

NOVEMBER 24, 2003

Public Hearing

6:45 p.m.

PRESENT: Sup. S. Maslen; Councilmen J. Ceretto, M. Johnson, and D. Kilmer; Eng. D. Britton; 2 Press; and Dep. Clerk C. Schroeder

ABSENT: Councilman J. Langlois; Town Attorney E. Brydges & Dep. Town Attorney J. Leone

The Supervisor called the public hearing to order. The Clerk read the public notice, as follows:

NOTICE IS HEREBY GIVEN, that a Public Hearing will be held before the Town Board of the Town of Lewiston, New York on the 24th day of November, 2003 at 6:45 p.m. at the Town Hall, 1375 Ridge Road, Lewiston, New York to consider an amendment to Chapter 7A-2 of the Town Code entitled Disposal of Garbage, Rubbish and Refuse by adding Subsection E:

No person, persons, firm or corporation shall cause to be disposed of by placing at the curb, street side or at any authorized disposal site for regularly scheduled municipal collection any trees, stumps, tree branches or brush where the owner of the property has contracted for the cutting down and removal of same. In such cases, it is up to the property owner and the contractor to make arrangements for such disposal. It shall be unlawful for any Town of Lewiston personnel or equipment to be used for this purpose.

By Order of the Town Board
October 27, 2003
Carol J. Brandon
Town Clerk

The Supervisor asked if anyone would like to address this subject at this time. No one wished to speak.

Councilman Kilmer MOVED to close the public hearing. Seconded by Councilman Johnson and carried 4-0. Time: 6:50 p.m.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk

NOVEMBER 24, 2003

Town Board Worksession

7:00 p.m.

PRESENT: Sup. S. Maslen; Councilmen J. Ceretto, M. Johnson, and D. Kilmer; Town Atty. E. Brydges; Dep. Atty. J. Leone; Eng. D. Britton; Finance Officer E. Evert; Sup-Elect. F. Newlin; Highway Supt. S. Reiter (7:20 p.m.); 2 Press; 6 Residents; and Clerk C. Schroeder

ABSENT: Councilman J. Langlois

The Supervisor called the worksession to order. The first item on the agenda was the amendment to Ch. 7A-2 of the Town Code re Brush Pickup.

1) LOCAL LAW re Brush Pickup: The Supervisor asked for a motion on this subject. Based on comments made prior to the worksession, **Kilmer MOVED to table until they get the verbiage that everyone is comfortable with. Seconded by Maslen and carried 4-0.**

Brydges: I appreciate that. I feel very uncomfortable with it in its present form. I will continue talking with Steve Reiter. Maybe we can come up with something.

2) RE-ZONING REQUEST: Maslen said this is in reference to a request by Innovative Marketing Solutions for a re-zoning classification from R-1 to PD-4 for property located at Northridge Drive to Creek Road (SBL# 101.12-1-91 and SBL# 101.12-2-8).

Atty. Brydges said he had submitted a letter recommending that since this is a re-zoning classification, as well as a variance request, the Zoning Board of Appeals must approve of this change. The Town Code specifically indicates that a PD District may not be placed in a R-1 District without a variance, which ultimately must be approved by the Town Board. "The Planning Board may not appreciate that but the fact of the matter is I forwarded this on to the Building Inspector before I made it official with you. He absolutely agreed with my recommendation."

Kilmer MOVED to forward this to the Zoning Board of Appeals. Seconded by Johnson for discussion.

Ceretto: This is a request for a variance for re-zoning. The developer has requested a re-zoning for this land from R-1 to PD-4. I understand that the PD-4 can be used for land that is zoned R-1. I also understand that the Zoning Board of Appeals can hear requests for variances. When we create a PD, we have changed the zoning for that land, as such. Where does it say in our Town Code or in NYS Town Law that a variance can be used to re-zone land? Where does it say that? I don't see it.

Brydges: Area variance?

Ceretto: Any variance. Our Town Code says PD Districts may not be placed in a R-1 District, period -- Nothing that says variance. Where does it say variance in our Town Code or in our NYS Town Law? Read it please.

Brydges: I don't have the book with me. I submitted this (letter) about a month ago. We (Coulter & I) both agreed that area variances have to go before the Zoning Board of Appeals.

Ceretto: Where does it say that? I don't see it?

Brydges: It's embarrassing to answer because I didn't check that against the law. It's in my handbook that was sent to us to educate us as town attorneys.

Leone: Area variances go to the Zoning Board of Appeals... Don't quote me on the number but I think it's Section 277 of the Town Law.

Ceretto: It talks about variances but not variances for re-zoning. It says variances but it's vague and it doesn't say for re-zoning. Where does it say in the Town Code or NYS Town Law that a variance can be used for re-zoning? Can you quote that? I don't see it and I had it checked out from other attorneys. It's not there.

Brydges: I wished you had told me. I would have tried to look it up and answer your question before tonight.

Ceretto: ... A PD District may not be used in R-1. The Town Board in the past changed the R-1 to another district... The Town Board changes the zoning... I am not against this project. I just don't understand the logic of sending it to the Zoning Board of Appeals at this time... For this particular project, the Comprehensive Plan says that this area is zoned Village Residential. This is zoned for what we are talking about. We hired an attorney (Dan Spitzer) to change the zoning to Village Residential... We can wait for the change in the zoning and then we can change it to a PD because it is no longer R-1 and this is what the community wants us to do in this particular area... This is what our Comprehensive Plan is telling us to do.

Brydges: He's asking for a re-classification to PD.

Ceretto: The law says that a PD District may not be placed in R-1. You have to change the zone. You can change it to R-2, which is in line with our Comprehensive Plan.

Brydges: I think that has to go before the Zoning Board of Appeals.

Ceretto: If it does, then show me in the code or in NYS Law that a variance can be used to re-zone land. If you can do that, show me. I don't see it and I've had other attorneys check into that.

Kilmer: I think the biggest question, John, is what did they ask for? They asked to go from R-1 to PD-4. Earl is saying what they are asking for they can't do. What you're saying is a good process... They need to be advised to submit in a different format and ask to go to R-2 so they can subsequently ask to go to PD.

Ceretto: Like I said, I'm for the project but I want to make sure it is done legally right...

Johnson MOVED to table this issue until the worksession (12/22), Seconded by Ceretto and carried 4-0.

3) DRAINAGE ISSUES: Maslen said it was her understanding that they had resolved this. "I thought that we had resolved this that this was an issue that had to be taken care of one by one by each. There are issues that are going to require contractors, bidding, etc. I don't know why that is on there again." The Clerk was directed to take this off the agenda.

4) SEWER REQUEST: This was in reference to a request from Mr. William Hilts, 5816 Buffalo St., to connect to the public sanitary sewer. Eng. Britton said he obtained two estimates from contractors to service this property. The first proposal was from Socko Contracting, Inc. in the amount of \$9,750. Britton said this company is currently under contract with the Town for the Sweethome/Wayside Sanitary Sewer Project. "Mr. Socko is right in the area. The mobilization cost would be minimized. The unit prices he said he would use are under the current contract. The unit prices he has in that contract are very, very good..." Britton said a second quote from Yarussi Construction was \$3,000 more.

Maslen said this was a section of Sanborn that was not completed in the first sewer bonding. This was the portion that went behind people's homes -- not the portion that was not done because there was rock there.

Britton said this extension would not require any rock removal and would require installing 170-ft. of 8" PVC pipe.

Maslen said the only reason they are looking into this at this particular point is because of the fact that Mr. Hilts' system has failed. Maslen said this extension would require an easement from the Church, which is the next property, and an easement from Mr. Hilts.

Britton said the total cost for this extension, including legal easements and engineering fees is \$11,250.

Kilmer MOVED to allocate \$11,370 from the Infrastructure Fund for this sewer extension project. Seconded by Johnson for discussion.

Johnson: How are we going to replace this money? This really should be bonded in the sewer project. If we are taking it out of the infrastructure account, are we going to be able to bond it back when we finish the rest of the sewers in the area?

Maslen: Remember when we tried to re-finance and do the bond issue for Sweethome/Wayside? Because it was additional areas in the same area, we had to go to the Comptroller's office. That took us six months. Please keep that in mind that this gentleman in the meantime will have to put in a septic system. It is going to take six months before we can get the approval. We'll have to go to Bond Counsel. We'll have to go thru all the public hearings. We have to go all thru that and then we have to go to the Comptroller's office and ask them if they will allow us to once again bond on this particular area because we've done it once before in one of the Sanborn phases. That's part of this whole issue.

Johnson: ... This is in an area that is specific to the south sewer... I have no problem with using that money, providing that we are under the idea that we're going to put this back because it is a benefit of a specific area. If we go to the State Comptroller's office and tell them that it is a critical issue from the County Health Dept., and we had to do this up front before we bonded the rest of it, I don't think we are going to have a problem. Do you?

Maslen: We've already had a problem. I wanted to include North Hewitt/Brookside/Edna in this past request so we could finish up the work that was not completed in the restoration and they would not allow it. That is something we have to be aware of. We don't know what they are going to do next time but this last time they did not. Anything that was already done they would not include. I just want you to be aware of that.

When asked, Evert said the South Sewer is the least secure fund the town has. To make it healthy, the revenue stream has to be improved. "That would mean to increase the cents per thousand gallons of consumption of water. That becomes the source of funding for the maintenance of those sewer lines. You need to remember that we don't treat that sewage. That goes to the County and the County treats it. There is not a revenue stream for processing as there is in the Master Sewer. The only revenue stream is thru the .49/\$1,000 based on water consumption. That needs to be looked at. We are hooking up more people to the sewer system in south sewer. Over a period of time, that will mean more operation & maintenance costs. That is what our contribution is to that sewer system --to maintain it."

Johnson: We have money in there for that?

Evert: We're getting by but there is not a substantial fund balance. We need to fund the overage that occurred in Hewitt/Edna/Brookside out of that fund balance. That project ran a little over because we could not include it in the re-financing.

Johnson: What is the balance in there now?

Evert: Roughly, it is about \$180,000 - \$190,000. That is just about the amount we are over on the cost to install the sewers in Hewitt & Brookside. That job ran out of money half way thru its second summer.

Johnson: Why would the cost be more?

Maslen: There were costs that were never estimated in the original proposal. There were engineering costs. There were employee costs, trucking costs and things that were not in the original proposal for that. It was under-estimated.

Johnson asked the Highway Supt. if he could put in the sewer extension to service Mr. Hilts for less. Reiter said his cost would be about \$8,500. (The contractor's bid was \$9,750).

Kilmer reiterated his motion to allocate \$11,370 to extend the sewer line.

After discussion, **Kilmer amended his motion to allocate an amount not to exceed \$11,250 to extend the sewer line to 5816 Buffalo Street. Seconded by Johnson. A call of the question on the amendment was carried 4-0.**

A call of the question on the Motion to allocate an amount not to exceed \$11,250 from the Infrastructure Fund for this project was carried a 4-0.

Johnson MOVED to authorize the Supervisor to sign the contract with Socko Contracting, Inc. to install the sanitary sewer extension, Seconded by Ceretto and carried 4-0.

5) HAZMAT LAND CONTRACT: Johnson referred to a copy of the contract for the sale of the land between the Niagara Frontier Bible Church and the Town of Lewiston at a cost of \$64,899.24 for two separate parcels (SBL# 116.05-1-27 and 115.08-1-27) -- 5.30 acres & 10.20 acres, respectively.

Johnson read a list of contingencies that are part of the sales contract, as follows:

1. Seller to obtain Supreme Court approval authorizing sale and approval of price.
2. Purchaser to accept existing surveys with affidavits of no change; SBL# 116.05-1-27 dated December 13, 2002 by Millard & MacKay and Job No. 02-25295 dated December 11, 2002 by Foit-Albert Associates.
3. Properties must be certified to be continuous to each other.
4. Closing on each lot is contingent on the closing of the other.
5. Seller to provide Phase I Environmental. If work required, Seller to pay or either party can back out of deal.
6. Zoning approval required for use for Haz-Mat Building and Training Facility.
7. Town of Lewiston Engineering approval.
8. Federal Funding regarding construction of Haz-Mat Building.
9. Niagara County approval of funding regarding on-going expenses, maintenance, etc. of building.

Kilmer: Why are we putting contingencies to buy the property on things that depend on us?

Leone: Because at the meeting where this was originally discussed, one of the councilpersons who happens not to be here tonight had requested a lot of that language. I put it in the contract. Although the form of this contract is a standard preprinted form, the seller has not approved some of the language that's in there. By the same token, I didn't expect that necessarily this contract would pass completely as to form without some discussion but I put all of the things in there that had been previously discussed and leave it up to the good judgment of this Board to strike out that which we choose not to have in there, assuming that you want to go forward to purchasing the property at all.

Maslen: What does No. 9 mean?

Johnson: I can touch on that. It didn't come from me but I know where it came from. I think it's that Niagara Co. would help fund this facility. It is my recommendation that we take that right out of there because there is absolutely no way Niagara County is. I think that No. 8, the federal funding regarding the construction of the Haz-Mat Building we can

take off. It's going to be up to us to try and fight for that. Those two items I would take off.

Johnson MOVED to approve the sales contract as to form, striking contingency items 8 & 9, and to authorize the Supervisor to sign said contract. Seconded by Kilmer and carried 4-0.

6) DETENTION POND ISSUE: A number of residents were in attendance relating to this matter. **Johnson MOVED to allow residents to speak on this issue, Seconded by Kilmer and carried 4-0.**

Steven Frey, 4240 Calkins Road, said his living room and bedroom window face this "hideous" thing. "I don't know why something like this would want to be put right in the middle of a residential... It looks like they are hiding some type of dump." Mr. Frey said he has lived there since 1996. "I've seen water but I've never seen it full to the top where it's over-heaping. Behind my house I have a creek where there is constantly water... This thing should be removed. It's ugly. It's not needed. Another fence won't work."

Brydges: How often do you see water in a year that is over a foot deep?

S. Frey: I would say about three years ago that I saw water in it.

Bob Bussingham, 721 Pletcher Road, addressed the liability issue. "Wherever there is property owned or anything there's always a liability; but there are certain liabilities that are higher than others -- this building, parks, bike path, skateboard park, etc. This liability back there, although there is liability, it almost doesn't even exist. I live right behind this thing. I have not seen water in there in a couple of years other than a puddle on the bottom. We just want to get rid of this thing because it is ugly... We don't really want another fence... I think you should go with what the neighborhood wants. We signed a petition. Your engineer said it is safe, as well as our past engineer. As far as the slope, it is not a drop off."

Joe Maietta, 4245 Calkins Road, said his property adjoins the back of the fence of that detention pond. "Everyone who has property adjoining this fence wants it down... It's such an eyesore if a guy from across the street doesn't like it if he can see it. People who visit him question him what is back there and why is it there. The fence is a big problem. I don't want it behind my house. I spend a lot of money on my house..."

Maslen: Was it there when you bought your home?

Maietta: Yes. I was told it would be landscaped and maintained... There was a general type of view that it was going to be maintained and landscaped and it wasn't. It's cut maybe twice a year thru the course of a summer. As far as the liability issue, I think it is very minimal. Rarely is there any water in there let alone enough water to make a difference. I think it should be totally removed. I think any other explanation or any other solution as far as keeping it up, cutting it down or doing anything else is really not acceptable.

Mike Game, 725 Pletcher Road, said he will have lived at his residence for 10 years this summer. "When I was building my house, they were just building the fence... It was an eyesore for a long, long time until probably this year where it rarely regularly got maintained. I don't think it looks good back there. I think it looks terrible. Being a fireman, I don't think it is a safety issue. I haven't seen water back there in three years."

Bob Andrews, 4211 Calkins Road, said he built his home in 1991 before there were any houses back there... "When they first proposed the subdivision they had the plans and we came to the town meetings because they needed the approval for it and the condition was, and a lot of it changed after the initial meeting. The size of that retention pond was moved. It was changed. It was moved. They finally agreed on that particular site. It was agreed upon at that meeting that they would put some type of natural barrier there. Residents were strongly opposed to any type of chain-linked or wooden fence. The developers said they

would look into it and try and come up with some other way to enhance the area -- to be more of a natural barrier.”

Maslen noted that it was her understanding the retention pond was supposed to be put further north of the development. “How did it come about that they changed that?”

Britton said he had a copy of the old engineering report. “According to the engineer’s report, there was some difficulty in obtaining the necessary easements to locate that retention basin there.”

Andrews: I saw the original plan from the developer who originally owned and developed this. The retention pond was supposed to be twice as large as it is right now and it was going to be shallow. It was going to be about a foot deep and it was not going to require a fence. Somehow, it got changed. I called the (former) Town Engineer, Bob Gallucci and asked him. He said it went against his recommendation but he wouldn’t say how it was changed. Somehow it got changed and they brought it farther south, made it deeper and put a chain-linked fence around it. Now it is an incredible eyesore and it has deteriorated all of our property values. We want it taken down. I never see water. If I do see water there it is once a year and within half a day it is drained out.

Brydges referred to his memo with respect to Attorney Leone’s advice to potential legal liability on the part of the town if the fence were to come down. “Everyone has to assess the extend of that liability toward exposure. If you were to find that the exposure is so minimum or not much at all, then you can go ahead and take the fence down if you don’t think your risk or exposure is that great. That is why I asked all these gentlemen how much water they see in there over the years. As little as I’ve heard from asking all of you I don’t think the liability is so severe that you’re going to have to worry about it, but that is your judgment.

Kilmer said he obtained an estimate from Fox Fence last May in the amount of \$2,345 to take down and remove the fence and fill the post holes with gravel.

Johnson asked Supt. Reiter if he could remove the fence. He would then be able to make use of the fence for some other purpose. Reiter said he could and he would also refurbish and fill in the post holes as well.

Kilmer MOVED that the Highway Dept. remove the fence (and retain for some other purpose) and that the petition lobbying for the removal of the Pletcher Road Detention Pond Fence be made part of the record. Seconded by Ceretto and carried 4-0.

7) POST AUDIT: A request was made to include the following vouchers for post audit payment: Office Max -- \$524.20; Sam’s Club -- \$209.15; Radio Shack -- \$42.98; and Heberling Associates -- \$480.52. The above vendors are charge card purchases and, if paid late, substantial finance charges and late fees are applied. **Johnson MOVED for approval, Seconded by Kilmer and carried 4-0.**

8) HEALTH COVERAGE: Maslen said there is urgency to choose the base plan for non-union employees to present this for open enrollment. Maslen said there is a dilemma in that the family coverage is cheapest with Independent Health Flex-Fit and the single coverage is cheapest with Independent Health (regular); which was the base plan for both in 2003. Maslen said more employees are affected by the family coverage then those affected by single coverage.

Kilmer MOVED to approve Independent Health Flex-Fit as the 2004 Health Base Plan at the rate of \$238.25 for single coverage and \$644.48 for family coverage. Seconded by Johnson and carried 4-0.

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In other matters, Kilmer noted that at the last meeting Atty. Brydges was directed to draft a law with respect to Cluster Housing Development to be implemented in the Zoning Ordinance. He asked to set a public hearing at the December board meeting to hear public opinion with regard to this.

Ceretto asked what the urgency is. He said they hired Dan Spitzer to work with the Comprehensive Plan Committee to review all of the zoning to get it into compliance with the Comprehensive Plan.

Kilmer: If you have a spot where cluster housing is allowed in the Master Plan, we have to have a law for it. That is what this is. This will describe what Cluster Housing is. If in fact a place is zoned for it, we will be able to use this law to determine what it is.

Johnson: We have no cluster development in our town code?

Brydges: We do but it is nowhere near as broad or as loose as the one in the other towns that I have reviewed. In reviewing the cluster development in the Lewiston Code, it is so restrictive it is almost not to be worth it. If you look at it, (the proposed law) will show you that the lot sizes are a lot smaller than are required in our Lewiston Town Code.

Johnson recommended that Dan Spitzer be invited to attend the hearing.

Kilmer MOVED to schedule a public hearing on Monday, December 8, 2003 beginning at 6:15 p.m., to consider an amendment to the Zoning Code as it relates to Cluster Development. Seconded by Johnson and carried 4-0.

Kilmer MOVED to adjourn, Seconded by Ceretto and carried 4-0. Time: 8:50 p.m.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk