

**TOWN BOARD MEETING    February 22, 2010            6:00 P.M.**

Present: Sup. S. Reiter; Council Members A. Bax, M. Marra, E. Palmer, R. Winkley; Deputy Sup. G. Catlin; Atty. M. Dowd; Adm./Op. T. Lockhart; Eng. P. Wzontek; Bldg. Insp. T. Masters; Finance Director M. Johnson and Town Clerk C. Brandon. 2 press reps and 8 residents.

The Supervisor opened the meeting with the Pledge of Allegiance followed by a moment of silent reflection.

**RESIDENTS:**

Paulette Glasgow of 836 The Circle. The question is regarding the “dog park” and the defective bidding process associated with the project and the possible appropriation of public monies. An expenditure of more than \$20,000 shall be awarded to the lowest bidder. NYS Constitution prohibits giving public money to aid a private individual, corporations or associations or undertaking contractual agreements under which the municipality receives consideration as a Town program so long as the Town retains the supervision and control. The Town is considering the giving of more than \$20,000 in public money on property it does not own to an unincorporated with no approved contract in place. This is obligating its’ taxpayers for future monies. Contractors review spec sheets which details what is being sought. The spec sheets first advertised 1536’ and the second advertisement stated 1636’ which was to amend the first advertisement. General Municipal Law #103 states that any amendment is strictly prohibited. Any and all bids should be disallowed. I would ask that you table this, bid properly and follow the law.

Rose Mary Warren of 5892 Griffin St. I requested 2 contracts....one between the Village who owns the land for the “dog park” and the Town. The 2<sup>nd</sup> was between the “dog park “people and the Town. I rec’d a letter from the Clerk stated that there was no contract between either one. I can’t believe you would pursue this until there was one showing who is responsible for different areas. I think the “dog park” group is to vague a name. It should also have specific names of people in the contract. In the Village minutes it says the Town of Lewiston is donating a fence. This is a generous \$30,000 offer. Will the Town cut the grassy area? Who is going to be responsible for their dogs and any injuries that are caused? Who will see that each individual who takes a dog there signs a form with the Town and who will monitor it? It also says that young children are permitted in park and they should be under supervision. I think there should be more guidelines before jumping into this. This proposal is not thought out. I think it needs written contracts and rules by more than a vague dog group.

Diane Roberts of 4391 Autumn Lane. On 1/8/10, I submitted a FOIL request asking for the contract with the attorneys and yet to receive it. I would like that response. With regard to the “dog park” there is a question of liability which the prior administration did question that. It was noted that the dog group was incorporated out of the City of Niagara Falls. Are we spending a lot of our money here in Lewiston to benefit dog owners in Niagara Falls that would come here? Who is going to own the property which is a contract question which goes with the liability issue of a child being bitten. Who is going to police it and be responsible for it.? On 1/25/10, the Clerk read my letter concerning the use of a truck by the Supervisor and I would ask each of the Board members and there was an indication that that would be looked into considering Mr. Reiter that you have still be seen around Town going into many personal businesses using that truck subsequent to 1/25. I would like to know under what authority you are using a highway truck on town business and exactly what town business is being conducted.

Amy Witroyl of 4726 Lower River Road. This evening the DEC is holding a hearing on modifications to CWM's SPEDES permit which is a long time coming. While we support many of the modifications DEC has proposed to this permit it is still not protective of water quality particularly with respect to radiological contamination. DEC's responses on radiation issues raised the last permitting on the modifications are vague and incomplete or factually inaccurate. Radiation problems addressed in other CWM's permits contain gas that puts workers and others at risk. For this CWM water permit, DEC says "new internal monitoring for PCB's are being proposed for the known and upgrading contaminated soil, test violations and a concern for their migration into the storm water." However, CWM opposed these new compliances points and CWM said they want to decide where to take their samples. DEC has said that monitoring is sufficient to approve or disapprove the possible presence of PCB's in storm water but the ongoing potential for the PCB migration in storm water discharge. The current sampling point mask the PCB's and it took DEC 3 decades to figure this out. The permit modification seeks to assure acceptable discharge quality for certain chemicals of concern. CWM says today that its' discharge is cleaner than the water in Niagara River but however CWM is comparing the quality of one discharge to about 100 years of about worth of bio chemicals built into the river including their own. DEC states that if the analytical results for PCB's are exceeded for 3 consecutive months CWM shall submit a report identifying long term measures to be taken. Mathimatically, this would allow CWM to exceed PCB limits 8 out of every 12 months. They have had more than 25 years to solve these problems and DEC has not been aggressive in preventing PCB discharges into our creeks. DEC states that a discharge goal maybe included is desirable to achieve recognizing that the goal is not currently being achieved. Today, CWM said that new limits were part of the broader imitative while failing to note that its' current mercury limit of 2000 per liter has for years been more than 600 times the DEC's limit. There are many more problems but I would ask you to remember is that the State ultimately denied the expansion of CECOS because we did not need it and because all hazardous waste landfill operations have problems. This time, DEC has determined that the State does not need CWM. That is a very significant change and one more reason why CWM's RMU2 application is in trouble in the time schedule. If you think it is beneficial to update the previous SPEDES permit on the Town web site, I would be happy to forward to the Town offices the current draft. Residents have until March 22<sup>nd</sup> to comment to the DEC.

AGENDA:

Bax: I would like to add that the Supervisor draft a letter similar to the Town of Porter on the carp epidemic and a resolution with respect to our Town Attorney positions.

Reiter asked to add contract obligations in executive session.

**Bax MOVED to approve the amended Agenda. Seconded by Marra and carried 5-0.**

MINUTES:

**Bax MOVED to approve the minutes of 1/25/10 RTBM and 2/8/10 Worksession. Seconded by Marra and carried 4-0-1 (Winkley).**

POST AUDITS:

**Marra MOVED for approval of the following Post Audits payments to Home Depot \$245.41; Sam's Club \$1,090.26; Beau Enterprises \$ 681.70; Ford Motor Credit Co. \$8,476.40; Mascaro Concrete Co. \$1,500.00 and Ken Young Paving Inc. \$6,500.00. Seconded by Palmer and carried 5-0.**

OLD BUSINESS:

1. Pletcher/Creek Road S.D.

Masters: The mylars have been signed and taken care of.

2. Gross Contracting Voucher

Johnson: We paid them \$141,520.12 and \$10,000 has been held back until we receive a letter that the system is level then we will pay them.

NEW BUSINESS:

1. A request from the Residents for Responsible Government (ROLE) for a response to their inquires made at the Jan. 26<sup>th</sup> meeting.

Reiter said he would ask that the attorneys draft a response to this request.

2. A request for a proclamation honoring wounded and ill military veterans on silver Start Banner Day.

**Marra MOVED that a proclamation be prepared to honor veterans through a Silver Star Banner. Seconded by Bax and carried 5-0.**

REITER:

1. Legal:

Dowd: There is going to be a resolution as whether there is going to be two consulting attorneys for the Town or a Town Attorney and a consulting Attorney. We will have a resolution to that affect now.

**Bax MOVED for the following Resolution.**

RESOLUTION

At a meeting of the Town Board of the Town of Lewiston, New York held on the 22<sup>nd</sup> day of February, 2010, the following was adopted:

WHEREAS, the Town of Lewiston, New York by its dully-constituted Town Board and pursuant to the authority granted by virtue of Town Law §20, establishing the office of Town Attorney on or about August, 1998, and

WHEREAS, the Town of Lewiston, New York by the duly constituted Town Board, thereafter and pursuant to similar authority, established the office of Deputy Town Attorney on or about February, 2000, and

WHEREAS, the aforesaid offices, after having been created, were filed in accordance with the position duties statement and qualifications as described and set forth by the Niagara County Civil Service Commission, and

WHEREAS, the current Town Board of the Town of Lewiston, New York at its reorganization meeting held in January, 2010, abolished the offices of Town Attorney and Deputy Town Attorney and in their place and stead opted to designate Mark Gabriele, Esq. and Michael Dowd, Esq. as counsel to the Town, and

WHEREAS, the Town Board of the Town of Lewiston now deems it appropriate, necessary and proper to re-establish the office of Town Attorney, and

NOW, THEREFORE, IT IS RESOLVED that pursuant to the authority granted by Town Law §20(2)00, the office of Town Attorney is hereby established for the e Town of Lewiston, New York and it is further,

RESOLVED, the said Mark Gabriele, Esq., is hereby appointed to the office of Town Attorney and it is further,

RESOLVED, that the said Mark Gabriele, Esq., shall receive a salary for the year 2010 in the sum of \$34,500 retroactive to the beginning of the year 2010 with credit to the Town for payments heretofore made to him as counsel for the Town; and it is further

RESOLVED, that the Town of Lewiston, New York shall file such appropriate documentation as deemed necessary with the Niagara County Civil Service Commission to re-establish by this resolution, and it is further,

RESOLVED, that the office of Deputy Town Attorney is not hereby established by the resolution; and it is further

RESOLVED, that Michael Dowd, Esq., shall continue to serve as counsel to the Town as previously appointed but he shall not designated as a Town officer.

The aforesaid resolution was duly presented to the Town Board passed by virtue of vote as follows:

**Seconded by Councilman Marra.**

Supervisor Reiter	Aye
Councilman Bax	Aye
Councilman Marra	Aye
Councilman Palmer	Aye
Councilman Winkley	Aye

**Motion carried 5-0.**

Bax: I have a consulting agreement between Mr. Dowd and the Town. It is annual agreement renewable year-to-year. The basic salary is \$34,500.

**Bax MOVED to approve the consulting agreement between Atty. Michael Dowd and the Town of Lewiston with an annual salary of \$34,500 and authorize the Supervisor to sign the annual agreement. Seconded by Marra. Motion carried 5-0.**

Dowd: With respect to the Mawhiney Trucking matter, I have reviewed the file. There is a court appearance tomorrow and I will report back.

Also, during the executive session I will bring up a retirement issue.

Palmer: Would you make sure that Ms. Roberts gets the information she has requested.

2. Engineering: None

3. Resolution re Climate Smart Communication Pledge.

Reiter said this is a pledge to combat climate change by becoming a climate smart community. We are working on it especially at the treatment plant where we are doing some co-gen work which is encouraging renewable energy and this will help us with our grants for the solar and wind power for the highway garage, town hall senior center and the plant.

**Bax MOVED to approve the resolution as presented. Seconded by Palmer and carried 5-0.**

4. Highway Equipment:

Reiter: The 20+ years old low boy trailer in the Highway Dept. which moves the rollers, paving machines etc. is rotting underneath and is beyond repair. Also, the tractor is costing more to repair than to replace. If a situation occurred we would have to rely on either Niagara County or the Town of Cambria. I have asked the Highway Dept. to get some bids and Mr. Johnson to look for funding with a cost of approximately \$140,000. All of the other departments use this equipment and I will report back at the work session on the bids and the funding. Also, I would ask that Mr. Johnson speak with our grant writer, Mr. Rotella.

Palmer: Governments fail to plan for the future and it would be nice for this Town Board to introduce a way to replace aging equipment on a rotating basis by putting money aside every year to go into a fund for these large piece of equipment not only in the Highway Dept. but the Police Dept. as well. We also need an inventory of the present equipment.

Johnson said it would check into this and also look into utilizing the funds.

Bax suggest a dedicated fund for replacement of equipment.

PALMER:

1. Saddlewood Lighting: The HOA asked for addition lighting in Jan. This issue has been around since 2006 and we installed an additional light (#5) with 100 watt bulbs. Instead of putting additional light standards in, the HOA is requesting on a temporary basis for increased wattage in this lights. We have info from National Grid and former Eng. R. Lannon and we have some prices. The Town would have to absorb the increased wattage and the installation of any lights. We need an update on the costs and I would like our engineer to look into this.

2. Rezoning/4885 Military Road:

We received correspondence from Advanced Design Group on behalf of Mr. Robert Warren of 4885 Military Road asking for approval of a zoning change from RR (Rural Residential) to Zone B (General Business). This will be referred to the Planning Board.

Reiter stated that at the recent meeting the Planning Board they discussed the homeland security building.

3. The Planning Board met and recommended the approval of a three-lot subdivision for Andrew Kloda for property located at 4280 Ransomville Road, SBL #76.00-1-16.1.

**Palmer MOVED for the acceptance of the Neg Dec on the property located at 4280 Ransomville Road. Seconded by Bax and carried 5-0.**

**Palmer MOVED for the approval of the three-lot subdivision at 4280 Ransomville Road as recommended by the Planning Board. Seconded by Bax and carried 5-0.**

BAX:

1. The CWW CAC will meet on March 1, 2010 at 4 p.m. and a report will be given by a rep from DEC on the water compliance issues.
2. Jake Brake: The correspondence that I received indicates that to enforce a no jake brake ordinance is an unenforceable law in a particular area because the jake brakes are considered a safety precaution in the trucks. The State did respond to a Village request for an opinion on the law and they said that the State law which enforces noise ordinances or a sign that indicates to travelers on the road that a noise ordinance will be enforced is appropriate and enforceable. My suggestion would be to place a sign basically saying that jake brake noise ordinances are enforced at the 3-4 locations that we have previously detected and that kind of solves both problems. If we were indicating in a sign that says effectively that jake brake noise ordinance enforces and it advises the truckers that are going to use it and if they are going to be over the decibel amounts permitted by law that they are either going to be ticketed or at least targeted by the police...but not that they can't use it entirely in the event of an emergency. The sign will say: Jake Brake Noise Ordinance Enforced or something to that effect. There was a letter of 12/21/09 from the Clerk's Office to NYS DOT asking if we could put up signs in the ROW...I don't think we have gotten a response to that. We have just gotten banter about whether jake brake laws are enforceable. With this option we have a viable sign that gets the message across and is not unenforceable. I think we can move forward once we get a response from DOT. Maybe the Clerk's office can follow up with DOT to find out if we can put the signs on the State ROW.

Winkley: This is a catch 22...if he has use his jake brakes for safety reasons and the issue for the jake brakes... there is really no reason for them to come down the hill other than their brakes are bad or they are over weight. If they are using their jake brake it is a sign there could be something potential wrong that truck. If you enforce that noise issue or stop the trucks that making the noise and check their brakes or their tonnage it will get known by the truckers because that is a \$5000 to \$6000 fine.

Bax said I think this noise limit is a State law that is already in affect. It is not a Town code modification. It is a 90 decibel limit. We are not going to be sitting out there with a decimeter and we can't do it with something moving. It is a tell tale sign of something else might be wrong such as overweight or bad brakes. I will research the law.

Palmer asked if there was section of the law that deals with unreasonable noise. I think that would be more appropriate.

Bax said I think there is a Town ordinance on noise. There is a Village ordinance. Maybe we would incorporate it into our code. We will have the attorneys look into that. I think it is a viable solution to a problem that we have been discussing for quite a while.

3. W.P.C.C. re Training Sessions:

**Bax MOVED to permit 10 employees to attend the Greater Buffalo Environmental Conference on March 23, 2010 with a cost of \$65.00 to \$75.00 per person with funds not to exceed \$800 from 8130.400-SS1. Seconded by Palmer and carried 5-0.**

**Bax MOVED for approval of Adm./Op. T. Lockhart to attend the WNY Stormwater Conference on March 25, 2010 at cost of \$75.00 with funds to come from 8130.400-SS1. Seconded by Palmer and carried 5-0.**

4. Asian Carp Issue:

We received a letter regarding this issue from the Town of Newfane and join them in a letter to Sen. Schumer requesting them to become active in the issue.

**Bax MOVED that the Supervisor send a letter to Sen. C. Schumber asking for his assistance by becoming active with this issue. Seconded by Marra and carried 5-0.**

WINKLEY:

1. Fire Bureau:

I attended the Fire Bureau Mtg. along with Tim Lockhart who is the Chairman of LEPC who gave a presentation on a heat plan which is a computerized program that you can go on line to check where all the MSD's materials are located in buildings. He showed us a diagram of a building and this pinpoints where the materials are located in the building which for a fire dept. is very helpful in an emergency.

Lockhart stated in about 85% of those in Niagara Cnty. that are required to report are on line with an estimation that by the end of the year we will have 99%.

2. Culvert Issue:

The firemen talked about the culverts with some of the deeper fire hydrants located on the wrong side of the culverts and when they are full it is hard to get a fire line across. The Supervisor also attended the meeting. We asked them to prepare a list of the culverts that they think are in immediate need.

Reiter said this is a situation that comes up occasionally and every time they prepare a list and then the Highway Dept. will "knock" them off as they can with the list that they have prioritized. They also must remember that they cannot go on the reservation.

MARRA:

1. At the last meeting, we were discussing some different parks projects and Mr. Johnson suggested looking into Niagara River Greenway Funding. With the Town receiving monies annually and it is set aside for these types of projects and I am currently working with Mr. Dashineau and Mr. Rotella trying to become more familiar with these projects. Even though the Town has money in reserves in an account that they receive annually for these projects there is a fairly lengthy process involved in securing these funds or getting the approval of the Niagara River Greenway. You have to submit paperwork and followed by a presentation to the Commission and get their vote & approval as well a vote and an approval from the host communities. We are currently looking into it and I will have more info at the next meeting.

**Marra MOVED to enter into executive session. Seconded by Palmer and carried 5-0.**

Time: 6:50 p.m.

Respectfully Submitted & Transcribed by:

Carol J. Brandon  
Town Clerk

Executive Session            7:05 p.m.

Present: Sup. S. Reiter; Councilmen A. Bax, M. Marra, E. Palmer and R. Winkley;  
Deputy Sup. G. Catlin; Town Atty./Counsel M. Dowd; Adm./Op. T. Lockhart  
and Town Clerk C. Brandon

Issues Discussed:

1. Sick Leave/Retirement
2. Modern/effluent, composting, electricity, tonnage.
3. WPCC Sludge Contract
4. Greenway Funds/Parks

**Winkley MOVED to exit executive session and reconvene. Seconded by Marra and carried 5-0.**

Time : 7:55 p.m.

No Action Taken.

**Winkley MOVED to adjourn. Seconded by Palmer and carried 5-0.**

Time: 7:57 p.m.