

PRESENT: Sup. S. Maslen; Councilmen J. Ceretto, M. Johnson, D. Kilmer, and J. Langlois; Atty. E. Brydges; Dep. Atty. J. Leone; Eng. D. Britton; Bldg. Insp. B. Coulter; Finance Officer E. Evert; 3 Press; 11 Residents and Dep. Clerk C. Schroeder

The Supervisor called the public hearing to order. The Clerk read the public notice into the record:

LEGAL NOTICE IS HEREBY GIVEN that the Lewiston Town Board will hold a Public Hearing at Town Hall, 1375 Ridge Road, Town of Lewiston on Monday, December 8, 2003 at 6:15 p.m., to hear all interested parties and citizens for or against the adoption of a proposed amendment of Chapter 30, Article XIID §34.4 of the Town of Lewiston Code, as follows:

30-34.4 General Regulations (Intent)

1. With the overall goal of encouragement imaginative, well-designed residential development, these provisions are intended to:
 - A. Enable and encourage flexibility of design and development of the land in such a way as to promote its most appropriate use.
 - B. Preserve the natural and scenic qualities of open lands.
 - C. Facilitate the adequate and economical provisions for streets and Utilities.
2. Approval
Conventional lot and bulk requirements may be modified to provide the flexibility necessary to achieve the above goals. In its review of a proposed cluster development, the Planning Board shall give particular consideration to the following, and may recommend denial of any cluster development which in its opinion does not exhibit these standards:
 - A. Individual lots, buildings, streets and parking areas shall be designed and situated to minimize alteration of the natural site features to be preserved.
 - B. Irreplaceable natural features, such as but not limited to stream beds, significant stands of trees, individual trees of significant size, rock outcroppings, ravines, etc. are typically included in cluster open space.
 - C. Cluster open space intended for a recreation or public use shall be easily accessible.
 - D. Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between development and the land.
 - E. Streets and walks shall be designed to provide for safe and efficient pedestrian and vehicular traffic.
 - F. In general, the proposed cluster development shall not have an undue adverse effect upon adjacent property, the character of the neighborhood traffic conditions, utilities or other matters affecting the public health, safety and general welfare.
3. Regulations
 - A. These regulations apply to both residential subdivisions (the clustering of lots) and residential group developments (the clustering of buildings). In either case, lots or buildings may be grouped or clustered on the cluster site, with no increase in overall density. This is accomplished by density transfer, namely specified reductions in lot and area requirements which are compensated for by an equivalent amount of land in cluster open space.
 - B. General provisions.
 - (1) Permitted districts. Cluster development shall be allowed in any district permitting residential uses.
 - (2) Permitted uses. Dwelling types, i.e. single-family and multi-family types, shall be restricted to those types of structure permitted in the district in which the cluster development lies.
 - (3) Density. Maximum overall density shall not exceed the maximum density permitted in the district in which the cluster development lies.
 - (4) Open space.
 - a. All lot area reductions shall be compensated for by an equivalent amount of land in cluster open space to be forever preserved and maintained for its scenic value

§30-34.4(3)(C)(2): Procedures. The proposed cluster subdivision shall be subject to the same review procedures as a conventional subdivision, as set forth and provided under Chapter 22A §22A-4.

At this time, Maslen asked if anyone wished to address the Board regarding this proposed Cluster Development law.

Richard Bradt, 500 Pletcher Road, asked for someone to explain what Cluster Housing is.

Atty. Daniel Spitzer, special counsel to the town assisting in the preparation of the Town of Lewiston's new Zoning Code was on hand to address this issue.

Spitzer: Cluster housing is one of a series of tools available to communities to preserve open space. If you think of a typical development, what do you have? You have a typical grid -- streets & blocks in typical rectangular fashion... It's basically the street that everybody's got an acre lot or half-acre lot and they got their nice suburban house on it. The idea of cluster development is -- what if we took a piece of everybody's lawn and put it all together in a common area? We'd have a lot more public open space then and that is the idea. Without changing the density of the parcel, take all the houses and group them somewhat together and therefore take all of that lawn space and that extra space and keep it as an open area for playfields, for nature preserves, for parks & recreation, for community centers & schools -- whatever uses the community wants.

Cluster housing can be done in different forms. You can have your traditional single-family residences. In the current code, the lots are allowed to be as small as 10,000 sq. ft. or $\frac{1}{4}$ of an acre for cluster housing. Let's say you reduce that down to $\frac{1}{8}$ th of an acre. You would then have an extra $\frac{3}{8}$ of an acre per house to take into your common area. Cluster housing is very common with patio homes & townhouses. Senior housing is very popular to use cluster housing -- In order to maximize not only health care services but limit the amount of area people have to walk to get to needed services. As a result, you have this bonus where you have a great open space that you normally wouldn't have... Cluster is a way of simply changing around location of houses and streets in a subdivision in a way that squeezes things together and maximizes open space. That open space can be open to the public or dedicated and accepted by the town or it can remain private with a particular subdivision or the particular owner.

Cluster housing is one of a series of tools designed to grant the Town Board and the Planning Board more flexibility in dealing with a developer. The goal of that flexibility is to get better development... It will enable the boards to take advantage of the tools in NYS Law to make trade-offs -- to work thru site plans and planned development to produce the kind of community you want... It is also important when you want to attract, as your Comprehensive Plan calls for in certain districts, senior housing or alternative living centers. These kinds of tools are important to bring those densities in to attract those kind of developers. Also important when you are looking at districts that you have to have mixed uses, where you want the rural service centers to maintain their vitality and you let people have uses close together. Planned Development and cluster housing can really help make economic sense for a developer who might otherwise look elsewhere to the open fields in Niagara Co. for their development.

A couple of comments in terms of this particular law -- I don't have an opinion on it one way or the other. I just want to make sure everyone is armed toward with what's in here. A lot of communities do not allow buildings or schools, for example, in the open space areas. I think your law has more built into it. If a developer does a very large subdivision and donates property towards a school, I think that's great. I think what's better is the point when you don't make a decision but rather here you've given yourself the flexibility, for example. That's one thing that is not in your current code -- open space. Secondly, you've very clearly written in this draft that it is up to you whether or not property is going to be dedicated. If you start having cluster housing developments of 10-15 acres, you're going to end up with small parcels of open space. That's great, but they don't necessarily want every single one of them to become a town park either where your budget

is going to be impacted. This draft makes it clear that there is no obligation to take dedication. In fact, the obligation is on the developer to insure that a homeowners' association or other financially viable entity is in place to insure permanent support for the land. This is not a hidden tax, as some regulations can be because of the way it has been structured...

One key point again is that you are changing the overall density. By NYS Law, you can't give density bonuses in cluster housing. You can do that another way called incentive zoning -- but that is not in front of you tonight. In other words, if a developer can get 10 houses in 10 acres, and he clusters it, he can't have 11 houses in there... If you have a development that currently allows 10 houses and because of the rules of the wetlands or other reasons they can't use part of that land, the overall density can actually be increased by cluster housing. In other words, if you have a 20-acre parcel and you have one house per acre, normally -- that is 20 houses. Let's say there is 10 acres of wetlands. You preserve the wetlands... and you give compensation by allowing that developer greater density on the developable half of the project. A lot of communities would say you could only use the part that you normally would have. Again, you give yourself the flexibility in this draft. You give the Planning Board and the Town Board the ability to negotiate. You may allow that same density on that same property and maybe you would get some other amenities. What we are attempting to do with this draft and what you are doing with this law is going from a strict set of rules to a situation of saying to the developer -- what are you going to do to make my community better?

Atty. Leone asked for clarification of incentive zoning. Spitzer said there is a provision in NYS Law that says there are certain times when you can give people bonuses -- over and above what you can have -- if they do certain things. For example, in the Grand Island zoning code, a developer could ask the Board for greater density in a subdivision in return for helping create access to the Niagara River or donating land to the public for increases to the nature preserves there. The Town Board has to rationalize why it is doing it. "Incentive zoning lets you bargain for more things for your community within a narrow threshold. One of the things that this Board is going to face as it adopts the new zoning code is -- if it wishes to have the incentive zoning law, what things are most valuable to this community that they are willing to give a developer over and above what that developer otherwise could have?"

Again, Maslen asked if anyone else would like to address this issue.

William Conrad, 5180 Townline Road, asked if there were any pitfalls as far as the density that the town should look out for.

Spitzer: It's a tough question to answer because all zoning is a "value judgment". You may not agree with the Board's values. You may not agree with allowing buildings closer together. You may not agree with senior housing, which can tend to be a drag on budgets. Anytime you are making decisions on particular uses, you're talking about values and you may not like that. I don't like codes that say that you have to dedicate land. The key one with cluster housing is -- I don't like codes that say you have to dedicate land to the community. First of all it's un-constitutional. You can't require people to do that. Secondly, it's a terrible idea to become a land bank with all these little parcels that take a real drain on a budget. On the other hand, if you identify parks in a particular area, cluster housing is a great way to accumulate land for it and to get what you need for regional parks or town parks without necessarily having to pay for it through bond issues. Other pitfalls - - You have to make decisions on the density. Are you comfortable allowing higher density? Are you comfortable with use of non-developable properties counting towards those goals? These are value judgments... If you absolutely hated some type of cluster development and you wanted to make sure it never happened then you would vote against this but you already have cluster development in your code. This is just making it a lot more realistic, a lot more practical and gives a lot more flexibility.

Richard Bradt: When you were talking about density and the percentage of acreage that can be used what determines what parts can and cannot be used?

Spitzer: What sets that number now is the district regulation -- the overall maximum density allowed in the underlying district. If the underlying district allows four houses per acre then it's four houses per acre. Cluster housing can be in any residential district but certain districts, i.e. agricultural-type districts have greater requirements for lot size. Whatever the underlying code section is, that is what the density would be. Cluster housing doesn't change density -- it changes layouts. It doesn't change the density for the overall parcel.

Bldg. Inspector Bob Coulter asked what would limit density -- the Master Plan or the Zoning District number. Mr. Spitzer said it would be the zoning district number. "Keep in mind that under the terms of the new (Zoning Code) draft, that most of those numbers come out of the Master Plan. The new densities are all taken right out of the Master Plan... After the new code is adopted, the Master Plan and the code are going to be exactly the same. If you change the code in the future, the code not the Plan controls it."

Coulter: I think the Board should look at making the law user-friendly so you can look at one place, one law and see what the densities are that are permitted wherever. It should be written in the law in plain English. The other thing I want to mention, Earl mentioned the subdivision regulations change. Now you have two procedures -- the subdivision procedure and the planned development procedure that are liable to be in conflict. I think they should look at that and refine the law and have one procedure.

Spitzer: In terms of your current code, there are different laws. We worked very hard on the draft code to make it very clear that any time they do need procedures that everything is done simultaneously, i.e. when it is a planned development, you don't do site plan. Where there is cluster housing, you either do site plan, planned development or subdivision, but you don't do all three...

Ginny Myers-Parks, 4303 L. River Road, asked what safety valves would be in place that would go along with the flexibility of a cluster development. Spitzer said that whatever the land is zoned under the new code there is only one house per acre allowed. If someone bought 100 acres, they are still getting 100 houses. You may save a lot of tax dollars by putting those 100 houses closer together so that services, infrastructure and other things are fairly close together... You reduce infrastructure. You reduce water & sewer costs to the developer. You also reduce water & sewer costs to the town, which has to maintain those lines. The safety valve is still your Master Plan. It dictates overall density.

Jim Quaranta, 535 Pletcher Road: With the changes that are being proposed tonight -- Is this a change in the zoning?

Spitzer: It's a change in the way that people can layout developments under the current zoning code.

Quaranta: Will the public have input on this or is it up to the Town Board to decide if this will be implemented or not... Do you have to apply to Niagara County before this?

Kilmer: We have applied to Niagara County.

Ceretto: Is there a preliminary site plan review on this?

Spitzer: What you are looking at tonight is just a law. You're not looking at any particular development. You already have cluster housing in your code. You're just changing how that particular law works. It has to go to the Niagara Co. Planning Board because it could affect property that is 500-ft from a State or County highway. You have to wait 30-days or until they give their recommendation before you can vote on it. In terms of the law, this is the required public hearing. In terms of the change in the tools that is what this is for tonight to get comments on whether the town should create greater flexibility in terms of the current cluster housing provisions to the more flexible approach in the draft law.

Maslen: Tell me what the procedures are so that the public will know.

Spitzer: Once you have a public hearing and the final version of the law has been on your desk for five (5) days, once the County has given you their recommendation or thirty (30) days have elapsed since you asked for their recommendation, then you can vote on it.

Maslen asked if there were any further questions from the public. Being none, she asked to proceed to the next public hearing.

Ceretto said he had additional questions that he wanted addressed. Maslen said he can access Mr. Spitzer at another time.

Councilman Kilmer MOVED to adjourn the public hearing, SECONDED by Councilman Johnson and carried 4-1 (Ceretto). Time: 6:55 p.m.

DECEMBER 8, 2003 Public Hearing

6:45 p.m.

PRESENT: Sup. S. Maslen; Councilmen J. Ceretto, M. Johnson, D. Kilmer, and J. Langlois; Atty. E. Brydges; Dep. Atty. J. Leone; Eng. D. Britton; Bldg. Insp. B. Coulter; Finance Officer E. Evert; Chief Winkley; WPCO Oper. T. Lockhart; Sup-Elect F. Newlin 3 Press; 15 Residents and Dep. Clerk C. Schroeder

The Supervisor called the second public hearing to order at 6:55 p.m. The Clerk read the public notice into the record:

LEGAL NOTICE IS HEREBY GIVEN that the Lewiston Town Board will hold a Public Hearing at Town Hall, 1375 Ridge Road, Town of Lewiston on Monday, December 8, 2003 at 6:45 p.m., to hear all interested parties and citizens for or against the adoption of a proposed amendment of Chapter 20A of the Town of Lewiston Code:

The following are set forth as proposed changes to the Local Law of the Town of Lewiston, New York dealing with recycling begin specifically Chapter 20A, Local Law No. 1 of 1990:

SECTION 20A-3 -- DEFINITIONS

RECYCLABLES -- The Town Board and/or its administrator will be responsible to determine which materials will be defined as "recyclables". Such recyclables shall include the following: clear glass containers; plastic containers, milky white, colored and clear; metal and aluminum containers; newspapers; household correspondence, junk mail, cereal and gift boxes, magazines and telephone books; and corrugated cardboard.

SECTION 20A-4 -- PROGRAM ESTABLISHED

B. The Lewiston Town Board and its administrator will determine other recyclables in addition to those specifically listed in Section 20A-3 -- Definition of the term "RECYCLABLES". Such Town Board or its administrator shall notify Lewiston residents and waste generators by publishing said information in the official Town newspaper or newspapers at least thirty (30) days before said declaration will be incorporated into the Town Recycling Program.

F. It shall be required of all Town residents and all waste generators within the Town to segregate and separate recyclable and/or reusable materials from solid waste. Solid waste which has been left for collection or which is delivered by the generator of such waste to a solid waste management facility shall be separated into recyclable, reusable or other components for which economic markets for alternate uses exist. The terms "economic markets" and "components" shall be as defined in the current Section 120-a (2)(a) and (b) of the General Municipal Law of the State of New York.

SECTION 20A-5 -- PREPARATION OF RECYCLABLE MATERIAL FOR COLLECTION -- The first sentence should read as follows: No Town resident or other waste generator shall dispose of waste material except as follows:

SECTION 20A-11 -- WHEN EFFECTIVE -- This law shall take effect immediately upon acceptance by the Secretary of State of the State of New York.

Maslen said the Environmental Commission recommended these amendments. She asked Ceretto, liaison to the commission, to address the areas where there is a change.

Ceretto said there has been no appointments made to the Separation/Recycling Committee the past eight (8) years and he has since transferred the duties of this committee with the Environmental Commission. Thru discussions, it was determined that there are individuals not recycling -- mostly in major apartment complexes in the Town of Lewiston. Atty. Leone was asked to comment on the changes to the current law

Leone: Most of the changes that have been made in the local law were things that have been suggested by the County, as well as our Environmental (Recycling) Committee. The primary change is the definition of "recyclables". What we did there is contact Modern to find out what it is they are taking so that our local law conforms exactly to what Modern is doing. The other is to make clear that it is required of all town residents and all waste generators within in the town, so that it is clear that there is not an exemption. I know the State Law provides for exemptions based on hardships but I didn't write any hardship into our local law. There was some question before as to whether or not apartment buildings and people who lived in apartments were required. My take on the local law was that they were; but now it is clear that they are because it says **all** town residents and **all** waste generators are required to recycle.

At this time, Maslen asked if anyone wished to address the Board regarding the changes to the Recycling Law.

Heidi Seguin, 406 Riverwalk Drive, asked how this law would be enforced, especially for those living in apartment buildings. "It has to be astronomical the amount of recyclables that are going into the landfills. We're trying to limit these landfills and we're throwing more garbage in that doesn't need to be thrown in because these apartment complexes are not abiding by the law. It's okay to right the law but what good is it if you are not enforcing it."

Ceretto: If this gets approved, we have a plan. Years ago, with the Modern issue, there was a very environmentally-conscience Board that was here at one point. They created an environmental officer, which we don't have anymore... It is difficult for us, now that we have a tax and we have layoffs, to create that environmental officer. What we can do is work within our means. If this passes, I would like to appoint Carol Brandon Recycling Officer to work along with Donna Garfinkel (clerk to the Environmental Commission) and John Sharpe. We're not out to penalize people as far as recycling. We're out to educate and let them know that there is a recycling law. We will appoint town people to go out there and let them know...

Nobody is after the one-time offender or the small-time offender. Like I said, there are major apartment complexes that are not recycling. We will notify and educate the public that recycling is a good thing. The bottom line is, if for some reason there is a major offender, then we have police officers that we will notify that somebody is breaking the law.

Maslen: There is no change for the average citizen who is already recycling... This law does not exclude those individuals living in apartments. It is now including them and they will be required along with everyone else... The purpose of this law, as I understand it, is there is no exemption any longer for those individuals living in apartment dwellings. Everyone will be required to recycle... There is no point in having a law if we can't enforce it. I think that is another step we have to take a good look at and decide just how that is going to happen and what the procedure is going to be.

Maslen asked if anyone else wished to address the Board at this time. Being none, she asked for a motion to close the hearing.

Councilman Johnson MOVED to close the public hearing, Seconded by Councilman Langlois and carried 5-0. Time: 7:10 p.m.

Transcribed and

Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk