

TOWN BOARD MEETING December 27, 2007 7:00 p.m.

Present: Sup. Newlin; Council Members S. Edwards, M. Johnson, E. Palmer; Tn. Atty. J. Leone; Deputy Tn. Atty. D. Boniello; Eng. R. Lannon; Deputy Sup. E. Elgin; Finance Officer A. DiRamio; Bldg. Insp. T. Masters; Police Chief C. Salada and Town Clerk C. Brandon. 25 residents and 1 press rep.

Excused: Councilman A. Bax.

The Supervisor opened the meeting at 7:10 p.m. The Pledge of Allegiance was recited and a moment of silent reflection followed.

RESIDENTS:

John Malinchock of 953 James Drive. It has come to light in the last couple of weeks that the County of Niagara is possibly going into the EMS service. This something that I believe that the fire service across the county should have input. They are proceeding forward with what is called a certificate of need regarding a county ambulance service. I have written a letter that should be sent to the State DOH by the Board asking that we be informed as to what has perhaps been submitted to them. A copy of the letter was left for the Board.

AGENDA:

Johnson asked to discuss a personnel issue in executive session.

Edwards added carry over personnel days.

Edwards MOVED to approve the amended agenda as presented. Seconded by Palmer and carried 4-0.

NOLF PRESENTATION:

Johnson recognized Neil Nolf, retired Base Public Affairs Office and Chief of Protocol at the Niagara Falls Air Reserve Station. A proclamation was read on his accomplishments.

Johnson MOVED that the Town Board recognizes Neil Nolf on his retirement and a proclamation be presented to him from the Town of Lewiston. Seconded by Palmer and carried 4-0.

N. Nolf thanked the Board for their proclamation and gave a brief statement on those men and women who have volunteered to serve their county.

MINUTES:

Edwards MOVED for approval of the minutes of 11/15/07 Work Session and 11/26/07 RTBM. Seconded by Palmer and carried 4-0.

2007 FINAL AUDIT:

Edwards MOVED to approve the regular Abstract of Claims numbered 4165 to 4446 and recommend payment in the amount of \$273,236.57. Seconded by Johnson and carried 4-0.

Edwards MOVED for approval of the Post Audits in amount of \$50,346.26. Seconded by Johnson and carried 4-0.

OLD BUSINESS:

1. Stormwater Laws:

Lannon: With the public hearings having been conducted, I am asking that the Board consider the following actions. Issue a Neg Dec on both L.L. #3 & #4 followed by the adoption of both of those laws this evening or before 1/8/08. Also, to adopt a Stormwater Management Plan which is the document that was discussed previously by Tom Hersey of the Erie Cnty. Dept. of Environmental Planning. This is not the

actual formal local law but the plan. Also, we could at the reorganization meeting designate a stormwater management officer who would carry out the plan.

Newlin said this can be done at the reorganization meeting and Mr. Lannon has stated that this is generally done by the building inspector or the highway superintendent.

Edwards MOVED to issue a Neg Dec on L.L. #3-2007 Stormwater Management. Seconded by Johnson and carried 4-0.

Palmer MOVED to issue a Neg Dec on L.L. #4-2007 Stormwater Management. Seconded by Johnson and carried 4-0.

Johnson MOVED to adopt L.L. #3-2007 Stormwater Management. Seconded by Palmer and carried 4-0.

Palmer MOVED to adopt L.L. #4-2007 Stormwater Management. Seconded by Johnson and carried 4-0.

Johnson MOVED to adopt the Stormwater Management Plan as presented. Seconded by Palmer and carried 4-0.

2. Janitorial Services Bid:

Leone: I have reviewed the bids as received on either one, two or three parts of the bid or all of them. If you were do all three together the apparent bidder is OTI Inc. If you take each segment separately another bidder is low. (A summation of the bids was presented.) The Town Clerk has some questions on this item and perhaps you may want to table awarding the contract. The bids were submitted without insurance and typically the contracts for janitorial have been done on an annual basis and then once the contract is awarded, I prepare the contract and then make sure that the insurance is submitted. In the past, we have made the people who are employed by the service that is going to do the work be bondable. I am not necessarily requiring the company to go out and secure a bond for the individuals, just that they are indeed bondable. The notice was duly published and the clerk has asked me to review the bids.

Newlin asked that this item be tabled and that the board be given the bid sheets.

Edwards asked that input from each department head be gotten.

Brandon: I discussed this with Atty. Leone and asked that it be tabled for several reasons at this time. I would like to discuss it with the Board and the other two department heads. I took it upon myself to ask the current cleaner if they would be willing until this issue is settled to work on a month to month basis and they agreed.

Johnson MOVED to extend the current janitorial contract on a month to month basis. Seconded by Edwards and carried 4-0.

3. HVAC Bids:

Leone: The Clerk had requested bids for HVAC and preventative maintenance and this have been one year contracts. The bid specs would be for a 3 year contract. I reviewed the 3 bids received and from high to low the difference per year is \$21.00 annually. The lowest bid is from O'Connor Mechanical Corp. with a bid of \$1299 per year. The specs do not require a performance bond but typically they have been required to sign the contract.

Edwards MOVED to award the HVAC contract to O'Connor Mechanical Corp. with a bid of \$1299 per year for a 3 year period. Seconded by Johnson and carried 4-0.

NEWLIN:

Legal:

1. Northridge Development

Leone: I have had a number of concerns from a legal perspective that have been satisfied. I have been in contact with the attorney for this development. I do have a letter...as indicated to the Board in the past there is an issue over one of the lots that is part of Legacy Drive and the title to that lot. I have recommended to the Board in the past that if they are going to accept dedication of the deed, the title insurance fee be put in place in favor of the Town. I have a commitment from the title company to do that. I have a commitment from the title company to insure the interests of the Town, title wise even without the six signatures of the third person. I have communicated with Mr. Augello who is the attorney for the developer and he has addressed my legal concerns along those lines. So, from the title insurance point of view it now appears to be in order. I have reviewed the proposed legal description for Legacy Drive having the description and it also appears to be in order. I have reviewed the proposed legal descriptions for the easements that would be part of the development. Those legal descriptions appear to be in order. I have reviewed the 2 year maintenance bond submitted by the developer and that appears to be in order. So, having said that from my perspective the developer has done what they needed to do to address a good number of legal concerns that there have been over this particular development.

Our engineer has submitted a letter to the developer (Nov. 30th) that outlines a variety of other things that were to occur ...escrow for sidewalks, payment of money to the Town reimbursing engineering and expenses etc. I can't speak to that...our engineer can.

I know that the developer is very concerned about trying to move this project forward. I know that they are looking and trying to get building permits issued as quickly as possible. I know that they have been constantly trying to get this project forward.

Lannon: There was a letter dated Nov. 30th sent to the Town Board listing 7 outstanding bullets. A few of those from a legal perspective Mr. Leone has addressed. What that leaves I believe are the administrative end of the project with the exception of the sidewalks which have not yet been constructed. In the letter, we suggested an offer that there be an escrow account established for the construction of the sidewalks similar to what we have done in the past. Also, the area between the curbs and the right-of-way ...wanted those to be a minimal of 4 inches of topsoil in accordance with the Town of Lewiston specs. Although, this has not been done either but again given the time of the year it is most appropriate that it be done in the spring or the next planting season. Those are the two escrow accounts. I have been in contact with Mr. Lindelow over the outstanding engineering on inspection fees and we are attempting to resolve those. We have not as of yet, but we have met and are attempting to resolve those. The last item would be the coordination with underground utilities, gas, electric etc. which is the responsibility of the developer. The construction end of it I think looks fine.

Leone: I need to point out one more thing...I don't want to imply to the Board that the third person whose name is on the deed has in anyway consented to this action as far as I understand he is still objecting. But, I am telling the Board however, is we do have the commitment for title insurance and I do have a letter from the title insurer indicating that they will insure over the lack of that parties signature.

Newlin said we do have a letter from that third party raising his objection. Is that correct?

Leone: That is correct.

Newlin: You believe that the title insurance.....

Leone: The title insurance commitment insures to the Town that the Town will have good titles to all the roadways and every portion of the roadways including the portion of land that is in dispute. My concern is then the lack of signature of all three of the parties who are on the deed plan. That appears to be resolved...I received a letter dated Sept. 19th and it was faxed to a few days later indicating that it is not a requirement for that title company that the deed be executed by that third party. So, as

a consequence of that, their commitment is in order and they will insure over that question and therefore the Town will have a policy of insurance certified that will be that the Town will have good title to that roadway.

Newlin: When it comes to the conflict matter are there any questions.

Boniello asked if the performance bond is for a 2 year period from the start of construction or from the acceptance of the final drive. At what point are the sidewalks going to be put in? Completion of all phases?

Lannon: It is up to the owner, but I would think that it would be after some of the under ground utilities have gone it and at some point some of the super structures have been built. If you build them now it is likely they would be damaged or torn up during construction. Is that fair to say, Mr. Lindelow?

Jack Lindelow: Not really, because the under ground utilities aren't going in the right-of-way. They are out side of the right-of-way.

Lannon asked if you would damage them when you backup.

Lindelow said not necessarily.

Edwards: Mr. Leone, that title insurance that assures us there is no mechanic liens or any claims to that property?

Leone said the title insurance report that he will get will have to insure over or omit those from coverage. The original report that I received had a variety of title issues over and above the one that I am talking about. That is not unusual. Typically, what happens though is you get a final report omitting those signed by a title agent and then there is a policy issued subsequent to the time that we receive the deed. If there are any they will have to be omitted before that deed gets recorded. From my perspective, the things that have been submitted to me, I am as comfortable as I can be. Obviously, I would like to make sure that things are as tight as possible but in this situation that isn't going to occur given the issue to the third party. I am as comfortable as I can be given the circumstances. If the Town wanted to go forward to accept dedication of the roadway based on everything that we have said so far that is fine and upon doing so then the next issue would be would the building inspector then issue building permits to the developer to go forward. So, we would want the title insurance in place, we would want it in place over the defects that we talked about and we would want to make sure that the escrow is in place or provided for that Mr. Lannon referred to the engineering fees that we spoke about and that the other bullet items that are on the engineering report were either satisfied or provided to be satisfied contingent upon....or wait until all those items are in place completely or to approve it subject to those things being submitted.

Edwards: The utilities are not underneath our sidewalks, why aren't they putting the sidewalks in? Are they curbing from the house to road?
(Comment was not audible)

Lannon asked if that was from the public drainage or the drainage from the residential drain...that will go in as part of....where is the detention pond...I don't know how they are going to handle that...how are they going to handle the onset drainage...if they need to get back in there to a catch basin or a knock out I can do that.

Masters: I am under the roof on this and have heard bits and pieces about it, but my concern would be if they put the walkways in ahead of time they are going to get dug up or damaged.

Edwards said that the attorneys applying for this said that there is nothing underneath them.

Lindelov: When we applied for our PIP permit, we proposed that the walkways (inaudible) and that way we put all the drainage in before the sidewalks were built...and it would be controlled by the occupancy permit when we apply for that (inaudible) sidewalks for each building and that we proposedthe drainage is all completed per CRA (inaudible). We really don't think there should be an escrow account. It should be controlled by the building inspector.

Masters: I don't care which way you do it but I would just have to have.....without trying to hold up the homeowner's sale but that doesn't seem fair to the homeowner.....

Newlin: It seems to me that there are several items that need to be done. Mr. Lannon do you have any recommendations...you have a set of bullet items. (7)

Lannon: The first couple were related to the ??? end of the maintenance bond, easements etc. On the last page are the items that come into play. Two of which is establishing the escrow account, third is payment of our fees to the Town and the last is just a note that the underground utilities need to be coordinated.

Newland asked if would you have a recommendation one way or another as to whether we or not wait for those items to be taken care of before we act on it or are you comfortable with us moving forward without that.....

Lannon: I would have to say either that....if there was a disagreement over whether the escrow account be established (I can't speak to that) and tell you that the sidewalks are not inand there needs to be some provisions to put them in.

Johnson asked if wouldn't we be protected if the building inspector doesn't give him an occupancy permit?

Newlin stated that then the homeowner would be tied up.

Johnson asked why even put the sidewalks in when you are building and if the buyer of the premises cannot get an occupancy permit when it is not really ready for occupancy anyway. You are hurting the buyer.

Newlin said the buyer may not know that the sidewalks are a requirement. It is possible.

Masters: Usually what happens (in Wheatfield) and I would go there for an inspection and the curb or sidewalks would be damaged and at the last inspection I would not give a final until the repairs are made and sometimes the closing date is the next day.

Palmer: Based on the Nov. 30th letter, Mr. Lannon recommends the establishment of the escrow account. I see no reason to differ from his opinion on this.

Newlin said he would be inclined to agree with you on that.

Lannon said there has been only an escrow account with Riverwalk.

Johnson said there are 5-6 other developments and with Patrick Homes we had to do the landscaping. I hope in the future that we will have a list on what has to be done so that people are not waiting for a long period of time to get something approved.

Newlin said he has some outstanding questions on the legal matter and I will seek private advice of counsel in executive session. Is there a desire to make a motion on this?

Boniello asked about the acceptance of title insurance issue and the other issue going to be resolved either by a MOU between the building inspector, the engineer and the developer.

DiRamio: I have had discussion with Dave Britton and we have PIP fees that go back at least a year ago that have not been paid.

Boniello said that before they get the first building permit, I am sure that all will be paid.

Newlin: How does the Board feel about accepting the insurance of title and then allow the building inspector, engineer and attorney to pursue a MOU with the parties involved.

Edwards: I don't have a problem of dedicating this road this evening...the developer stipulates that everything our attorneys and engineer need.

Boniello: Approve it subject to a MOU and that all conditions are met. Everything that Mr. Leone said about the title insurance is correct but the other thing is that it is indemnified to hold harmless the Town including defense costs on any issue arriving from the issue of title insurance.

Palmer MOVED to accept the title insurance as presented. Seconded by Edwards and carried 4-0.

Palmer MOVED for the acceptance of the dedication of the roadway subject to execution of a Memorandum of Understanding (MOU) between the Developer and the Town of Lewiston incorporating all the concerns of the Engineer, Attorneys and the Building Inspector included in the November 30, 2007 letter. Seconded by Johnson and carried 4-0.

Leone: The performance bond that has been submitted may have to be extended.

Boniello: It is possible that the project will not be done in 2 years and I don't know if you are going to put the final grade on the road because the project is complete or the majority is complete so it should be put on their agreement to take into consideration what we will do in the way of extending the performance bond.

Leone stated that the maintenance bond is in effect on December 12, 2007 to December 12, 2009.

Boniello: I doubt if that project is going to be completed by that date.

Lindelov: The ROW is completed and as of now we have final approval from Mr. Lannon.

Boniello asked if it was going to be completely developed by.....

Lindelov: The ROW is 100% completed.

Newlin suggested that the MOU be worked on.

2. Budget Transfers & Encumbrances:

Johnson MOVED to transfer the following requests: A-1110-0200 to A1110-0400 \$3000; A-1990-0400 to A1420-0400 \$55,000; A7310-0100 to A1220-0200 \$2300; A7310-0100 to A7310-0400 \$11,000; B-3620-0100 to B-3620-0400 \$15,000; B-3620-0100 to B-3620-0200 \$500 and SW1-8340-0400 to SW1-8340-0200 \$3000. Seconded by Palmer and carried 4-0.

Edwards MOVED that the 2007 Encumbrances in the amount of \$374,654.44 (See List) be approved. Seconded by Palmer and carried 4-0.

3. Re-organization Meeting:

Johnson MOVED that the Re-organization Meeting be held on January 3, 2008 at 7:00 p.m. Seconded by Edwards and carried 4-0.

PALMER:
Nothing at this time.

JOHNSON:
Fire Contracts:

Johnson MOVED that the Supervisor and the President(s) sign for the approval of the Fire Contracts as written for Sanborn Fire Co., Upper Mt. Fire Co. and Lewiston Fire Co. #2. Seconded by Palmer and carried 4-0.

Johnson MOVED that the Supervisor and the Town Atty. be allowed to sign a mutual contract with the Village of Lewiston for the services of Lewiston Fire Co. #1 for the years of 2008, 2009, 2010 & 2011. Seconded by Palmer and carried 4-0.

Johnson MOVED that the Supervisor be allowed to sign the fire contract with the Ransomville Fire District and the Pekin Fire Co. as to be determined by the attorneys. Seconded by Edwards and carried 4-0.

Sanborn Fire Co. Roster Addition:

Johnson MOVED for the addition of Kevin Casal to the roster of the Sanborn Fire Co. Seconded by Edwards and carried 4-0.

County Ambulance:

Johnson MOVED that the Supervisor be authorized to send a letter after review by the Town Attorneys to the EMS Communications Office of the NYS DOH with respect to an application by the County of Niagara to initiate a County Emergency Medical Service. Seconded by Edwards.

Johnson said that if we did go to a county service, would there be a double tax for Lewiston residents who now have good coverage. I believe that there are parts of the county that do need some service and they should pay for it.

Boniello noted that this matter is farther along that we are aware of and that this is an effort by the county to subsidize other towns. What will happen is an unfunded mandate. We here have good service and we would end up subsidizing other services throughout the county. They are trying to do this is to create an emergency situation and that there is no need to go through the regular channels. There are firemen throughout the county that do not want this. I understand that this is being proposed by the office of Fire Coordinator & Emergency Services. I think that a letter should be sent to our legislative reps and the Niagara County Legislature asking for their input and views.

Palmer said he too does not believe that the residents of Lewiston are aware of this.

On the Motion, carried 4-0.

Johnson stated that info provided by the budget officer showed that the county rate for ambulance service for 3 communities went up substantially and we should do some research on this matter.

EDWARDS:

Northridge Development:

With respect to the MOU, I don't see where an MOU or any negotiations are needed. To expedite this they should do those 4 items that satisfied our attorneyswhy are we negotiating?

Boniello: I wouldn't call it negotiating but I would call it making sure that they are obligated to do certain things and they have to do them before the issuance of a building permit and the dedication of the road. We are not holding up the process.

Edwards said he does not want to be accused of holding up the process. It has only been a month that Mr. Johnson brought it to our attention that they want this

development to go forth. But yet, we have a debt (the PIP) to the Town for how long, Mr. Lannon? So, we are not holding them up.

Boniello said the “ball” is in their court.

Newlin said that within that motion, they have to meet those requirements as set forth in the MOU.

Parks Department:

Edwards MOVED that Derek Tracy and Anthony Morreale at a rate of \$8.50 per hour be hired for a period of 3 weeks for winter cleanup. Seconded by Johnson and carried 4-0.

Carryover Personnel Days:

Edwards MOVED that at the request of the Town Clerk that the following employees Donna Garfinkel (1); Barbara Joseph (2) and Kevin Norwich (2) are permitted to carryover personal days to be taken within the first 90 days of 2008. Seconded by Palmer and carried 4-0.

Edwards MOVED that the following employees of the WPCC be allowed to carryover 1 personal day to be used in the first quarter of 2008: Richard Dreier, Leslie Frey, David Harvey, Martin Lauer, Rosalie Kilmer, J. Lester Myers, William O’Connor, Scott Clark, Dave Alexander, & Timothy Lockhart. Also ½ personal day for Don Haseley. Seconded by Palmer and carried 5-0.

Palmer MOVED to go into Executive Session to discuss litigation and a personal issue. Seconded by Johnson and carried 5-0.

Time: 8:20 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk

Executive Session:

Present: Sup. Newlin; Council Members Edwards, Johnson & Palmer; Attorneys Leone & Boniello*; Deputy Sup. Elgin and Police Chief Salada.

Items Discussed:

1. Personnel Issues re: Police Dept.
2. Pending & Current Litigation.
3. Misc. Personnel Issues.

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

Time: 9:30 p.m.

*Minutes taken by Deputy Tn. Atty. Boniello.

