

Public Hearing – Amendment to Zoning map                      March 13, 2006    6:45 p.m.

**PRESENT:** Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Pacioni; Deputy Supervisor Elgin; Budget Officer DiRamio; Town Attorney Leone; Deputy Attorney Boniello; Town Engineer Lannon; Building Inspector Coulter; Recreation Director Dashineau; Police Chief Winkley; 3 Press; 15 residents and Clerk Donna Garfinkel

Supervisor opened the Public Hearing – 7:10 p.m.

Clerk read Notice into the record.

Notice is hereby given that a public hearing will be held before the Town Board of the Town of Lewiston beginning at 6:45 p.m., Monday, March 13, 2006 at the Town Hall, 1375 Ridge Road, Town of Lewiston, to consider an amendment to the Zoning Map of the Town of Lewiston to rezone the north portion of property located on Ridge Road, SBL# 90.00-1-35.1 from RR (rural residential) to B (business). The first 200' of the property is currently zoned Business, remaining 200' is Rural Residential. It is a vacant parcel. The property is located east of 2535 Ridge Road. All citizens and persons of interest will be given an opportunity to be heard.

Preston, James – 2297 Hartman Road - Newfane is the owner of the property. The property was purchased at auction in 1998. Preston is trying to sell the property but with the two different zones, it is difficult. The application has been approved by the Planning Board; the Environmental Commission recommended a Negative Declaration and the County Planning Board returned it to the Town with no recommendation.

**Motion by Edwards to Close the Public Hearing, Seconded by Johnson and Carried 5 – 0.**

Town Board Worksession    March 13, 2006            7:20 p.m.

Supervisor called the meeting to order.

Johnson requested addition of the Police Retirement agreement to the agenda.

*First agenda item* – Request to amend conditions for the approval of Phase 2 – Riverwalk.

The Town received a letter from Magavern & Magavern stating they are not being granted building permits for Phase 2B due to a resolution approved by the Town Board April – 2005, and are requesting this condition be waived or amended.

Attorney Daniel Spitzer addressed the Board.

In the existing Town Board Resolution of April 11, 2005, it states in #4 – “The Final Plat for Phase 2B is hereby approved, subject to final approval by the Town Engineer. The Final Plat is substantially similar to the Preliminary Plat for the Phase. No permits may be pulled for construction in Phase 2B until construction in Phase 2A is substantially complete”.

Spitzer said the resolution does not define what “substantially complete” means. Coulter has interpreted it to mean the substantial completion of the homes. As the subdivision stands at this time, there is one home built, two on the way and the infrastructure is completed.

Spitzer believes the right thing to do is to amend the resolution with a couple of caveats. It is important that Ryan Homes be a part of the process. They are building the homes and they will be taking on more and more of the responsibilities. It is also important to look and see if this will cause an additional environmental issue. Spitzer does not believe it will.

The Town also received a letter from concerned residents. The letter outlines the conditions in which the group is willing to waive the Town conditions in the resolution. They are as follows:

- 1 – Any remaining unbuilt lots in 2A must be leveled and graded for proper drainage.

Spitzer said the developer; Ryan Homes and Magavern all agree this is a reasonable request.

2 – Trees on lots 303 and 304 to be staggered and no smaller than 12 feet.

Spitzer feels 12 foot trees are not easy to transplant and is an extensive cost. The Board should look at this hard. There maybe precedence set here if this is done. 6 foot trees are more reasonable.

3 – Deed restriction on the owners of lots 303 and 304 that the trees and property past the drainage lines on the rear of the six lots not be cleared and be kept as is.

Spitzer has to agree with the developer and the builder on this. They object to more deed restrictions on these properties. If the developer and the builder work out something with the neighbors, that would be great. The Town should stick with the original landscaping plan.

4 – Guarantee, in writing, that any standing water that might occur on the Schultz / Myers / Quaranto properties to be fixed by the HOA, Ryan Homes or the Town.

5 – All homes in 2A are owner occupied homes. No home in 2A be built and left unoccupied.

Spitzer feels conditions 4 and 5 are beyond the legal ability of the Town. There is currently no standing water on their properties. There is going to be a drainage easement behind these lots and it is the Towns responsibility to prevent the homeowners from clogging them. This will be controlled by the drainage plan that has been approved for the project.

These types of drainage disputes are more of a private dispute, where the parties sue each other. The Town does not get involved, except for the extent of the drainage easements. Spitzer does not believe the Board can tell a builder they have to do something for the benefit of another property owner.

Johnson wants the Town to make sure the drainage plan is taken care of. The Town has had to go into other subdivisions several times to address drainage.

The last condition deals with owner occupied homes. Spitzer is not aware of any authority the Town would have to prevent someone from leasing their property. Spitzer respectfully suggests this condition is probably illegal under the Federal Fair Housing Law.

Ryan Homes have addressed the model home concern. The Town does not have control over how one conducts their business. The neighbors feel there will be more traffic if the model home is used as an office. Spitzer respectfully disagrees, by building two sections at once, the over all construction time will be reduced.

In accordance with the resolution, the 6 foot blue spruce trees need to be planted. Spitzer wants all to understand, that if Spring arrives and the trees are not planted, Coulter can put a “stop-work-order” on the entire project. The changes are being made to the resolutions, so the Town expects the developer do what is being asked.

Leone reviewed the proposed escrow agreement for the sidewalks. The developer has placed \$1,000/per lot, into an escrow account for the construction of sidewalks after the homes are complete. It is being done this way so the sidewalks are not destroyed during the construction process.

Edwards asked who will be responsible for the replacement of the trees if they die. Spitzer believes it is the developer.

**Pacioni MOVED the following Resolution**

Town of Lewiston Town Board  
Resolution Amending the Final Plat Approval for Phase 2B

**Whereas**, the Town Board of the Town of Lewiston has considered, and after consideration, approved the Final Plant for Phase 2B; and

**Whereas**, one of the conditions was that Phase 2A be substantially completed before Phase 2B commenced; and

**Whereas**, the Board desires to amend said condition for the reasons stated herein.

**Now**, therefore be it resolved by the Town Board of the Town of Lewiston as follows:

1. Condition 4 of the original approval is amended to read as follows:
  - a. The Final Plan for Phase 2B is hereby approved, subject to final approval by the Town Engineer. This Final Plat is substantially similar to the Preliminary Plat for that Phase.
  - b. The remaining lots in Phase 2A not currently under construction shall be graded to meet the approved grading plan before Phase 2B permits are pulled.
  - c. In accordance with the original landscaping plan, blue spruce trees at least 6 feet tall shall be planted in a triangular pattern along the southern border of lots 303 and 304 as soon as planting of trees is possible in Spring, 2006.
2. This change is made because it would allow the different types of homes in Phase 2A and 2B to be built and sold simultaneously, increasing the housing choices in the community. The Town tax rolls would grow faster. The Town would avoid losing seniors and first-time home buyers seeking more affordable housing. Lastly, it would reduce environmental impacts by reducing overall construction time.
3. The change requires no further action under the State Environmental Quality Review Act because it has no adverse environment impacts; it reduces construction impacts through shorter construction time because all impacts are the same or less than the original approved plan, and because this change allows nothing not already considered by the Town under SEQRA.
4. The Resolution is effective immediately.

**Seconded by Johnson and Carried 5 – 0.**

Johnson asked if the trees will on the neighbors land or lots 303 and 304. Spitzer encourages the Board to allow the developer to work with the neighbors.

Newlin said the Town has worked for quite some time with the developer, construction people and residents. The project does reflect the growing needs for smaller families, empty nesters and seniors. The Board needs to rely on the Engineers to address the important issue of drainage. If all parties continue to work together cooperatively, we can look forward to a good project that will benefit the Town and its residents.

*Second Agenda Item* – Rezoning of parcel – Preston. Property located east of 2535 Ridge Road – Tax Map # 90.00-1-35.1.

Leone said the Board should recognize that it is difficult to re-zone one lot as opposed to a whole area, so there is not a spot-zoning question. Mr. Preston purchased the property the way it is. This is not a situation that he created himself. This has been reviewed by the Planning Board, Environmental Commission and the County Planning Board. The neighboring properties are primarily Business in nature. On the other hand, the Town is loosing 200' of Agricultural property.

It was questioned how many other parcels of land exist like this. Coulter said the lots on both sides of Rout 104 are like this. Coulter is o.k. with this rezoning.

Leone said this may or may not be in accordance with the previously adopted Master Plan.

**Edwards MOVED to approve rezoning of the north portion of a parcel on Ridge Road – SBL #90.00-1-35.1 from RR (Rural Residential) to B (Business), Seconded by Bax and Carried 5 – 0.**

*Third Agenda Item – Niagara Power Coalition discussion.*

Newlin said the Board approved payment of approximately \$17,000, to cover an overage the Coalition incurred, largely from Attorney and Power Consultant expenses. This figure does not include the \$586.00 needed to pay for the Audit conducted by Pat Brown.

**Edwards MOVED to pay \$586 – funds coming from the NYPA Settlement Reserve budget line – to cover the cost of the Audit, Seconded by Pacioni**

These fees can be paid pending the receipt of the Audit.

**Carried 5 – 0**

When the Town was confronted with joining the County MDA, the cost was \$80,270. This reflected a large cost for the purchase of the mega watts. This amount does not need to be paid in 2006, because it will not be incurred until 2007.

Since this, the County has formed the NPI – Niagara Power Incorporated. They will be used to establish the mechanisms of Administration and Accounting that will be instituted should a County wide MDA be set up.

The County has decided to remove this commodity charge from within the dues for each existing member, therefore reducing the cost to \$24,270. This fee will be paid through the NYPA Settlement Reserve, not taxpayer dollars.

Newlin said Lewiston will move forward with a two track process. One – to try and cooperate with our neighbors in good faith, and two – move full speed ahead with the creation of a Town MDA.

Spitzer feels the most efficient way for the Town to proceed is to be part of the County process. If the Town ends up with its own entity – MDA – the Town should still enter into an agreement with the County.

Newlin said it would behoove the Town to work out inter-municipal agreements. This would allow the different entities to share power amongst each other during a low power needed time.

**Johnson MOVED to allow the Town to expend an amount not to exceed \$24,270 – funds coming from the NYPA Settlement Reserve budget line, pending the receipt of the audit conducted by Pat Brown, Seconded by Pacioni**

Johnson is in favor of consolidation / cooperation with the surrounding communities. Moving forward with both possible MDA's is the correct thing to do.

Edwards asked if the MPI will replace any of the functions done by the Coalition. Newlin said no. They will focus solely on the structure.

The Greenway will still be a function of the Power Coalition. It is believed a special committee will be organized for the Greenway.

It was suggested the Town have their own Attorney for the MDA.

**Carried 5 – 0.**

Fourth Agenda Item – Permission to build one model home – along the east side of Miller Road.

Angelo Lore - Peter Mascaro Construction present to discuss the request. The subdivision was approved several years ago and the applicant would like to build a model home to encourage building in the subdivision.

Leone is concerned with the model home being built but not connected.

The PIP needs to be completed before the building permit is granted. Lore said there is no sewer at this time, but has gone out to bid. The sewer connection is across the street, and will require approximately 800 feet of sewer line.

**Johnson MOVED to approve the Model Home, pending securing a PIP through the Engineer, Seconded by Bax and Carried 5 – 0.**

*Fifth Agenda Item – Abstract approval.*

**Johnson MOVED to approve the Abstract of Claims number 481 – 820 in the amount of \$1,222,327.71 and Post Audit amount of \$98,215.77, Seconded by Edwards and Carried 5 – 0.**

*Sixth Agenda Item – Elm Drive – Water break.*

Lannon suggested the Town replace the driveway apron, offer a spot repair further up on the driveway and seal the driveway with the cost not to exceed \$200. The repair of the apron will be done by the Town. The \$200 is to cover the cost of the spot repair and seal.

Johnson would like the Engineer to get the cost of repair for the whole driveway. To be discussed at the March 27<sup>th</sup> Town Board meeting.

*Seventh Agenda Item – Parks & Recreation Department.*

**Edwards MOVED to hire Patrick Moyer as a Parks Laborer at the pay rate of \$8.50/hour, Seconded by Johnson and Carried 5 – 0.**

**Edwards MOVED to award Fox Fence the fencing job at Lewiston Town Park as follows: Outfield fencing - \$9,087.00 / Sideline fencing - \$3,370.00 with funds coming from H-61 budget line, Seconded by Bax and Carried 5 – 0.**

**Newlin MOVED to approve the Town Recreation Dept. to go out to bid for restoration of the bathrooms and shelter at Kiwanis Park, Seconded by Johnson**

Johnson suggested having Mr. Rotella, the grant writer, look into possible funds. Dashineau contacted Mr. Rotella but has not heard anything back.

Edwards questioned if there are any present Town employee/department that may be able to perform these tasks. Dashineau is not aware of anyone and said these are cosmetic improvements.

**Carried 5 – 0.**

Pacioni would like to request an Executive Session at the end of the Worksession to discuss personnel.

Johnson requested an action be taken on the Police Retirement Agreement. Leone has been reviewing this, along with having discussions with Mike Richardson. Richardson has suggested the sooner the plan is approved, as per the Contract, the better. Costs are constantly increasing.

**Johnson MOVED to allow the Supervisor to sign, pending the review of the Attorney, as per the contract 384 E, Seconded by Bax**

Leone said it is part of the requirement for the Collective Bargaining Agreement. However, the benefit can be adopted for a limited or unlimited period of time, but for not less than one year. If adopted for an unlimited period of time, all current and future members who participate are automatically covered. If adopted for a limited period of time, members who enter employment after the expiration date of the adoption are not eligible for this benefit.

Leone is not sure what the Collective Bargaining Agreement states, so Leone suggests the resolution be made to adopt the plan in conformity to what is stated in the Collective Bargaining Agreement.

**Johnson amended the Motion, to make sure the plan is in conformity with the Collective Bargaining Agreement as stated and Carried 5 – 0.**

Edwards requests a Worksession on Monday, March 20, 2006 at 8:00 p.m. to address the Collective Bargaining Agreement with the Teamsters and address the Employee Policy Manual. Town Board members, Richardson and Highway Superintendent Reiter to be in attendance.

**Edwards MOVED to schedule the above meeting, Seconded by Johnson and Carried 5 – 0.**

Leone would like to have the Town Board allow the Supervisor to enter into agreement, with Lewiston – Porter LLC with regards to the Storm Sewer Drainage Easement and the Dedication of the Riverwalk Drive.

**Johnson MOVED to approve the Supervisor to sign the Storm Sewer Drainage Easement and the Dedication of Riverwalk Drive, Seconded by Edwards and Carried 5 – 0.**

**Johnson MOVED to enter into Executive Session to discuss personnel, Seconded by Bax and Carried 5 – 0.** (8:45 p.m.)

Executive Session:

**PRESENT:** Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Pacioni; Deputy Supervisor Elgin; Town Attorney Leone; Deputy Attorney Boniello; Recreation Director Dashineau

Minutes taken by Attorney Boniello.

**Johnson MOVED to hold a regular meeting to have this issue discussed with the Personnel Manager, Seconded by Newlin and Carried 5 – 0.**

Executive Session Adjourned – 8:45 p.m.

Minutes Respectfully Submitted and Transcribed by,

Donna Garfinkel  
Deputy Town Clerk