

Regular Town Board Meeting

June 22, 2015

6:00 pm

PRESENT: Supervisor Brochey; Councilmembers Bax, Ceretto, Conrad and Winkley; Deputy Supervisor Briglio; Town Attorneys Davis and Seaman; Building Inspector Masters; Town Engineer Lannon; Finance Officer Blazick; Highway Supt. Janese; Chief Op. WWTP Ritter; Recreation Dir. Dashineau; Sgt. Previte; 3 Press; 8 Residents and Clerk Donna Garfinkel

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

AGENDA APPROVAL

Agenda additions: Brochey: water meters, justice court grant, legal fees, banking and Niagara Gorge Trail Project; Winkley: police personnel.

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

Niagara Gorge Trail Project

Bernie Rotella, Town Grant Writer and Jeff Lesback of Hatch Mott MacDonald Design updated the Board on the progress the Gorge Trail is making.

Rotella said two grants have been received. One is a congressional appropriation; the other is Greenway monies. Hatch Mott MacDonald was hired for the design process. There are two alternatives; one, the path is west of the Robert Moses and the other it is on the east.

A meeting has been scheduled with New York Power Authority, New York State Office of Parks and Department of Transportation. These are stake holders for property the path passes through.

Lesback said the three (3) State agencies involved have jurisdiction over land and facilities in the corridor. There have been many discussions on the benefits and drawbacks of the alternatives. The preferred alternative is to have the pathway on the west side. That will make it truly a world class pathway. There will be great views of the Niagara Gorge, the river, the Village of Lewiston and Canada. It is proposed to place the pathway immediately adjacent to the south bound travel lanes. That will involve guide-rail replacements, railing placement, and possible over-looks.

As it stands, the plan calls for the Office of Parks to utilize the roadway, being responsible for the pathway from Devil's Hole to the Power Project dam. This road is currently closed. They would be responsible for doing all the work to get the path to the damp. NYPA has agreed to maintain the access across the dam.

On the other side of the dam, the DOT has agreed to take over the design and construction of the pathway from the dam to the Village of Lewiston.

Once the path reaches the bottom of the Escarpment, the access road at Artpark will be used to get to the streets of the Village of Lewiston.

This morning, a draft design report was delivered to the DOT. A public information meeting will be held. It is hoped construction will begin in 2016.

Rotella said this is a very important project. In Niagara County there are two missing links; one is Wheatfield, the other is Lewiston. It is very exciting that this portion will be completed.

Brochey asked about the financing of this. The Town contributed \$160,000 with these dollars coming back to the Town from the DOT. Rotella said the Town will be reimbursed from the DOT at 80%. The grant was for \$1.8 million for design and construction and the match will be taken from the Greenway funds.

Previte questioned if there will be additional parking. Rotella said what there is, is what there will be. Lesback said the DOT will do the final design and they are interested in some type of pull-off. The existing road will be used from Devil's Hole to a certain portion then there will be an off-road path.

Janese questioned the maintenance of the path. Snow removal in the winter, etc... Lesback said the agreement is the Town will be responsible for the maintenance once the project is constructed. It is not believed this will be a winter use.

Lesback is hoping to hold a public information meeting next month. The DOT needs to review the design report; it will then go to the other stakeholders for their review.

TWO-MINUTE STATEMENT - RESIDENTS

Latko, Martin – 1680 Ridge Road – Latko spoke on behalf of his mother. A drainage ditch located on the edge of her property has backed up and caused flooding. Latko approached the Highway Dept. in 2012 and was told they will look into the matter. To date, nothing has been done. In March 2013, a letter was sent to the Town, and still nothing done. It has been past practice to have this done.

Janese said he spoke to Latko this morning. It is private property and drains out on to a State highway. If it is part of Town drainage, the Town can address it. Typically if it comes from private property, on to a State road, it's not.

Bax recalls the letter and apologize for it not being addressed. There are a number of concerns when there is a drainage issue.

Mary Proietti – 1348 Ridge Road – Proietti has lived in Lewiston her entire 80 years. There are dump trucks hauling clay. Proietti's house is covered with clay dust; chair covers, table covers, windows, car, etc... She can't leave windows open. She is breathing it. This is the country, not Buffalo Avenue. They are not stopping at the stop signs. Proietti has seen a trucker try to beat five cars, so he went right through. These trucks are an accident waiting to happen.

Ceretto asked if they are required to cover their trucks and water them down. Proietti said the only people that cover their trucks are Modern and they do not water them down.

Brochey has been to Proietti's house and has seen the dust. Brochey has spoken to a State Police officer, who believes it is more from the truck, than from the clay itself.

Winkley said something is getting into Proietti's house, if coming from the trucks it needs to be addressed. Winkley requests Previte have the Police look into it.

Proietti said they are speeding; they are not doing 50 mph. Previte said he has witnessed this himself. Brochey has followed trucks going 60 mph and has had a close call at the intersection at the Town Hall.

It was questioned who patrols the washing of the trucks. Winkley said the trucks need to be stopped. Davis suggested contacting the DEC regarding mining violations, State Police or DOT for State violations and local police for traffic violations.

Previte said the Town has a Commercial Officer trained in this. This could be arranged.

TWO MINUTES STATEMENTS – DEPARTMENT HEADS

Highway Superintendent Janese received three or four complaints regarding trees in the greenspace on Scovell Drive. The down trees need to be removed and Janese is not sure where this stands. The Town of Lewiston owns the property.

Bax said the reality is, the trees are down and in some circumstances are a danger to public health. The Town has been addressing this for quite sometime. A policy needs to be put into place to address this. Possibly professionally evaluate and have the trees systematically taken down.

Janese said he had "his person that does tree work" take a look through all these greenspaces. The one where Janese thought there was a matter of life or property, simply vanished, he cut them down himself.

Bax suggested inviting the residents to a Board meeting. Janese to place flyers in resident's doors notifying them to attend. Bax asked this be placed on his July agenda.

Ceretto asked if residents show interest in doing this themselves. Winkley said some want the property, some don't.

Lannon questioned if it is okay for the owner to take care of the greenspace. Winkley said yes. Masters asked, if he had Town greenspace behind his property, the Board wouldn't care if he went with a chain saw and cut all the trees off the property. Winkley said yes they would care.

Janese still addressing the disassembling, inspection, measuring and reassembling of the Muck Pump.

Residents have been asking Janese for a time-frame update on Riverwalk.

APPROVAL OF MEETING MINUTES

Conrad MOVED to approve the RTBM minutes of May 28, 2015, Seconded by Bax and Carried 4 – 0. (Winkley abstained)

Conrad MOVED to approve the Work Session meeting minutes of June 8, 2015, Seconded by Ceretto and Carried 5 – 0.

POST AUDIT PAYMENT

Conrad MOVED to approve the following Post Audits; Blue Cross & Blue Shield - \$11,640.92; Key Bank - \$25.00; Lewiston, Village of - \$15.00; Niagara Falls Water Board - \$580.00; NYS Teamsters Council - \$ 34,502.37; Reinforced Concrete - \$4,280.00; Sam's Club - \$3,254.68; Staples - \$1467.19; Time Warner - \$235.94; United States Treasury - \$172.64; US Postmaster - \$144.00, Seconded by Bax and Carried 5 – 0.

OLD BUSINESS

Long – Water Bill

Ritter has no information. Will address at next meeting.

Clay Mining Truck Issue

Brochey distributed photos of trucks traveling on Ridge Road. Brochey will contact the DEC and the Niagara County Health Dept. to organize a meeting to address residents concerns.

Winkley questioned if Masters can issue a summons for the dust issue. Winkley believes Masters can enforce Town Code regarding dust. Masters said he doesn't have a clear answer on whether the 1987 Town Code is enforceable, and to what degree.

Davis said the State Environmental Conservation law pre-empts local codes about the activity of the mine. The Town certainly has the ability to restrict it all together with zoning. The Town is limited in what it can enforce; ingress and egress, public thoroughfares, routing.

Bax questioned if keeping the trucks clean can be dealt with. Davis said if they are Tug Hill mining trucks, they have been contacted and asked to do a better job with cleaning of the trucks coming out of the mine.

Masters said it is both, Tug Hill and Mawhiney. This is on the back burner because Masters is waiting for a clear answer on what, of the 35 items, in the Town Code can or cannot be enforced. He is not going to step on the DEC if what he is telling them is unenforceable. Complaints are received on a daily basis; dust, noise, shaking of homes, can't open their windows.

Davis is not sure if Masters is the right person to enforce, it seems to be more of a DOT issue. If a truck is traveling the road and it is not a safe commercial vehicle, this is the DOT.

Winkley said there should be 200-feet of paved road exiting the mine. Masters said they are required to have a stabilized construction entrance of stone, and prior to that, 200-feet of asphalt. By the time the truck enters the road the truck should be clean. There should be a water truck wetting down the road and spraying trucks off. Winkley believes this can be enforced by Masters.

Masters said once a truck is on the road, it is not his responsibility. Winkley said someone should be there keeping that portion of the road clean and rinsing off the trucks. Masters asked if this is not so, does he then violate them per Lewiston Town Law. Winkley said yes, Masters has the authority to enforce that regulation. Masters does not want it to be said the Supreme Court said he can't do this. Winkley does not believe Davis ever said Masters could not enforce these issues.

Masters said there is an unresolved issue with the unpaid application fee by Mawhiney. The Board also needs to determine if the past fees should be paid by Mawhiney. Davis has provided them with a permit and asks if it has been submitted. Masters said no.

Davis said the application fee has been paid three times, but the Town has never cashed the checks.

Bax said the DEC has the company pay into a remediation fund. These dollars are there to help remediate these types of problems. Bax believes the DEC would agree with the Town in taking care of these items.

Recycling Totes

Bax has not had an opportunity to contact Dawn Timm of the Environmental Commission. He will report back at the July meeting.

Pay increase – Kreps

The Town Clerk is requesting an hourly increase, retroactive to February 23, 2015. Seaman said the Board can not give retroactive pay, but can approve a \$1.50/ hour increase. The retroactive issue was researched and the Comptrollers opinion distributed to the Board.

Brochey said Kreps deserve the increase. Her duties have increased since her hire.

Winkley MOVED to approve a \$1.50/hour increase for Linda Kreps, starting June 23, 2015, Seconded by Conrad and Carried 5 – 0.

NEW BUSINESS

Item No. 1 – Sewer bill reimbursement request – Fuller

Winkley MOVED to table pending receipt of the pool repair bill, Seconded by Ceretto and Carried 5 – 0.

Item No. 2 – Pathway from Lewiston to Niagara Falls update requested from resident

Clerk to forward minutes of tonight's presentation from Rotella and Lesback.

Item No. 3 – Town sponsoring a Free Rabies Immunization Clinic

The Clinic will be held at the Town highway garage on July 11th from 9 – 11. The Dog Control Officer will be present to license dogs and answer questions.

SUPERVISOR BROCHÉY

Land Conservancy – Smith requested to be removed from agenda.

Health Insurance reimbursement – Rizzo

A letter was submitted requesting the Board waive the 90-day reimbursement requirement for a medical insurance payment.

Winkley MOVED to approve the payment to Digital Imaging Group in the amount of \$760.80, Seconded by Bax and Carried 5 – 0.

Water reimbursement payment – Gambino

Brochey discussed this with Water Clerk Norwich. The water bill was estimated too high, the next month the bill was reduced. Once calculated, it was determined that Gambino was getting more reduced than should be.

Winkley MOVED to table to have Attorneys review, Seconded by Ceretto and Carried 4 – 0.

Sanborn Fire Company – Tax exempt designation

The Sanborn Fire Company is purchasing two (2) fire trucks and is requesting the Town designate Thomas Carney, President of Sanborn Fire Company to act as Hearing Officer regarding a Public Hearing being held for the funds.

Winkley MOVED to designate Thomas Carney, President of Sanborn Fire Company to act as Hearing Officer at a Public Hearing being held for funds for two (2) fire trucks, Seconded by Bax and Carried 5 – 0.

Niagara University Crossing Concern

Brochey received a letter from a professor at Niagara University regarding existing unsafe conditions at the intersection of Lewiston Road and Hyde Park Blvd. Brochey contacted Dave Mallon of the DOT. Mallon will contact the professor to discuss the issue.

Bax agrees this is a dangerous intersection. Niagara University students cross to get to Devil's Hole and the Falls. Anything they can do would be helpful.

Winkley MOVED to forward a request to the DOT to perform an investigation of a possible crosswalk at Hyde Park Blvd and Lewiston Road, Seconded by Bax and Carried 5 – 0.

Brochey offered to work with the DOT, to see if Lewiston can help.

Legal

Lewiston received a letter from Office of the State Comptroller regarding the Town Management of Joseph Davie State Park report. The Town responded to the audit in February and it was believed to be sufficient. The response to the audit is voluntary, and it is stated in the law that the municipality may in its discretion respond.

Davis and Seaman have drafted a Corrective Action Plan as requested by the letter. Davis requests the Board authorize Brochey to sign. The Action Plan reiterates the previous response that the Town is accepting the recommendations, and outlines what has already been done to address the issues.

Bax MOVED to authorize the Supervisor to sign the Corrective Action Plan as drafted by the Attorneys, Seconded by Winkley and Carried 5 – 0.

Davis received notice today that a tentative agreement has been reached with CSEA and is being sent to the membership for a vote. It is what has been previously negotiated and discussed with the Board. Once signed by them, it will come back and be presented to the Board.

In regards to the Teamsters, Town Hall employees, Davis received an e-mail from a Teamster representative asking the Town to begin bargaining. Davis spoke with Mr. Doyle, and Doyle does not believe he was authorized to negotiate on behalf of the Town for this union.

Winkley MOVED to authorize Brian Doyle to negotiate on behalf of the Town of Lewiston with the CBA Union (Town Hall Employees), Seconded by Bax,

Bax asked if the Attorney or any Town Board member will be part of the discussions. Davis said it will be handled like the CSEA. If Doyle has any questions or concerns during the process, he will contact the Board.

Carried 5 – 0.

Seaman requests an Executive Session for consultation with Attorney to discuss a matter concerning the employment of a particular individual.

Engineering

Brochey has been working with Lannon on the Senior Center roof. Brochey spoke with Mark Schwartzberg from NYPA regarding this. Schwartzberg is in agreement that this meets the criteria for hydro-power money. A hyper-insulated ceiling will cut down the cost of heating and air conditioning the building.

Lannon said there are four air-conditioners on the roof. One is new (2010), and the other three are past their useful life.

Brochey recently asked Blazick to review the hydro-power money and where it stands. Some of this money does have to go back to residents. There is approximately \$2.4 million, with \$800,000 being used for refunds, plus some utilities to be paid.

Blazick is reviewing and understanding the workings of the hydro-power money. So these figures are tentatively what they are. It is not clear as to how much is accounted for, with what the Board has already voted to spend. If everything was done correctly, this is the amount remaining. The NYPA amount received last month was very low compared to what has been received. It is approximately 1/4 of what it was the month prior.

Seaman said a very specific motion was passed by the Board, as to how these dollars are to be used. There are certain budget and financial journal entries that need to be made to get this adjusted. According to the numbers presented when Mr. Kloosterman was Finance Officer, the Town has used up a lot of, if not a majority, of the Town's allocation. Seaman offers to sit with Blazick and work on this.

Lannon said the roof portion, at the Senior Center and the WWTP, are ready to go out to bid. The estimated cost for three new HVAC units, installed, is \$40,000 - \$50,000. Lannon understands there is a financial impact but there is also a calendar impact for the roof. It is recommended the roof and HVAC be done at the same time.

The Board asked Lannon to hold off. Masters asked what the drop-down date is for the roof. If not done before fall, the roof needs to be patched. Lannon suggests a decision be made by the July Work Session.

Lauren Court Curb – Lannon said this bid is ready to be published. Draft sets were given to Masters and Janese and neither had comments.

Bax MOVED to authorize the Engineer to go out to bid for the Lauren Court project, Seconded by Winkley and Carried 5 – 0.

Joe Davis – Lannon has been corresponding with NYS Parks and is hoping to have information on the easement by the end of the week.

The asbestos demolition project is complete. The project came in \$4,400 under budget. There was a live wire left on the property. Current Electric was called to shut it off.

Finance

Blazick spoke of two invoices that need to be submitted under legal. If the known expenses are taken from the account and with the anticipated fees to be paid, there will \$1,000 remaining in the budget for the rest of the year. Blazick wants the Board to be aware of this.

Bax recalls when this budget has been zero. Blazick said that is true, the only problem is the Board is dealing with this year's budget. The options are not clear for this, but it is a problem. The Board just spoke of hiring an attorney for the union. This money is not in the budget.

The Justice Dept. received a \$45,000 grant, awarded in July, 2014. At that point ½ of the grant dollars were paid to the Town and put into revenue. A bill from New York State Industries for the Disabled, a conduit of Biel's Documents has been received. Once paid, the Town will be reimbursed the remaining half. The Town will receive the total; it just was not accounted for correctly last year.

Blazick requests the Board authorize payment of \$45,000. The Town will be reimbursed by the end of July. Blazick believes the owed dollars should come from Retained Earnings. Winkley asked if this was an accounting error last year. Blazick spoke with Pat Brown, and it was believed the money that was received was from a previous grant. The revenue should have been deferred, so the revenue could match the expense, and it wasn't.

Bax MOVED to authorize Blazick to pay New York State Industries for the Disabled \$45,296.20, Seconded by Conrad and Carried 5 – 0.

The Town is changing its depositor to First Niagara Bank. Currently when a wire-transfer is done, Barb Cich is the authorized verifier of the transfer. Cich needs to be appointed for First Niagara Bank.

Bax MOVED to authorize Barb Cich to be the wire-transfer verifier with First Niagara Bank, Seconded by Conrad and Carried 5 – 0.

The Town purchased approximately \$70,000 worth of water meters. There are approximately 60 meters remaining. The Town needs to purchase more. The cost for meters is not in the Water Dept. operating budget.

Blazick has three possible accounts which are Capital Accounts. It is not clear what these are for. H-81 - Master Sewer Meters balance of \$67,519.94; H-82 – Town of Lewiston Other Meters balance of \$44,957.98; H-86 – Water Infrastructure balance of \$22,055.63. These accounts have had no activity since January, 2010.

Bax asked if a motion is necessary. Blazick said no, the money is there, just want to confirm the use. Meters to be purchased out of H-81.

Resolution accepting the Town's Financial Reports

Brochey MOVED to approve the Financial Reports prepared by Brown & Co. for Tax Collector, Justice Courts and the Town Clerk's Department and direct the Clerk to forward a copy to the Office of the State Comptroller and the New York State Court Office, Seconded by Bax and Carried 5 – 0.

COUNCILMAN BAX

Riverwalk Barricade Removal

A letter was received from the attorney of the property owner which states the property is private and feels the Town has created a hazard by opening the roadway. The Board acted on the recommendation of Fire Inspector Patrick Martin. Davis to reach out to Martin and report back at the next meeting.

Retirement of David Harvey – Harvey has 43-years of dedicated service to the Town.

Bax MOVED to regrettfully accept Dave Harvey's retirement letter, Seconded by Winkley and Carried 5 – 0.

The Environmental Commission requests a Local Law be created to establish an Escarpment and Water District. This will provide additional protection on the escarpment and riverbanks in respect to disposal of grass, uses of the land. Bax refers this to the Attorney's for their review.

284 Agreement – Janese provided the Board with the Agreement which has been submitted on the form that was prepared by Attorney Seaman.

Blazick questions the portion of the agreement that states “this may be subject to change at the discretion of the Highway Superintendent with funds used for any and all Town roads”. Is this statement on the provided Agreement? Janese said no.

Bax said it has been modified to read: “To pave and repair such highways, sluices and culverts that are in most need of repair in the discretion of the Highway Superintendent”.

Bax MOVED to approve the Agreement as drafted, Seconded by Conrad and Carried 5 – 0.

Janese said he went to Riverwalk this morning. Someone has moved the Town cones, the road has been cleaned up and stones added.

COUNCILWOMAN CERETTO

Nothing to report

COUNCILMAN CONRAD

Raby – Filing with Niagara County Clerk’s Office

On a previously approved one-lot subdivision Raby didn’t file the necessary documents with the Niagara County Clerk’s Office within the required 90-days. Raby is requesting the opportunity to forward these documents now.

Davis reviewed the subdivision law. This 90-day requirement deals with major subdivision, but is silenced under minor subdivision. Something needs to be filed; Davis suggests the Board do a reaffirmation of the application.

Winkley MOVED to reaffirm Raby Subdivision – SBL# 89.00-2-11.211 as originally filed in 2007, Seconded by Bax and Carried 5 – 0.

Cell Tower Fees

The Tower Committee met. The Town has received letters from cell tower owners stating the fees are illegal, and inappropriate. The Committee submitted the following recommendation:

Based on discussions with the Tower Committee on June 17, 2015, the Tower Committee is recommending the Building Department incorporate quarterly Tower and Collocation inspections in the Town of Lewiston. Each Tower inspection will cost \$80 with an additional \$20 per Collocation on the Tower. Violations for each code infractions will carry a fee of \$180 to cover administrative and follow-up inspection costs.

The existing code, Chapter 22B-4-A(1)(a), reads as follows:

The application fee for the construction of a communication tower/or similar facility shall be \$1,500. This is the basic fee. There is an annual renewal fee of \$1,000. The application fee for any collocation shall be \$500, with an annual renewal fee of \$1,000. Permit fees are nonrefundable and may be changed from time to time by Town Board resolution.

The Tower Committee suggests the chapter be amended to not include actual fees, and the fees to be set at the annual reorganizational meeting by the Town Board.

The Committee would like to move forward updating the law. Davis raises the concern that there is case-law, that if the Town can't support these fees, it can be struck down.

Conrad said the companies have been pushing back for years; this is a good step forward because this is what they have been asking for. Davis asked if there was more data to back this up, not just this memo. Conrad said yes, this is just what was produced after the Committee's meeting.

Masters requested to create a detailed list of what will be done at each inspection. Conrad to forward back-up data to Attorney's for them to move forward.

COUNCILMAN WINKLEY

Resignation Police Dept.

Nicholas Condi was to resign July 1st, due to scheduling with his new employer; he will resign June 15, 2015.

Winkley MOVED to accept the resignation of Nicholas Condi effective June 15, 2015, Seconded by Bax and Carried 5 – 0.

Winkley MOVED to accept the resignation of Jeffery Bissell effective June 18, 2015, Seconded by Bax and Carried 5 – 0.

Winkley MOVED to hire Nicholas Cofield and Vincent Paonessa to fill the two positions, Seconded by Bax

These two officers work part-time in the Town of Niagara. This is a great opportunity to share costs of vests, training etc...

Carried 5 – 0.

Sanborn Fire Company – Removal of members

Winkley MOVED to remove the following from the Upper Mountain Fire Company roster: Ball, Culler; Leffler, Samuel; Masello, Theresa; Munday, Charlotte; Olejar, Kevin; Semski, Bryan; Bradley, Sharon; MacDougall, Darren; McArdle, Ian; Nedza, Kimberly; Rice, Katelyn; Sullivan, Brianna, Seconded by Bax and Carried 5 – 0.

Sanborn Electrical Sign

Winkley said the State no longer permits signage on State right-of-ways. Assemblyman John Ceretto is investigating working something out. If this can't be worked, the sign may be placed at the Sanborn Historical Society Farm Museum.

Bax request funding for the Highway Dept. and road patchwork be added to the July 13th Work Session agenda.

Winkley MOVED to enter into Executive Session for discussion concerning the employment of a particular issue, Seconded by Conrad and Carried 5 – 0. (8:07 pm)

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

Issues Discussed: Matter concerning the issue of a particular employment.

Winkley MOVED to exit Executive Session, Seconded by Bax and Carried 5 – 0. (8:50 pm)

No Action Taken.

Bax MOVED to adjourn the meeting, Seconded by Ceretto and Carried 5 – 0. (8:52 pm)

Transcribed and Respectfully Submitted by:

Donna Garfinkel, Town Clerk