. Wolfgang build houses on very small lots. Geriach objects to this. She had to change her plans to concur with Town requirements.

Geriach's husband is an engineer and unable to attend. He asked her to mention the August storm that flooded new developments in North Tonawanda and Amherst. The run-off ponds that were designed overflowed and they were built in accordance with the New York State requirements.

Considering she lives in a swamp, what assurance is there that they will not flood with this new development?

Brochey would not be able to answer that. Talking with Masters, they will have to do another study after the Board approves this.

TWO-MINUTE STATEMENT – DEPARTMENT HEADS

Chief Previte outlined the last month's calls: 813 incidents; 127 traffic tickets, 33 auto accidents and 35 arrests.

Cami Jarrell spoke in regards to French Landing. CRA has done a detailed review on the drainage the applicant is designing. CRA made multiple recommendations and changes along the way through the Planning Board process. It is a properly designed drainage system. It meets all requirements for New York State. In CRA's engineering opinion it is a well designed system the developer is proposing.

In regards to flooding – there is no 100% guarantee. There is a flood plan along Lower River Road that will be impacted by the road that will come off. It does require a Flood Plan Development Permit which will go through the Town with Mr. Masters. It requires detailed analysis to provide for flooding and to provide a study that determines whether or not the development will affect that flood plan. Once the road is built, the developer will have to justify what will happen to these flood waters.

This usually occurs after the Plat design has been approved. This will deal with the lots. Masters said Lannon said this will be addressed at the issuance of the PIP.

Highway Superintendent Janese wants to clarify a couple of comments. Residents spoke about sidewalks and cutting the grass. Janese said he has nothing proposed for Riverwalk, not a penny of Town money has been spent on Riverwalk. The Board directing Janese to spend any money certainly is not the case.

Town Clerk Garfinkel forwarded two e-mails to the Board regarding recycling totes. The Town has none to distribute to residents. The Board needs to decide to go to carts or stay with totes.

The Town has purchased totes from the Tulip Corporation. Garfinkel received a quote for 250 bins in the amount of \$8.93/bin for a total of \$2,232.50.

Bax MOVED to authorize the purchase of recycling totes from Tulip Corp, at \$8.93/bin, Seconded by Winkley and Carried 5 – 0.

At the August 24th Board meeting, there was discussion on the placement and time schedule of political signs.

Calls are being received from candidates asking when they are allowed to place their signs out. Candidates not in the Primary are asking when signs can go up.

A resolution in 1999 states “no political signs shall be erected more than 30 days before a Primary election and that all signs shall be removed within 6 days of the conduct of the General election”. Seaman said the resolution has “no teeth” if challenged.

Garfinkel apologizes to any candidate that removed their signs after the Primary. The 6 day time limit is for after the General election not the Primary. The resolution was interpreted wrong.

The Town Code does not deal with a time line. If the Board is not happy/comfortable with a time limit, Resolution 1999-9 should be rescinded. Garfinkel request this be addressed tonight, because she is hoping to have this resolved and have an answer for the candidates.

Seaman recommends the Board rescind the 1999 resolution and rely on the ordinance within the Code that deals with all signs.

Bax MOVED to rescind Resolution No. 1999 – 9, Town of Lewiston Political Sign Law, Seconded by Conrad and Carried 5 – 0.

Garfinkel asked for clarification – Candidates can put their signs out whenever? Bax said yes. The code may need to be revised.

Ceretto asked if there is a date for them to be taken down. Bax said not now.

Masters asked if the law that was rescinded, is the Political Sign law in the Town Code. Seaman said no, the resolution.

Masters said the Town will then follow the Political Sign law in the Town Code now. Seaman said yes, it the general sign law. Masters said there are two laws in the Town Code. Seaman said the more comprehensive one deals with all types of signs.

Masters asked Seaman if he then means the political signs under the Zoning Sign law or the Political Sign law. Masters is asking because he enforces the Zoning Law. Historically the Town has gone by the Political Sign law.

Seaman said it is addressed in both. Seaman recommends the Town enforce it as if it were any other sign, under the Zoning Code.

Bax would like review this, there needs to be something appropriate on the books.

Janese said he was the only one that took his down. Garfinkel apologized to Janese.

NIMAC Presentation

John Cooper – Chairman - Niagara Military Affairs Council thanked the Board and residents for allowing him to attend to report on the Council. As a community the Niagara Falls Air Reserve Station is the home of the last remaining Air Force Base in the State of New York. It is the largest Federal facility in the region, and the largest employer in Niagara County. The base is a very important piece of the community.

NIMAC advocates on behalf of the base in Washington and at all levels of the Air Force.

Cooper thanked the Board and the residents for their long-time financial support of the base. Brochey thanked Cooper for all he does. The Military is very much appreciated by the entire Country.

APPROVAL OF MEETING MINUTES

Bax MOVED for approval of Public Hearing - Local Law Adoption meeting minutes 8/24/2015, Seconded by Winkley and Carried 5 – 0.

Winkley MOVED for approval of Public Hearing – French Landing Subdivision meeting minutes, 8/24/2015, Seconded by Bax and Carried 5 – 0.

Brochey requested a clarification be noted on a comment he made in the 8/24/2015 meeting. In speaking on the 284 Agreement, Brochey stated he contacted the Town of Niagara and how they prepare their 284 Agreement. Years ago, past administration prepared it similar to what Lewiston did, without a list of roads. Brochey did say at the meeting that the Town of Niagara was audited the following year, and are now itemizing and presenting a list of roads along with dollars used. Brochey wants this comment on record.

Winkley MOVED for approval of Regular Town Board meeting minutes, 8/24/2015, with this clarification, Seconded by Bax and Carried 5 – 0.

Winkley MOVED for approval of Work Session meeting minutes 9/14/2015, Seconded by Ceretto and Carried 4 – 0. (Bax abstained)

POST AUDIT PAYMENT

Ceretto MOVED the following Post Audit Payments: Key Bank - \$856.15; Sam's Club - \$1,0842.72; FM Communications - \$975.00; Leaf - \$455.80 and Staples - \$394.20, Seconded by Bax and Carried 5 – 0.

OLD BUSINESS

French Landing Subdivision – Final Plat Approval

Brochey does not feel the Board or Attorneys have had enough time to review the letter received from Arthur J. Giacalone.

Davis said Mr. Giacalone does not represent the developer or the Town, it is a letter submitted by an attorney two hours prior to the meeting.

Winkley asked if there is a time-table the Board has to work within. Davis said there is a 45-day time period. If no action is taken it is automatically approved.

Bax addressed number 3 of the letter, in regards to public funds for this development. The Town does have a contractual relationship with the prior developer who was suppose to complete that road as part of his subdivision.

Speaking for himself Bax does not anticipate any public money being used for this project, especially when there is already someone else on the hook for doing so. Bax feels number 3 is also a non-issue. Bax does not plan on voting for any public money to be used for this purpose.

In regards to performance and maintenance bonds, Bax believes they are in order and are anticipated in the appropriate amount. Davis said this has been addressed with the Town Engineer. The PIP process still needs to be done and it has been recommended that would be the time to finalize the bonds.

Davis said there is language in the Code regarding the timing of things. These Code provisions are being revised currently. There is a provision that if the Town Board deems it necessary/helpful, it can vary and waive certain technical requirements. It is all appropriate.

Conrad has been speaking with Lannon and the Attorneys quite a bit. He has walked the site and talked to a few of the neighbors. The same issues keep coming up.

The drainage comes from south to north on Wolfgang's subdivision, and then heads to Lower River Road to Wolfgang's home property, then heads north towards the lake. It was a concern it was coming out by the Montante property. Conrad was assured by Lannon, the flow goes north on the east side of Lower River Road. So this should not affect those across the street or south of Wolfgang's home. Conrad believes this issue has been resolved.

The developer is abiding by DEC regulations in regards to ponds and drainage. The Town can't hold them to a higher standard than what they are required to do.

In regards to the traffic issue, Lower River Road is a County road. The County has reviewed the project and determined no improvements/changes are warranted. The project design exceeds the minimum standards for site distances. So again, the Town can't hold them to a higher standard.

Conrad said no tax money will be used for the development of this property. Once developed, and the roads are turned over to the Town, it will be plowed just like any other roadway.

In regards to the fire safety issue, the Board understands Fire Inspector Pat Martin will not authorize any Certificates of Occupancy until French Landing roadway is completed from Lower River Road to Riverwalk Drive. Martin stands on his merits and the Board will not push him in any other direction than what he feels is appropriate in representing the Town and his interpretation of the Code.

What the Board does not want is another Riverwalk. Conrad walked Riverwalk with Janese when it was flooded, and it is a bad situation. Conrad does not want a development that creates another issue for another resident.

The Town did not require as-built surveys for Riverwalk. An as-built survey should be done for any land development to ensure that the construction of the project is per the design. Conrad would like a letter from the developer's engineer and Town engineer ensuring that things are done correctly from a construction stand point. The letter should also state that if the construction is not done per specifications and per drawings, the developer is held responsible for correcting the issues.

Bax believes all Board members do not want to repeat the past. The Town doesn't want to exasperate or create new problems in this area.

Bax asked if anyone had a chance to look at the compliance with SEQRA issue. Davis said this was not a conditioned Negative Declaration. A Negative Declaration was issued; there were conditions on the Preliminary Plat approval, if this is what the Town wants. This was adopted at the time of the Preliminary Plat. Davis recommends issuing a Negative Declaration for the Final Plat if the Board were to go forward on this issue.

The only remaining issue is that of the fire prevention. No one wants anyone to be in jeopardy for not being able to get fire trucks there.

Davis said there has been a discussion on building model homes. Bax that if what he is saying is that effectively there will be no one living in these buildings, no C/O's issued until the road is built. Davis said the developer's proposal was to issue C/O's when the second phase of the road is started, not completed. Martin is on record stating he will not sign-off on this until the road is completed, or until something is done at Riverwalk.

Davis said the developer has offered that, if there is no second phase a performance bond would be in place to finish that as a cul-de-sac. That does not meet Martin's approval. If the performance bond is for the road to go all the way though, the developer is not agreeable with that.

Bax said the complicated issue is the Town has rights and obligations the Town needs to follow through with. This is the Board's issue, with the prior development.

Brochey questioned the Stormwater District or Homeowners Association comment. Davis said this is a decision the Board needs to make.

Bax has heard the stormwater district being proposed, but has mentioned, this has to be approved under the appropriate circumstances, at a later step then were this stands now. Is this correct?

DeCastro said it can't be created until it is built. The Board would have an option, at that time to vote on it. The developer can't offer you something that doesn't exist.

Winkley said that since the Board makes a motion in the affirmative, Winkley moved to approve the subdivision as presented for the partial development of the French Landing development.

Conrad moved to approve the Final Plat as submitted, with two phases, as approved by the Town Planning Board, with the understanding that per Town Fire Inspector, the Town will not issue any Certificates of Occupancy until the full length of the roadway is complete and connected to Lower River Road. Phase One consists of 8 single family homes, related infrastructure and a roadway with the code compliant emergency vehicle turn-around at its end. Phase two is to consist of the construction of the remaining 19 single family homes, related infrastructure and the completion of the new roadway through to connect to Lower River Road.

Martin feels the Board would be entering into the fact there may be 8 constructed vacant homes sitting there.

Bax said it would be in the developer's interest to come to the table and work something out at that point. This would be giving motivation on the party that wants to sell the lots and move on to phase two. Bax understands Conrad's motion to be, effectively allowing them to be built but not necessarily to be occupied, the Board is preserving any concerns for lose of life.

Conrad said yes, the fire safety issue becomes an issue if they are occupied.

Bax said the negotiations would continue as the development is developed. Any decision that is made by the Board's non-action does not include that condition.

Davis said the Board can accept the Planning Board's recommendation; the Board can modify it or can approve the recommendation with conditions. Just make sure the conditions have all the Board wants. If the Board does nothing, it would be an acceptance of the Planning Board's recommendations.

Brochey said leaving the homes empty just opens them up to vandalism.

DeCastro said the developer's proposal is requesting permission for the first phase, which is 8 homes, work with the Town and work with Mr. Martin. Martin's position is he doesn't care what the developer does, he will speak to Mr. Masters and they are not going to offer any building permits or C/O's. DeCastro will handle that on his end, as customary when there is a disagreement. Looking for approval of 8 lots, whether Masters' grants building permits, and if Martin objects, again this will addressed at a later date.

Brochey sees this, as a Board, we should be standing behind the department heads just like we stand behind the president.

DeCastro said you don't stand behind them when they are wrong, you correct the error.

Conrad does not believe the Board wants to go against Martin and does not believe the motion does. The developer would next go to the Department of State and look for a decision to see if they agree with Martin's stand on the fire matter.

DeCastro said this is a very simple matter. The issue, as he understands it, this Board is only a Fire Prevention Bureau. DeCastro is asking for permission to build the first 8 homes. As for getting a permit or C/O, Masters and Martin will address this with the developer. If they disagree with their determination, then DeCastro will go to the Department of State. DeCastro believes he is correct, and does not believe the Board is part of this discussion. Conrad agrees.

Winkley said no one wants to see empty houses, but doesn't believe Martin will allow a shovel in the ground for the houses.

DeCastro asked Masters if he will issue building permits with Martin's objection.

Masters said now that DeCastro has asked, even though he has stated it is dangerous when he speaks in public meetings, Masters feels there are a multitude of issues the fire issue being one. Personally Masters feels it will weaken the Town's case if the Board approves this with a known fire safety issue.

Conrad said this would be approved with the knowledge that no C/O's will be issued.

Masters said why put pavement in if it's not in compliance with the fire code. Conrad said it reads no C/O's would be approved until the road was fully complete.

Masters does not know if the Town wants to go with a Stormwater District or Homeowners Association. Conrad said that is not a matter for Final Plat approval. Masters said the Planning Board made it very clear that they wanted to know which way it was going to go and who was going to be responsible. The Board should make the decision now, before approval of the subdivision, whether or not the Town will take responsibility of all drainage.

DeCastro wants to correct a misconception; the drainage is done before the homes are started. The Town engineer will address the drainage with the developer's engineer, once it is constructed. A PIP is put in place. The drainage needs to be accepted, meet with State, Federal and Town Code, before the homes are built. DeCastro said the drainage is a red herring; the real issue is whether Martin and Masters are going to object.

Brochey would hate to start something like this, take a bulldozer path to the road, and not finish saying "well we started it". DeCastro said every contract has an element of good faith.

DeCastro believes as he stands here tonight, they are entitled to the 8 lots. DeCastro is willing to try to accommodate the Town's concerns and work together. Despite what Glasgow and some knuckle head attorney said, DeCastro believe he can go ahead and build.

DeCastro said all drainage will be prepared by the Town before anything is started. There will not be a drainage issue when the property is constructed, unless the engineer retires. But knowing the engineering firm, (Town's) everything will meet the code and be done properly.

The real issue is Martin's findings. DeCastro understands Martin will take the appropriate actions he deems is right for the Town.

To answer a resident's question, Savard said the drainage will be done in two phases. If the whole project is constructed, the road goes all the way through, and all lots are put in, the entire drainage system will be constructed.

If only 8 lots are put in, only phase one drainage will be constructed. Provisions have been made, as requested by the Town, to provide drainage to the rest of the parcel by putting drainage along the back. If phase two were to never happen this will allow the drainage to be constructed as was requested.

Phase one pond, phase one drainage, phase one road. Phase two pond, phase two drainage, phase two road. Savard said Phase one can stand independently on its own.

Martin said the Board can keep debating and narrowing it down. The reality is DeCastro talks of one subdivision hinging on the other, and we can't do that. Martin said this developer, with this proposal, is picking up over 1,200 feet of road to get it out to Lower River Road. It is picking up the infrastructure that has already been approved from Riverwalk. If the developer does not have the funds to put the roadway in completely, Martin doesn't even know why the Board is even entertaining this.

Masters brought up a great point; the Town keeps getting backed into a corner. Martin said if need be, it will be stopped at the PIP stage. Show the road, put it in and we can work it out. The

Town has the ability to stop this at any point. The Town is working diligently here, but it is changing week by week.

Martin said there is 1,200 feet of dead-end roadway. It can be argued back and forth, but this developer wants to use it for his subdivision to tie into. It is being made unsafe, and that has been the position for the years this has been discussed.

Blazick said she has heard a lot tonight about: we will address that, or, we will take what steps we have to take. Does anyone else hear lawsuit and litigation and attorney fees?

Winkley said the Board is concerned about this also. If a developer comes in, they meet all the requirements; it is difficult for the Board to say no. Winkley is listening to the residents but the developer has their rights also. If the developer comes in and shows the approvals/agreements, The Town is going to get sued either way. Try and pick the lawsuit were you are going to win, be least expensive. The Board has two obligations, the developer and the residents.

None of the Board members disagree with Mr. Martin. This has been discussed and discussed. Winkley would like to see the road go all the way through.

Davis said this is a modification, not what the Planning Board approved. This was presented as two phases, if phase two does not happen it ends up in a cul-de-sac. The Board can modify that if they wish, requiring the road go all the way through. Or, the Board can require a bond, that if at the end of phase one, the developer goes away or otherwise doesn't continue phase two, there would be a performance bond in place to build the road through.

Brochey asked if the developer is entertaining the idea of a bond. DeCastro said he met with the Board in executive session and it was indicated the developer is open to discussion as to how to move forward. The idea is to put the whole road in that is how the project succeeds. The problem is because of the Lewiston market, the developer would like to proceed in two phases.

Winkley said the Board is not in the position to determine what the market is or isn't. That can not be used in the Board's decision.

Davis said the Board doesn't want to be anti-developer. It is not what the developer wants to do it is what the Board wants to do. If the Board doesn't want to go the bond route, then require the road to be completed. That would be the decision, and as it has been alluded to, there are formal ways to resolve these disputes.

Or, there can be an agreement, with the developer, to extend the time-period. DeCastro does not believe time is going to change anything. DeCastro requests the Board vote on the Planning Board's recommendation.

DeCastro said developers have a right to develop their property. It is part of the Town's function to allow development. To have people who are raising concerns that are not existent, drainage, home sales, these are not concerns for the Town Board. Did the developer comply with the law, DeCastro believes they did.

Masters said if the Board doesn't make a decision on whether there is going to be a Homeowners Association or a public utility; right now the plat will get filed saying everything is public drainage easements. DeCastro said that is not correct. The plat does not deal with that issue. All the easements are public, the Town has an interest in any easement, it does not mean the Town maintains them. They are the developer's responsibility until the Town accepts the dedication. That is not an issue for today.

Masters said again, if the plat is filed and it says public drainage, without a definition, what will happen? Right now the map in Masters' office says public drainage easement. DeCastro said every subdivision map says that. Masters said that is not correct.

Ceretto said she is very uncomfortable about the road not being completed. It is understood the first 8-lots will be developed but then does the road just stop.

Parks, Ginny – 4303 Lower River Road – Parks thanked the Board for allowing her to speak. At one point there was a plan for this development that had a complete cul-de-sac on the whole property, and if this was the way it was done, it would address all concerns.

Davis believes the original cul-de-sac plan was rejected by the Town. The developer then returned with the road going through, not in one phase, but two phases. It was thought to build the road, sell a few lots, start phase two, and then complete the road. That is what is in front of the Board tonight. If phase two does not happen there is a proposed bond that will be supplied, that would create that cul-de-sac. It wouldn't be a dead-end, it wouldn't be open to further development, and it would be a permanent cul-de-sac. But that plan also does not comply with the Fire Code as interpreted by Martin.

Conrad's intent with the motion was to meet an obligation as a Town Board in dealing with this development while at the same time appreciates the findings of Pat Martin. The C/O's would be dealt with at another juncture of the process.

With due respect to the residents, Conrad agrees with Winkley's comment about disallowing development in the Town. As a Town Board, there is an obligation to treat developers fairly in the hopes of looking out for the interests in the residents.

Conrad amends his motion based on the need for a performance bond, the road continue all the way through at the end of phase one and that phase one consists of 8 single family homes, all infrastructure and roadway, with the emergency turn-around. The approval would be for just phase one.

Davis asks if this amendment/modification includes the performance bond for the road to go all the way through, but then mentioned the cul-de-sac.

Conrad said the cul-de-sac for phase one, but a performance bond to finish it if phase two does not occur.

Masters said the plan does not propose a cul-de-sac; it is T-turn around.

DeCastro said as a point of order, the Fire Code does provide for this situation. It provides dimension, size etc.....

Conrad wants to make sure this is correct. Conrad MOVED to approve the Final Plat, for phase one, as approved by the Town Planning Board with the understanding that per the Town Fire Inspector, the Town will not issue any Certificates of Occupancy's until the full length of the roadway is completely connected to Lower River Road, and phase one will consist of 8 single family homes, related infrastructure and a roadway with code compliant emergency turn-around as depicted on the plan, and a performance bond that if phase two does not occur the rest of the roadway will be constructed before

DeCastro said there is only one issue with this, the developer can only build phase two if the Town Board would come back and approve it. If the Town Board does approve phase two as designed, then there will be some extensive litigation as to issuance of C/O's.

Bax believes what DeCastro is saying is the performance bond will be conditioned upon the approval of phase two. DeCastro said the way the motion is stated, there would be no certificates of occupancy until we got to the performance bond and other issues with phase two. Conrad said this is the common way of development. One does build as you sell off lots and create revenue. It is not uncommon for it to be done this way, although uncomfortable.

Davis would recommend a two phase development, either deny it or approve it as recommended by the Planning Board or a third option, would be to approve the two phase subdivision but nothing starts till the road is completed.

Bax asked Martin if Phase one was the only thing on the table, and the cul-de-sac as proposed, and included, would that meet his approval.

Martin said this is going down a slippery slope. If there were not 34 houses already existing in a subdivision that this developer is using this road, yes the question would be easy. But there are 34 houses that are already built on a dead-end road. This development wants to come in and create and extend another dead-end condition even further. This will just compound the issues.

Bax said the concern is not necessarily the turn-around; it is getting to it in the event there is a blockage.

Winkley has asked this repeatable. Whose responsibility is it to get Riverwalk up to compliance, and no one can give an answer.

Martin said the problem is a timing issue. Codes are updated all the time. When Riverwalk was started, the current codes were not in place. If it was reversed, if Riverwalk was never developed, how would this subdivision go in?

Conrad would rather see this development start off of Lower River Road first. This became an issue due to a distant concern.

Winkley feels the Town is holding the developer hostage for an error done by a past Town Board.

Martin doesn't agree its holding him hostage. If he wants to take advantage of the ability that that infrastructure has already been put in by another development, and he is using it to his advantage, Martin does not know that he is being held hostage.

Martin feels the third option presented by Davis makes a lot of sense. Complete the roadway and then start building the homes.

Conrad MOVED to approve the Final Plat as approved by the Town Board in only one phase, with the Wolf Run roadway running from Riverwalk to Lower River Road in completion before issuing certificates of occupancy, and a letter regarding the as-built survey that the project was built as designed from the engineer on record, Seconded by Winkley and Carried 5 – 0.

DeCastro said he has no clue what the Board just approved. It sounds like the Board said no to Phase One and approved the entire Final Plat with the road going all the way through. Conrad said correct. DeCastro said that motion makes no logical sense. Conrad said there are no phases.

Brochey said the project is being approved but under certain terms.

Winkley said one phase all the way.

Conrad MOVED to rescind the previous motion, Seconded by Winkley and Carried 5 – 0.

Conrad MOVED to approve the Final Plat, as submitted and approved by the Planning Board of the Town of Lewiston, for the development to occur in a single phase, with the roadway starting from Riverwalk through the development to Lower River Road, no building permits are to be issued until the roadway is complete, Seconded by Winkley and Carried 5 – 0.

DeCastro requested a copy of the last motion prior to the next Town Board meeting so he can act on it.

NEW BUSINESS – Clerk's Correspondence

Town Hall Hours - Extended Town Hall hours will be suspended until May, 2016.

Acknowledge 30-day Liquor notice – Schimschacks

Bax MOVED to acknowledge the 30-day Liquor notice for Schimschacks, Seconded by Winkley and Carried 5 – 0.

SUPERVISOR BROCHEY

Halloween Hour Designation – October 31, 2015 from 4 pm – 8 pm

Rename Robert Moses Parkway

A proposed resolution has been received from Mamie Simonson. The resolution would like to see the name of the Parkway changed to Niagara Scenic Parkway. Simonson feels this explains the destination more correctly.

Bax understands the intent/desire to change the name, but this is larger than the Town of Lewiston. Robert Moses was a big part of Niagara Falls.

Winkley MOVED to support the renaming of the Robert Moses Parkway to the Niagara Scenic Parkway, Seconded by Bax and Carried 5 – 0. The following is the approved resolution.

WHEREAS, Tourists, visitors and the motoring public are presented signs to the Robert Moses State parkway throughout Niagara County, and

WHEREAS, The name of the parkway is not helpful or descriptive in directing tourists or visitors to their destinations, and in fact, can actually confuse the motoring public since the name Robert Moses does not explain or denote the parkway's features or purpose, and

WHEREAS, because the parkway is undergoing reconfiguration and redesign at the present time, this presents a golden opportunity to rename the parkway and make it more tourist and visitor friendly, and

WHEREAS, the ideas of a name change has received the support of 80% of the respondents to an online poll conducted by the Historical Association of Lewiston, indicating public approval for the name change, and

WHEREAS, the name "Niagara Scenic parkway" provides a logical solution and is a simple, direct and clear description which enables visitors to quickly understand the parkway's purpose and benefits,

SO THEREFORE BE IT RESOLVED, that the Town of Lewiston, New York, supports changing the name of the Robert Moses parkway to the Niagara Scenic Parkway, and

BE IT FURTHER RESOLVES: That copies of this resolution be directed to Governor Cuomo, Senator Robert Ort and Assemblyman John Ceretto, in an effort to encourage our State leaders to take the necessary actions to implement this name change as soon as possible.

Legal

On September 25th there was a water main break which required immediate attention. Seaman prepared a Resolution for the Board to consider. It finds this particular water main break an emergency under General Municipal Law §103(4). Therefore, no competitive bidding is necessary.

Bax MOVED the following resolution,

WHEREAS, on September 25, 2015, a water main break occurred on The Circle, in the Town of Lewiston, and

WHEREAS, the water main break caused damage to the Town's infrastructure, including the roadway, and threatened to continue to cause more damage if not immediately fixed, and

WHEREAS, Kandey Company Inc. is a reputable firm with the ability to address and fix the water main break and was available to respond to the site of the break in a timely fashion and did so respond, now therefore be it

RESOLVED, that said water main break constitutes a public emergency as that term is defined by GML §103(4) requiring immediate action that could not await competitive bidding procedures, and be it further

RESOLVED, that Kandey Company Inc. be engaged to address and fix the water main break beginning September 28, 2015.

Seconded by Winkley and Carried 5 – 0.

Woods at Blairville

The Town received a letter from Woods, Oviatt, Gilman LLP regarding ownership of Washington Drive and Summer Street. In 1996 these roads were not recorded with the County once dedicated to the Town.

Attorney James Bonsignore was present to represent the property owners and the contract purchasers for Woods at Blairville.

When the surveys were received from the sellers, they indicated Washington Drive and Summer Street were to have been dedicated to the Town.

The roadways were accepted for those locations. The process had gotten as far as signing and delivering the deeds, for the roadways and a couple of easements. For whatever reason, the deeds and easements were never recorded. The purchaser can't get good title to the property due to this outstanding roadway issue. One consideration back then, was the roadways were to be dedicated, no zoning issues were to arise as a result of the dedication of the roadway, and the area covered by the roadway was to be removed from the assessment rolls and not to pay taxes.

Because those deeds were never recorded, Bonsignore said his client's predecessor has been paying taxes on what is otherwise now, by operations, a public highway. Bonsignore is not here to seek any reimbursement for the taxes; it simply needs to be cleaned up so there can be a clean purchase of the property.

Bonsignore is requesting the current property owner execute a new deed, new easements, clean up the error and get this on the books. This will ensure the roadway belongs to the Town. Under Highway Law Section 189, when there is a roadway used by the public and is maintained by a municipality for a period of ten-years or more, it automatically becomes a public highway. This time period has been exceeded.

Masters has reviewed the Woods at Blairville files and what Bonsignore is saying is correct. Masters said on July 23, 1996 there was a Special Meeting and at that meeting in lieu of the recreation fee, the developer gave the Town 11% of the property as greenspace to be totally maintained by Woods at Blairville. This was never recorded either and is not reflected on the tax map.

Sidewalks were to be installed on the roadway out as a condition of approval. There is also an outstanding pond issue. Masters is not quite sure what that is; it is not clear in the documents. These three items were conditions of approval and they have not been done.

Seaman thought at first the Town had never accepted dedication, but there are minutes stating the road dedication have been accepted. So at this point it is just a matter of recording the deed.

Masters questioned the Board "what is to be done with the outstanding conditions that were to be done as part of the dedication?" Bax believes them to be dead.

Bonsignore said when dealing with an issue like this, the substantial passage of time, unless and until conditions of approval are met, the project can't receive building permits, C/O's or dedications. The Board did accept dedication, which to Bonsignore it is the fact of proof that the conditions of whatever the approval were, were met.

This is an operating enterprise. This project has been developed, constructed and occupied for a better part of decade and a half. Whatever those conditions may have been at the time, the present documents show that any conditions that were imposed on the project have been met otherwise none of these other steps could have been taken.

Winkley said this is another incident where things are not being completed. Legacy Drive and Joe Deck's properties also.

Masters suggests not conditionally approving anything.

Winkley asked who is responsible to file the deed with the County. Bonsignore said it is the applicant's obligation to provide the documents to the Town for acceptance and recording. What happened here is not clear.

Bax MOVED that the current owners of Woods at Blairville file all appropriate deeds with the County Clerk's office, reflecting the dedication and acceptance of Washington Drive and Summer Street, and authorize the Supervisor to sign all necessary documents to factuate the road dedications that was completed in 1996 conditioned on Attorney approval, Seconded by Winkley and Carried 5 – 0.

Engineering

Jarrell said a notice to proceed was issued for the Lauren Court project. The contractor has 60-days to complete the work. When the time comes, CRA will work with the Town to notify residents that will be impacted by the work.

Brochey said the contractor plans on starting November 1st and complete by November 20th. Police should be notified because there is a chance residents will not be able to get into their driveways and will need to park on the street. Previte will notify officers.

The notice to proceed has been issued for the roof at the Water Pollution Control Center. Contractor will have 90-days to complete. The contractor is already on site.

The Senior Center roof is awaiting the Supervisor's signature on the contracts. The notice to proceed should go out tomorrow.

Finance

Resolution / Signatories – Host Standing

The following resolution needs to be approved for the Greenway Host Committee account.

Winkley MOVED to designate Dennis J. Brochey, Town Supervisor, Mark J. Briglio, Deputy Supervisor and Martha N. Blazick, Town Finance Director as signatory to the Town of Lewiston Host Community Standing Committee bank account at First Niagara Bank, Seconded by Bax and Carried 5 - 0.

Discussion on the Town Historic Preservation Commission and need for members.

COUNCILMAN BAX

Bax said Dashineau is looking into an ash tree issue on Mary Lane.

Gerald Burnett has submitted his letter of resignation as van driver at the Senior Center.

Bax MOVED to, with regret, accepts Gerald "Skip" Burnett's retirement as of September 18, 2015, Seconded by Winkley and Carried 5 – 0.

COUNCILWOMAN CERETTO

Nothing to report

COUNCILMAN CONRAD

Nothing to report

COUNCILMAN WINKLEY

Winkley MOVED to accept, with regret, the resignation of Court Officer Michael Torrie, as of September 9, 2015, Seconded by Bax and Carried 5 – 0.

Winkley MOVED the addition of Max Jacobson and Steve Stinson to the Upper Mountain Fire Company Roster, Seconded by Bax and Carried 5 – 0

Winkley MOVED to grant a waiver to Upper Mountain Fire Company for a sign to advertise their Open House - October 3, from 10 am – 3 pm, Seconded by Bax and Carried 5 – 0.

Winkley MOVED to hire Eric Corson and Brian Grear as Part Time Police Officers, Seconded by Conrad and Carried 5 – 0.

The Town received a letter from Lee Simonson requesting the Board declare the second Monday of October as Indigenous Peoples Day.

Winkley MOVED to the following Resolution, WHEREAS, the Town of Lewiston recognizes Indigenous people have lived upon this land since time immemorial and values the progress our society has accomplished through the contributions of the Indigenous peoples' culture, and WHEREAS, natives and non-natives have shared this community for hundreds of years and the Indigenous people have provided us friendship, guidance and protection, and WHEREAS, the idea of Indigenous Peoples Day was first proposed in 1977 by a delegation of Native nations to the United Nations – sponsored International Conference on Discrimination against Indigenous populations in the Americas, and WHEREAS, other cities and communities, locally and around the Country, have declared their own Indigenous Peoples Day, including the Town of Newstead and Village of Akron in Erie County, and Seattle, Washington, Minneapolis, Minnesota, South Dakota also recognizes the second Monday in October as Native American Day, an official State holiday, and WHEREAS, the Town Board of Lewiston, New York wishes to recognize Natives with a day to celebrate and honor Indigenous people to better reflect the experiences of Indigenous people and to hold in esteem their roots, history and contributions, and WHEREAS, the Town of Lewiston wishes to preserve and promote the history and culture of all Indigenous people and believes the time has come to observe a yearly holiday in their name. SO THEREFORE BE IT RESOLVED, that the Town of Lewiston declares the second Monday in October as Indigenous Peoples Day in the Town of Lewiston from this day forward, and that it encourages continued recognition, appreciation and celebration of our goodwill and friendship with our local Indigenous Peoples.

Seconded by Bax and Carried 5 – 0.

Brochey MOVED to enter into Executive Session for discussion of employment of a particular individual, Seconded by Bax and Carried 5 – 0. (8:40 pm)

PRESENT: Supervisor Brochey; Councilmembers Bax, Ceretto, Conrad, and Winkley; Deputy Supervisor Briglio; Town Attorneys Davis and Seaman and Police Chief Previte

Discussion on employment of a particular individual.

Bax MOVED to exit Executive Session, Seconded by Conrad and Carried 5 – 0. (9:16 pm)

No actions taken

Bax MOVED to adjourn the meeting, Seconded by Ceretto and Carried 5 – 0. (9:17 pm)

Respectfully Transcriber and Submitted by:

Donna Garfinkel
Town Clerk