

Town Board Meeting

January 22, 2007

6:30 p.m.

Present: Supervisor Newlin; Council Members Bax, Edwards & Palmer; Tn. Atty. Leone; Deputy Tn. Atty. Boniello and Town Clerk Brandon.

Excused: Councilman Johnson.

The Supervisor opened the meeting at 6:40 p.m.

Edwards MOVED to enter into an Executive Session for purposes of pending litigation. Seconded by Palmer. Carried 4-0.

Time: 6:41 p.m.

Executive Session:

Present: Supervisor Newlin; Council Members Bax, Edwards & Palmer. Attorneys Leone & Boniello*. Mr. Tantillo representing Insurance Co.

Discussion:

1. Presentation by Mr. Tantillo re: Batrouny vs. Town of Lewiston.
2. Claims/Funds with ongoing drainage claims and potential claims.

Motion by Edwards, Seconded by Palmer to exit Executive Session and reconvene. Carried 4-0.

Time: 7:25 p.m. *Minutes taken by Deputy Tn. Atty. Boniello.

The Supervisor reconvened the Town Board Meeting at 7:26 p.m.

Also Present: Adm./Op. Lockhart; Eng. Lannon; Chief Winkley; Finance Officer DiRamio; Bldg. Insp. Skurski. 3 press reps and residents.

The Pledge of Allegiance was recited. The Supervisor asked that we remember in our silent reflection, John Stoyell a former member of the Environmental Commission and the founder of our recycling program in the Town. Also, the family of Gern Jaeger, Senior Van Driver on the passing of his wife.

RESIDENTS:

Kevin Myers of 521 Pletcher Road. I want to remind the Board about the discussion regarding the trees on the lot line behind my home. We have talked with Eng. Britton about this. I understand that they want to put a model home up. (Note: This issue will be discussed)

Edwards asked if Mr. Myers had any objection to the trees being planted on his property.

K. Myers: Originally, we had hoped for some type of buffer would be provided by Ryan Homes and Joseph Deck on their property behind our lot. There were changes to the R-1 of 75'. They did put new trees on the roadside.

Palmer: Is there a written agreement to between Mr. Deck and you & the other neighbors?

K. Myers said that the Board minutes reflect that there would be screening provided.

Newlin stated that an agreement had been worked on last year and there are some stipulations.

Lannon: It was a resolution and amended and filed for final plat approval for Phase 2B. Paragraph C states that accordingly to the original landscaping plan, blue spruce trees, at least 6' tall be put in a triangular pattern along the southern border of lots #303 & #304 as soon as the planting season is possible in the spring of 2006. This along with the grading has been completed on those 2 lots. The trees remain to be planted. It would not be possible given the weather to plant until the spring of this year.

Newlin: I think it will be worked out with a meeting of Mr. Britton, Mr. Lannon, Mr. Myers and the Ryan Homes representative.

K. Myers stated that there is only 15' from the lot line to the first house. We were told that the homeowner may cut the trees down. We asked if they could put some kind of agreement and they said they couldn't so they would put it on our lots and we would not have to worry. I don't think there is enough room.

Bax questioned why that is your problem. According to the document it should be on Mr. Deck's property.

Newlin: Mr. Quaranto stated to the Building Inspector that he preferred that the trees not be on the developers' property. I think you should meet with Mr. Britton or Mr. Quaranto to make sure that you all in agreement.

K. Myers said we did not get much of what we asked for and we were not unreasonable.

Bax said he appreciated his persistence.

Kevin Schultz of 529 Pletcher Road. I was told that if I didn't accept them on my property they would not be put up at all.

Newlin said that Mr. Quaranto spoke passionately about having the trees on his property, but when you came to us we were surprised. Mr. Quaranto said one thing and you reflected another concern.

K. Schultz: I don't want trees on my property but I have accepted it.

Newlin said you will have a chance to bring up your concerns at this meeting with Mr. Britton. The Board will not be taking any action tonight.

Daniel Kilmer of 5109 Dana Drive. As Chairman of the Cable Comm., I have several complaints that Time Warner doesn't seem to be the friendliest company that has moved into our area. I think the Board should consider an ad to be written in the *Niagara Gazette* or the *Sentinel* asking residents to either write in or comment when the Board decides to discuss this issue. A supervisor in a neighboring town intends to take the cable company on. This Board has to tell me where you want to go and this way maybe easier. I thought that an ad asking if the residents are happy with the service that is being provided and maybe with feedback as to where we should go with our re-licensing agreement.

On the Riverwalk issue, the reason that we thought the trees were going to be put on their property was because once Mr. Deck sells the property and it is no longer his the trees could come down.

AGENDA:

Newlin: We will be going into Executive Session for pending litigation.

Palmer: The Tennessee Gas (Tenneco) issue.

Bax: A letter from Timothy Henderson regarding a ROW on property owned by the Town and an adjoining property.

Edwards to take care of Mr. Johnson's agenda items.

Bax MOVED to amend the Agenda as presented. Seconded by Palmer and carried 4-0.

MINUTES:

Bax MOVED to approve the minutes of 12-28-06 Final Audit/RTBM; 1-04-07 Reorganization Mtg. and 1-08-07 Worksession. Seconded by Palmer and carried 4-0.

POST AUDIT:

Edwards MOVED to approve payment of the following Post Audits: Home Depot \$50.95; HSBC Bank USA N.A. \$52.99; Office Max-(HSBC Business Solutions) \$1,852.08; Office Max-(HSBC Business Solutions) \$203.70; Sam's Club \$170.70; NYS Unemployment Insurance \$201.42; Valley Fab & Equipment Inc. \$12,588.02; Niagara Gazette \$185.64; Ford Motor Credit \$8,248.13 & Ford Motor Credit \$8,395.11. Seconded by Bax and carried 4-0.

OLD BUSINESS:

Association of Towns – Resolutions 1-14 - 2007.

Newlin stated that we will vote on them at the Work Session on Feb. 12, 2007.

TABLED ITEMS:

Riverwalk Phase 2C – Model Home Permit

Palmer: If there was a resolution passed which required the developer to meet certain criteria and accepted to do so, it is my opinion after talking with the residents that we should wait until they have satisfied the criteria before we permit them to build a model home or at least satisfy the desires of the residents by a form of MOU. This Board has already determined that there are to be held to certain criteria and they have not done so. I am not going to vote for anything that is going to permit their project to go forward.

Newlin: The stipulations that Mr. Lannon referred to previously last year as to what the developers needed to do to make sure that the project go forward has not been taken care of. I want to thank you (the residents and Mr. Quaranto) for doing that for bringing it to our attention. We would have assumed that things had been moving along which they have not. Until you are satisfied that you see some progress and it is a two-way street, I don't see any reason why the Board should move forward with approval. Maybe a new MOU is in order with dates of completion is something you (the residents) should consider.

Bax: Unfortunately, the yoke has been around your neck and you have done a lot of the legwork. This Board supports you enormously and we are sending a message to the developers that people that are neighboring your development we are going to be listening to them.

Newlin stated that the previous weather was in their favor for tree planting and they choose not or decided not to for some other reason.

Edwards: I would suggest as part of the MOU that a performance bond be included and the money would hold them accountable. I think the residents would feel more comfortable.

Newlin suggested that these are options that the residents could discuss with Mr. Britton when they meet.

CORRESPONDENCE:

1. Request from Michael J. Dowd and Michael E. Deck for a Change of Zone of Premises located at the Northeast intersection of Creek Road and Pletcher Roads from a Residential "R-1" district to a Residential "R-2" District as described in the attached petition. Kindly forward this petition to the Town Planning Board for their review and recommendation and advise said petitioners of the date that this matter will be on their agenda.

Newlin asked that the request be sent to the Planning Board and no motion by the Board was necessary.

NEWLIN:

Legal:

Leone: I was asked to research the availability of the Deputy Supervisor to serve as a member of the Planning Board. Mr. Boniello and I have discussed it and since there is no definitive decision or opinion on the point, I contacted the Association of Towns attorneys and they stated that it was fine. He can be on the Planning Bd. and be Deputy Supervisor.

I have a litigation matter for Executive Session.

Newlin: At last weeks' Planning Board meeting, things preceded well with the presentation by the Seneca Development Corp. regarding the new golf course. Questions by the residents seemed to be satisfied. We will be having another public meeting by this Board on February 1st.

Mining Moratorium:

This Board is considering enacting a mining moratorium until such time as we "marry" up the provisions set forth in the Master Plan and the actual code.

Leone: We have a local law that allows for requests for mining permits. We also have a Master Plan that limits the area within the Town where those kinds of permit can be requested in certain zoning ordinances that are proposed in the Master Plan. Given the fact that the Re-codification Cmte. has gone through a lot of work and effort not with just respect to mining but respect to all of the zoning ordinances of Lewiston ...the research that I took a look at indicates it would be a proper function of the Town police power to enter into a moratorium. I would think that you would do that by local law and there is a procedure to follow. I will follow up with the Board in the next meeting or two.

Supervisor's Annual Report:

This to comply with the requirements of the State Comptroller's Office that all monies received and/or disbursed by any department must be annually reported to the Town Board and noted in the minutes. The report is available through the Clerk's Office for inspection.

Newlin MOVED to accept the report of monies received and disbursed. Seconded by Edwards and carried 4-0.

Power Coalition:

We met today and everything is going well. Nixon & Peabody has been retained as our new counsel. We made good progress with National Grid and the NYPA last week and it looks like we are well on the way to getting cheap power to flow into Lewiston. I think power will come in Sept. The first billing cycle will be showing sometime in November. More details will be forthcoming in the next month. Mr. Edwards was able to attend the meeting and the next meeting has not been set but I will inform you of the date.

PALMER:

Tenneco Issue:

Mr. Johnson, Eng. Lannon and I meet along with the residents and reps from Tennessee Gas Co. We were able to tour the facility. The complaint is excessive noise from the facility. In 2005, Tennessee Gas Co. built a new fenced-in area that is used to put an instrument into the pipeline which takes pictures and verifies it is operating properly. It is an above ground (20' & 30') pipe and because there are flocculation from the pressure from the gas line it seems when the pressure from the gas line decreases a bit (controlled by Houston) a resident noise emulates and they are not aware that this noise is happening. They are working on the problem and are talking with Houston. When this situation occurs they are going to try some types of solutions to get rid of the problem. I think that we and the residents were satisfied as they were very forthcoming. Solutions like enclosing it or berm it were are possible.

Bax asked if this was caused by the new instrument that they have installed.

Palmer: It is the actual pipes that are sticking out of the ground where the camera has been inserted and as a result there is a noise. This is only a regulating station and it controls the flow of gas from Texas.

I attended the Planning Bd. meeting last week and many residents were there. A number of people had questions about drainage and other issues associated with the golf course and I think the responses were very satisfactory.

EDWARDS:

Town Hall Sign Project:

Lannon: We took bids last week and the bids that came in were confusing. The numbers that we asked for that were submitted however, there were several qualifications on those numbers. It makes it difficult to determine the apparent low bidder. We were able to negotiate a no cost change to the parking lot lights whereby that electrical contractor will essentially put in the power to the sign. So, those two items will result in a clarification of the specifications so, with that I would recommend that we reject all of the bids received and put those out to re-bid with a minor revision to the specs.

Leone: You must in the form of a motion reject all the bids and then request that the specs be redone to conform to the engineer's explanation and then put it out to bid.

Edwards MOVED that Town Board reject all bids on the Town Hall Sign Project because of change of the specs and that the Engineer amend the specifications and advertise for re-bid. Seconded by Bax and carried 4-0.

Highway/Drainage:

Transfer of Highway Funds/Highway Supt.

Edwards MOVED to transfer from 2006 fund 5110.04 DB (General Repair) \$3557.42 into 5130.02 DB (Equipment) and an amendment to the encumbrance list to reflect Account 5130.02 DB \$12,588.02 P.O. # 18783. Seconded by Bax and carried 4-0.

1380 Swann Road Drainage:

Lannon: A memo recommends that enclosing the ditch is not recommended. The work would only redefine floodwaters onto adjacent properties. Should the homeowner wish to pursue installation of drainage pipe along the front ditch, the Highway Dept. should be contacted for current policies of pipe placement within the right-of-way. Several issues occurred based on the Dec. 1st storm that was a climatic anomaly given the saturated ground conditions and the significant amount of rain that we had prior to that and there was no place for the water to go. The Clerk was directed to write the homeowner with the recommendation of the engineers.

4939 Hillview Court Drainage:

We have a letter (on file) from Nancy Deering of Hillview Court asking for relief and some repairs to the drainage to the front of her home following the December 1st storm. I met with Mr. Reiter and he is going to address this and if he does not know what to do with the situation he will get assistance from Eng. Lannon and see how to resolve it if it is a town problem.

Edwards MOVED that CRA Engineers look into this situation and confer with the Highway Supt. and try to resolve it by the Feb. Work Session. Seconded by Bax and carried 4-0.

BAX:

Cable: Time Warner Franchise Negotiations.

It was mentioned by Chairman Kilmer of the Cable Cmte. which is currently trying to negotiate a franchise agreement with Time Warner. Several people have contacted him who are unhappy with the service. I did an unofficial poll and it

raised the same concerns. I am suggesting that we ask for a public comment period where we put in small ad asking people to come and voice their opinion as to whether they are satisfied with Time Warner. Unfortunately they are one of the only "games" in Town. The Cable Cmte. is looking for some direction from us and I don't see how we can make an opinion or decision without the public.

Brandon: The local newspapers quite often put a notice in the government section at no charge and we could urge the public to come to the February board meeting.

WPCC:

552 Fairway Drive, Sanitary Sewer:

This should be discussed in executive session as it is a matter of settling this issue.

Sanitary Sewer Back-up Claims:

Also for discussion in executive session.

Close Capital Accounts:

Bax MOVED to close Capital Account H-83 Badger Youngstown (Water Meters) with remaining funds to be returned to Fund Balance SS 1 (WPCC) and H-90 Creek Road Force Main with remaining funds to be returned to Fund Balance SS2 (Master Sewer). Seconded by Palmer and carried 4-0.

Create Capital Account/For Updating Sewer Mapping & Modeling:

Lockhart said he was seeking a capital account for mapping & modeling. The original map was from 1978 and I am looking to put everything into one map and have a GIS and in an electronic format. I would like permission to use part of this capital account to look at how the collections systems react to various flow conditions. I would like to do this under one capital account. The mapping and modeling would be approximately \$45,000. By setting up a capital account it gives us a "piggy bank" to work from and we can set our own pace. Also, by closing the H-90 account which has a balance of \$50,000 which would become available to fund this.

Bax MOVED to create Capital Account H-92 Sewer Mapping & Modeling. Seconded by Palmer and carried 4-0.

Bax MOVED to appropriate \$45,000 from the SS2 account to H92 account for Sewer Mapping and Modeling. Seconded by Edwards.

Edwards asked if this will work in conjunction with the mapping that we did last year?

Lannon said they are two separate items.

Lockhart: The modeling for the water and the pressure systems....we can layer on the GIS system.

Edwards said the purpose is separate but we really need a map for the utilities on it.

Carried 4-0.

Spill Prevention Report:

Lockhart: The renewal application for Hazardous Substance Bulk Storage is due by March 1, 2007. A copy of the Spill Prevention Report Certification must be included with the renewal. Also, the Town Engineer has estimated to update and put this document in electronic form to be about \$6500.

Bax MOVED that \$6500 be allocated under Account # 8130.400-SS-1 for the purpose of updating the Spill Prevention Report. Seconded by Palmer and carried 4-0.

ROW/4661 River Road:

Mr. Tim Henderson has written a letter regarding the ROW in the Morgan Farms area where Town trucks who have gone back and forth have done considerable damage (ruts) to this property. In the past, the Highway Dept. had left gravel there to be spread around. Now, Mr. Harvey of the WPCC is addressing this issue. We are asking for a load of gravel with a cost of around \$40.00. We can discuss this at the next work session.

EDWARDS (For Councilman Johnson)

Regarding this WNY Council on Occupational, Safety & Health, Mr. Lockhart would you respond.

Lockhart: Through WYNCOSH, each year they go for a state funded grant through the Dept. of Labor and I have participated in this. We recently did a session on ergonomics here at the Town Hall. We will be doing other sessions soon. There is no cost to the Town except those who attend the programs through their normal wages.

Edwards: I question a lot of our safety practices in the Town and we reward some departments for not having any accidents (not monetary)...safety awards. I don't see a lot of safety training. It is available....

Lockhart: I give notice to the various departments that the training is available and it is up to the department if they participate. It is also available to the other municipalities.

Temporary Senior Citizen Van Driver:

An applicant has been approved by Civil Service and possesses a valid driver's license.

Edwards MOVED to approve Curtis Aubrey as Temporary Senior Citizen Van Driver at the rate of \$10.00 per hour. Seconded by Bax and carried 4-0.

Bax MOVED to enter into an Executive Session for the purpose of litigation. Seconded by Palmer and carried 4-0.

Time: 8:30 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk

Executive Session:

Present: Supervisor Newlin; Council Members Bax, Edwards & Palmer; Town Attorney Leone; Deputy Town Atty. Boniello*; Eng. Lannon and Adm./Op Lockhart.

Issues Discussed:

1. Drainage Claims/Possible Settlement. 3 new claims. No action taken.

Motion by Edwards to exit Executive Session and Reconvene. Seconded by Bax and carried 4-0.

Bax MOVED to authorize the Supervisor to settle J. Shaghoian claim with amount not to exceed \$5800 subject to verification of insurance. Seconded by Palmer and carried 4-0.

Bax MOVED for the acceptance of the Sanborn Grant and authorize the Supervisor to sign document. Seconded by Palmer and carried 5-0.

Motion to adjourn by Edwards and seconded by Palmer. Carried 4-0.

Time: 9:15 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk

* Minutes taken by Deputy Town Atty. Boniello.