

Public Hearing            Comprehensive Plan / Zoning Code   March 14, 2011   5:30 p.m.

**PRESENT:** Supervisor Reiter; Councilmembers Bax, Marra, Palmer, Winkley; Deputy Sup. Catlin, WWTP Chief Oper. Ritter; Building Inspector Masters; Highway Supt. Janese; Town Attorneys Dowd and Davis; Finance Director Johnson; 12 residents; 2 Press and Clerk Donna Garfinkel

Clerk read notice into record.

Town of Lewiston  
Notice of Public Hearing

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Lewiston will hold a Public Hearing, in accordance with Section 272-a of New York State Law, on March 14, 2011 at 5:30 p.m., at the Lewiston Town Hall to solicit comments on the Draft Comprehensive Plan Update and Draft Zoning Code. Copies of these documents are available for public review at the office of the Town Clerk and on the town's website [www.townoflewiston.us](http://www.townoflewiston.us) . The proposed zoning amendments primarily affect procedural issues. The existing zoning districts will essentially remain unchanged.

Supervisor introduced Drew Reilly and Ellen Parker of Wendel Engineering.

Reilly updated the Board and residents on the progress of the Comprehensive Plan and Zoning Code. The existing Comprehensive Plan was adopted in 2000. A plan is required when you zone; you must zone in accordance with the Comprehensive Plan.

In 2005 the Town had a proposed Zoning ordinance update, but never went forward with it. In 2010, the Town approached Wendel to help implement the zoning updates. In order to update the zoning, the Comprehensive Plan needs to be updated, so the Town requested the Plan be updated.

The Town needs to modernize the Zoning Code. The existing one is from the 1960's. The proposed changes are mostly procedural items.

The public hearing is for the Comprehensive Plan update and zoning revisions that deal with process and modernizing the zoning code. Phase II, if the Board adopts the update, which will go hand-and-hand with the original Comprehensive Plan, would be changing the zoning districts.

Ellen Parker said the updated Comprehensive Plan does not replace the existing document.

The Vision Statement has been updated. Reaffirming goals & objectives in general, and updating goals and objectives to reflect current conditions.

The Environmental Setting has been updated.

Wendel recommends the following be addressed: Development Regulations (Zoning, Clustering, Site Plan Review, etc); Recreational Planning; Environmental; Sanborn; Village of Lewiston (direct surrounding areas); Transportation; Agriculture; Niagara River Greenway Corridor; Economic Development / Industrial Development; Infrastructure and Heritage.

Reilly said people are questioning why the Town changed from a Future Land Use Map to a Vision Map. A Future Land Use Map causes problems. When you tell residents that this is what every property in the Town is to be used for, the day after you adopt it, it is outdated. The Vision Land Use Map gives guidance on how to go forward.

Reilly said there are significant additions to the Definitions Section. The definitions to yard, lot, area and height regulations have not been changed; just made clearer how to interpret those requirements. This will assist the Building Inspector.

The exiting zoning districts will remain the same, but it is being suggested, in the future, the Town consolidate them. There are too many and cause confusion.

A new overlay zone for mining/excavation is added.

A new Cluster Development Law replaces current Cluster Development law.

A new OSPR – Open Space Preservation and Recreation section has been added.

A new PUD - Planned Unit Development district has been created.

The Town has added Site Plan Review into the code. A new Intent Section to the Site Plan Review explains the objective of Site Plan Review which is to evaluate a proposed land use in terms of its suitability to individual site conditions and surrounding land uses to minimize adverse effects on the health, safety and welfare of the local residents. This is a positive move for the Town.

A new Special Use Permit section has been added. This reflects new State Law on how they are processed.

A new section, Non-Conforming Uses and Structures has been added.

A new section for the Planning Board and the Zoning Board has been added. These are process issues and how they operate.

Revisions have been made to the Signage Ordinance, more detail has been added.

Supplemental Regulations have been updated. A new section on Adult Uses Zoning is being added.

Supervisor invited residents to comment.

Fitzpatrick, Arthur – 2030 Langdon Road. Fitzpatrick lives 200-feet from a “roll-off container” business, which exists under a Special Use Permit from the Zoning Board of Appeals. The Zoning Board of Appeals does not answer to the Town Board. How can the Town stop this from happening to anyone in the future, he asked.

He has gone to the Zoning Board of Appeals to let them know that the operations is continuing to expand and there is now painting. The Board tells him that the permit does not say that he can't do these things.

Reilly said it is being changed. A Special Use permit is not going through the Zoning Board of Appeals, it will be through the Town Board and there will be a process for this. Existing permits will be grandfathered; but if they come in to modify they will be under the new code.

Dowd said the process will still be the same whether the Town Board grants a permit. If a resident is unhappy with the Special Use permit granted by the Town Board, they would bring an Article 78 proceeding.

Bax questioned if the new procedure will include requiring a public notice of the request. Reilly said it will be treated like any other public hearing. The requirement could be, notification of people within 500-feet, and placed in the paper.

It needs to be listed in the Code what requires a Special Use Permit. When listed, the criteria should be in for each Special Use. This is the next step.

Glasgow, Paulette – 836 The Circle - Glasgow said Special Use permits go with the land, not the property owner. Reilly said this will remain. The Board can give the permit a condition that makes it a one, two, three year permit. They can be reviewed each year.

Changes to the Zoning Ordinance have not yet been addressed. There will be a separate Public Hearing.

Glasgow said the DEC has recently changed the Short and Long Environmental Assessment Form (EAF). They reflect numerous environmental issues, including Smart Growth, climate

changes, environmental justice, pollution prevention and hazardous waste. These items are not in the plan and Glasgow hopes this will be addressed.

There is nothing in regards to the Towns agricultural community. The Town of Porter was the first community in Niagara County, along with Niagara County, to pass a right-to-farm law. This is not addressed, nor is vested rights or developmental rights transfer policy.

In January of 2011, the DEC announced regulations on Outdoor Wood Boilers (OWB). They burn wood or other fuels. There are all kinds of residential stack height requirements and setbacks. In relationship to continues Agricultural land, larger than 5-acres, they must be located at least 100-feet from the nearest resident. Commercial OWB's have to burn 90% cleaner. This needs to be addressed.

Glasgow commended Reilly on the Sanborn Redevelopment Plan. Sanborn is a jewel, a jewel that has been neglected for too many years. There needs to be more detail. There is no discussion on Historic District. Sanborn has within it, many historical buildings, one of which is the Sanborn Farm Museum.

Wind turbines need to be addressed. This will be a big thing in the future.

In Section 5, Assessment of Environmental Impacts it mentions "the protection of important lands from inappropriate development, especially sensitive environmental lands such as the escarpment". Too bad previous Town Boards didn't have Reilly and Parker to do the Master Plan, because they completely screwed up the escarpment with development. This is the most sensitive area in Lewiston.

No mention of "hydrofracking", a process that results in the creation of fractures in rock.

Glasgow hopes the Greenway Plan is a 3 to 5-year Capital Greenway Plan. The Plan should show how the money will be spent and reflect the goals established by the Niagara River Greenway Commission.

In regards to Article XXVI – Supplemental Regulations and Article XXV – Signs, more work needs to be done to tighten up these ordinances. The spirit of what you wish to accomplish is a good one, but should you fail to redraft these ordinances there is a good chance the ACLU will take up residence in Lewiston.

Glasgow asks "Has Lewiston recently had an adverse secondary affect with regards to adult cabarets, motels, or video stores that are already here? You desire to regulate the operation of such businesses because they have an "undesirable secondary effect" on our community. Could you please tell me what those undesirable effects are? Have we seen an increase in drug use or crime due to these businesses? Has mine or your property value decreased because of these businesses? Municipal zoning ordinances on adult businesses may be very popular but serious constitutional issues arise when a municipality directs regulation against free expression that is protected by the Federal and State Constitution".

Glasgow said she is not in support of these businesses, as they have no place in any community, but she is an advocate of a legally defensible defense against the regulations that will put the Town in court.

In order to enact a legally defensible ordinance regulating the use of these types of businesses, the Supreme Court laid down a four part test for determining when it is permissible to use zoning, so to not violate the first amendment of the Constitution. In deterring validity you must consider the predominant purposes of zoning to suppress this type of speech or rather to eliminate the secondary effects; does the zoning regulation further a substantial government interest; does the zoning regulation narrowly tailored to affect only those uses which produce unwanted secondary effects, and does the zoning regulation leave open reasonable alternative locations for adult uses.

Three of these have been addressed. The first one has not, and that will be the one that will get the Town. The way the Town answers all four parts of the test, the Town needs to do a

study on what the adverse secondary effects would be and have public hearings. This way the Town is on the record, saying this is why we are enacting this zoning law.

This could also be approached through Site Plan Review that could help mitigate negative impacts on the neighbors. The Town could impose such elements as parking, means of access, screening/landscaping or architectural features to regulate the impact of the effects of the adverse secondary effects.

In regards to Article XXV – Signs, regulating sign ordinance must regulate the physical characteristics of signs through-out all of Lewiston. One sign can't be singled out. The present code singles out election signs. If you regulate where and how long a campaign sign is posted, you must apply the same regulation to all signs throughout Lewiston. Glasgow suggests this be looked into.

Glasgow commends the Board and Wendell for the job that has been done.

Witryol, Amy – 4726 Lower River Road. Witryol would like to see any information, proposed changes, and/or plans for the planning process posted on the Town website. Maybe the Supervisor could remark at Board meetings that it is on the website and encourage the press to let the public know.

Any property in the Town of Lewiston, that is subject to an investigation for former Defense Department use by the Federal government, or for current use by the Federal government, as a practical matter, the Town might look at the location and history of the property, and say “This isn't really ideally suited for residential”. The clean-up standards differ, based on what the Federal government will do for the Town, as to whether the Town contemplates use for industrial or residential. Residential will get you a safer and better clean-up. Whatever opportunities the Town may have to designate as potential future residential use, it is hopeful there will be clean-up. The Corp of Engineers has determined the upper and lower ground water bearing zones in the northeast part of the Town are connected

Reilly thanked all for their input. This is the 30-day review process, and written comments have been received. Reilly addressed resident's comments.

Signage has been removed from the code.

Reilly has given the Board advice on handling the adult cabaret. It has been suggested the hydrofracking not be addressed in the Zoning.

The Historical District is a great idea and will be discussed. The Town is working on a Wind Turbine code separate from Zoning.

Wood burning fuels have not been discussed, but can be addressed if the Board wishes. This is a very difficult issue.

Very strong recommendations have been made to the Board in regards to Agriculture Districts.

Smart Growth legislation is out there. The Town has done one major thing for this; the Comprehensive Plan. This is the proof that the Town is doing Smart Growth; there is a plan that makes sense.

**Winkley MOVED to close the Public Hearing, Seconded by Palmer and Carried 5 – 0.**

**Winkley MOVED to adjourn, Seconded by Palmer and Carried 5 – 0.** (6:15 p.m.)

Respectfully Submitted and Transcribed by:

Donna Garfinkel  
Deputy Town Clerk