

PRESENT: Sup. S. Maslen; Councilmen J. Ceretto, M. Johnson, and D. Kilmer; Dep. Sup. C. Stojak; Dep. Town Atty. J. Leone; Eng. D. Britton; Finance Officer E. Evert; Highway Supt. S. Reiter (7:15 p.m.); 1 Press (Bflo. News); 6 Residents; and Clerk C. Schroeder

ABSENT: Atty. E. Brydges and Councilman J. Langlois

The Supervisor called the worksession to order. Although it is an open meeting, there would be no time for public comment, she said. She deferred to Councilman Johnson to report on the first agenda item.

1) HAZ-MAT LAND PURCHASE: Johnson said the Town Attorney, Joe Leone and the attorney for the Niagara Frontier Bible Church (NFBC) are in the process of putting a contract together for the sale of the NFBC property on Upper Mountain Road to the Town of Lewiston. Johnson said there are some items that are contingent on the sale contract. The first being receipt of environmental studies of the property. These, he said, would be forwarded by the NFBC. Also, the Haz-Mat Department would need to put some sort of proposal together to make sure that whatever facility it would build is suitable to put on that piece of land. "I'm sure the town can ultimately make that decision no matter what. We would have to go before the zoning board ourselves to talk about it." Johnson said the cost would probably be between \$65,000 - \$70,000 for the purchase of the land, including closing costs. We could have a purchase offer probably by the October 16th meeting for everyone to look at, he said.

Attorney Leone said he had some notes as to his understanding what the proposed purchase price would be and the attorney for the NFBC would check with his client to make sure everyone was on the same page. Leone agreed the estimate of \$65,000 - \$70,000 is "probably in the ballpark." He has made it clear to the attorney for the NFBC that they are only in the talking stages and that by no means has the Town approved a contract, but it is something they are interested in. Leone said the land is on two separate parcels and he has to make sure the properties are adjacent or contiguous to one another.

Leone noted that the NFBC does not own the property yet; but they are in the process of purchasing it. It was noted that when property is transferred from a religious corporation a Supreme Court order is needed. Leone said he was told they could get in court within the next couple of weeks. If this town decides to go forward to buy the property then we would need a separate order to approve the transfer to us. "There are a lot of things that need to be discussed and Councilman Johnson has been on top of it... Ultimately, if we can put a proposal together -- a written agreement -- then we can show it to the Board."

Johnson said the town could go into a due diligence period of 90-days to try and get some of this done under contract. Johnson then corrected Leone in that the NFBC is in the process of buying the Church on Bronson Drive. I think you're talking about the sale of the Church they are buying did not close yet, not the property the town is interested in buying. They don't want to sell us the land on Upper Mt. Road in case this other deal falls apart. They would go back and build on that land.

Joe Passanese, Haz-Mat Commission, said the property they are looking to purchase is 10.1 acres on one parcel and 10.2 on the second located on the south side of Upper Mountain Road, abutting the Reservoir -- one is right behind the other. The front parcel is 10.2 acres and the back parcel, which backs against the Reservoir, is 10.1 acres, for a total of 20.3 acres. The 15 acres that they told you about is where the church on Bronson is. That is the hold-up that they explained to me. NFBC owns the property we are interested in. They were going to build there when the church on Bronson went up for sale and became available. They are in the process of purchasing it and they are currently occupying it. That was their contingency -- hold off on selling the land that they own until the deal went thru with the church on Bronson Drive.

2) ASSESSMENT REVIEW BOARD: Johnson read a memo from the Town Assessor noting that the term of Barbara Carter expires September 30, 2003. She is a state certified member having served two terms. Her attendance and performance have been excellent. If the Board decides to re-appoint her, it would be for the 10/01/03 through 9/30/08 term.

Kilmer MOVED to re-appoint Barbara Carter to the Board of Assessment Review for a 5-year term commencing October 1, 2003. Seconded by Johnson and carried 4-0.

3) Drainage Issues: Maslen said several drainage matters have been brought before the town board in recent months; specifically on property located at 779 Scovell, 5840 Garlow Road, 468 Fuller Place, 4399 Autumn Lane & 5844 West Street. The Highway/Drainage Supt., by town board directive, provided cost estimates for completing these projects. "Most of it however he doesn't have in his budget and he has a full plate for this year. I thought we were going to decide whether or not we wanted to put this in the budget or if we wanted to take this individually."

Kilmer: If you read each one of them, some of them he feels he wouldn't want to do; he would rather sub-contract them out -- if you read some of the descriptions he's made. When he puts his drainage proposal in, we should ask him if he wants to add these contractual costs to his budget so he can sub-contract these out.

Maslen: My question is --do we want to get into this. Are these all projects you feel are the town's responsibility? I understood our responsibility was the immediate right-of-way from the highways. Some of these are on private property. I'm looking for you to look these over to decide which should be addressed and which should not... It does not make sense to me for us to begin these projects until all of the water work in the various areas is done. Scovell Drive is one of the areas that we will be putting in new water lines...

Kilmer referred to the complaint filed by Marcella Sharman, 5844 West Street, who has a huge pipe along side her house that drains all of Sanborn and is also the most costly one to repair (\$10,931.50). Maslen referenced Reiter's response to this in his memo of 8/11/03: This is a large, difficult job due to the conditions -- the close proximity of homes, size of the pipe, and other factors. "He was kind of washing his hands of it."

Kilmer: I've been to the property. I think it is a mess. We have to fix it one way or the other. Whether we task him and give it to him in his budget or whether we send it out to a private contractor, we have to resolve that issue. It's a problem that we've created for this resident. We have to fix it.

Maslen: When I reviewed the plan on that particular piece of property, that was the responsibility of the builder and the homeowner. That was not the responsibility of the town. We did not accept responsibility for that. That was not part of the contract or the planning or anything for that piece of property. I don't know how it became our responsibility.

Kilmer: I guess when we decided to put the drainage plan of Sanborn in her side yard. Mr. Reiter, at the last meeting I attended when we discussed this, did say that that's the reason the pipe was so large was because we drain a large majority of Sanborn into that... If we're going to drain a large hamlet like Sanborn, or even half of it, into a private resident's yard, we have to hold ourselves somewhat liable for what it's doing... All the (storm) sewer and drainage came across the road. I believe it's been there for a while. They put in a bunch of new 8-inch pipe underneath the sidewalk. That is what it drains into... I'm not looking to get it done tonight either. I know that is a lot of money. Some of these private property issues I think we do need to tell them it is private property and we're not doing private property but this is an issue where we are pushing an entire hamlet's drainage into a woman's side yard. All she is asking for is to at least put a pipe in and to cover it up...

Ceretto: I would like to see all of these projects get done eventually. I know that we have some money left in infrastructure and maybe contingency... Let's start working off the list and get these projects done.

Johnson: We need to sit down with our engineer and ask how these things happen. In other words, why aren't they factored into the job in the beginning, if we're supposed to do this, just so this doesn't happen in the future? We're getting all these complaints on drainage... Maybe, we can give this (list) to the engineer to have him look these jobs over.

Kilmer: I'm not in disagreement with the Supervisor. A lot of times, we cause our own problem because we fix one person's -- maybe as a favor, maybe not. They see their neighbor getting it done and what we do is we've made residents dependent on something that is not a town responsibility. We have to simply stand up and say on those that are not a town responsibility, sorry, this is not a town responsibility -- you're going to have to manage this on your own. We need someone to tell us which ones are the town's and which ones are not...

Maslen: There is not a day that goes by that somebody doesn't want us to come on their private property and fix a problem that is not the town's responsibility. We are responsible for the R.O.W. and any easements that we maintain. We are not responsible for drainage problems that happen on private property for no fault of the town's. We just keep taking on more and more of this responsibility and it really, truly isn't ours to take... I want to be sure that when we take on the responsibility for correcting something, that it is something that we are responsible for. On West St., if when the town did a project up there, if they disturbed this woman's property, and it was never restored to the proper condition, then we need to take care of that. One of the unfortunate things about Sanborn and the sewers was that it was not done under the vigilant eye of an engineer. We had an engineer on board but he was not there all the time. So, these types of things fell thru the cracks. That is why we are now going out and contracting some of this work because we have an engineer on site that watches the pipe go in the ground and make sure that these are done. We, as a town, have a responsibility to our residents but we do not have a responsibility to take over their responsibility... That is what I was asking for here. For someone that has some criteria and some ability to look at this list and say this is definitely the town's responsibility. You are responsible and we will take care of it. If it is not then you turn to the homeowner and say - - look, this is something that you purchased. This is your problem and you have to take care of it.

At this time, Engineer Dave Britton commented: There's private run-off and there's public run-off. Public run-off is what West St. would fall into.... Private run-off drains all thru a homeowner's lot. When that rear-yard drainage comes out to the front and goes into the R.O.W., it becomes public drainage. If you have public run-off from your roads and it is draining the R.O.W. and your storm ditches are going down the road and they turn and go into somebody's yard, that is public run-off going thru private property. So, what you have to do is define private run-off and public-runoff. Once you have those two things, it's pretty clear.

Johnson MOVED to table the drainage issues until the October worksession to give the Engineer, along with Steve Reiter, an opportunity to review Reiter's memo of August 11th, pertaining to these drainage projects and to place it as the first item on the agenda. Seconded by Kilmer and carried 4-0.

4) **POST AUDIT:** A request was made to include the following vouchers for post audit payment: Home Depot -- \$115.29; Office Max -- \$367.04; and Sam's Club -- \$443.52. The above vendors are charge card purchases and, if paid late, substantial finance charges and late fees are applied; and Buffalo State College -- \$900.00. This BSC environmental course was approved at the 9/8/03 town board meeting but needs to be paid by course date of 10/6/03. **Johnson MOVED for approval, Seconded by Ceretto and carried 4-0.**

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In other matters, the Supervisor referred to a memo from the Receiver of Taxes requesting approval to place the unpaid water and sewer accounts for the Town of Lewiston on the 2004 Town and County taxes. The breakdown is as follows: Water: \$113,928.43; Sewer (Master): \$80,980.05; Sewer (South): \$1,990.68 for a total of \$196,899.16. **Johnson MOVED for approval, Seconded by Ceretto and carried 4-0.**

A Joint Town/Village Board Meeting has been scheduled for Tuesday, October 21st at 6:00 p.m. at Town Hall to discuss the 3rd Quarter Police Statistics.

Relating to the public hearing scheduled Oct. 16th on the Final Plat for Riverwalk Subd., Johnson asked whether they shouldn't consider holding the hearing at the Senior Center, due to the fact that 400 signatures appear on the petition opposing Riverwalk patio-home proposal. "If in fact the 400 people who signed that show up at town hall, we're going to have an absolute disaster."

Kilmer said he spoke with the developer who indicated that he had hired someone to contact as many as the 400 petitioners as he could. "Of the first 100 he has contacted, all but six want their name removed from that petition. I don't believe we are going to have a large group of people. A lot of people felt they were misinformed when they signed that petition... I don't think a bigger venue would be necessary."

Kilmer MOVED to enter into executive session to discuss a personnel/contractual issue. Seconded by Johnson and carried 4-0. Time: 7:50 p.m.

Present: Maslen, Ceretto, Johnson, Kilmer & Atty. Leone

Kilmer MOVED to close the executive session and re-convene the worksession, Seconded by Johnson and carried 4-0.

Kilmer said they went into executive session based on an engineering issue. Mr. Lannon has left O'Brien & Gere and has gone to another engineering firm. There are two projects he would like to see finished by Mr. Lannon -- the golf course and water infrastructure improvements. "The golf course is too sensitive an issue for us not to complete right now. We have SEQR. We have a lot of other issues facing us."

Kilmer MOVED to authorize the Supervisor to contact O'Brien & Gere and express the town's wishes for Bob Lannon to finish overseeing the golf course and the waterline project that he has already started. If in fact O'Brien & Gere has a problem with letting him finish those two projects, then the town would exercise the 30-day termination clause that is in the contract. Seconded by Johnson.

Maslen: Because the water line project is going to go on probably until the spring of next year, I'm not sure it is reasonable to ask for him to stay on under O'Brien & Gere. Let's just say until the end of the year.

Kilmer: That's fine because the contract is until the end of December with O'Brien & Gere. That is when the RFPs would go out if in fact we were looking for another engineering firm. My biggest issue is the golf course and the water. Everything is time sensitive right now... However the engineering firms feel they want to handle it, I think they would more or less release those projects to Bob Lannon to take care of...

Kilmer amended his motion to retain Bob Lannon as consulting engineer to oversee the golf course and the waterline projects until the end of the year. Johnson amended his second. Carried 4-0.

Johnson MOVED to adjourn, Seconded by Ceretto and carried 4-0. Time: 8:00 p.m.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk