

Present: Supervisor S. Reiter; Councilmen A. Bax, M. Marra, E. Palmer and R. Winkley; Dep. Sup. G. Catlin; Eng. R. Smith; Atty. M. Dowd; Atty. M. Davis; Police Chief C. Salada; Finance Director M. Johnson; Hwy. Supt. D. Janese; 3 Press; 20 Residents and Dep. Clerk C. Schroeder

The Supervisor called the Public Hearing to order for the acquisition of Legacy Drive. He asked Atty. Dowd to bring the Board up to date on this.

Dowd said a Public Hearing was set a number of months ago. One of the owners of the property passed away since then. The Board decided to re-notice it. Notification of said hearing was sent to the legal representatives of the two estates, as well as the owners listed on the Assessor's records as being the owner on record with the Town. All necessary parties have been notified of the public hearing. As you recall, it was the Town's concern that there were some buildings built on Legacy Drive but the road was never dedicated because of the title controversy with the owners on that parcel. Dowd said it is the Board's concern that the road access to those structures poses a danger. Dowd said it is the Board's intent to get the road dedicated and get access to Creek Road and Northridge Drive to get the safety issue resolved. Dowd said the board has to comply with the Eminent Domain Procedure Law. The first step is the public hearing. As part of that, the Town has to consider any environmental impacts. It is an unlisted action under SEQR. If the Board chooses to continue with this, it would have to designate itself Lead Agency. No other agency would be involved. The Town would prepare a Short EAF to determine if there are any adverse environmental impacts. After the closing of the public hearing, the Town has 90 days to issue its findings whether or not it's appropriate to take this land. It has to be for a public benefit, primarily public safety. Once the Board issues its findings and determines it wants to take the property, the next step would be to take the matter to court for the issuance of a deed. Dowd said an appraisal of the property is being conducted. The appraiser contacted the property owners as well to give them an opportunity to participate in the appraisal process.

The Clerk was directed to read the public notice:

NOTICE IS HEREBY GIVEN that a Public Hearing will be held before the Town Board of the Town of Lewiston on the 28th day of January, 2013 beginning at 5:30 p.m. at the Town Hall, 1375 Ridge Road, Lewiston, New York to consider the following act:

PROPOSED ACQUISITION OF REAL PROPERTY FOR THE PUBLIC PURPOSE OF COMPLETING THE DEDICATION OF THE PUBLIC ROAD KNOWN AS LEGACY DRIVE IN THE TOWN OF LEWISTON HAVING APPROXIMATE DIMENSIONS OF 81' X 150' WHICH IS FURTHER IDENTIFIED AS SBL# 101.12-1-37.

All residents for or against said proposal will be given an opportunity to be heard.

By order of the Town Board
January 7, 2013
Carol J. Brandon
Town Clerk

Published 1/12,13,14,15,16/2013

The Supervisor asked for public comment:

John N. Blair, attorney for the law firm Blair & Roach, said he has been retained by the estate of Benjamin Sicoli, to share a few things with the Board before it completes its analysis and its findings: This has been a matter that has been pending for some time with an attempt to privately negotiate an acquisition for this particular portion of Legacy Drive that we call Lot 17. Those negotiations are ongoing... We believe there are alternatives and that it is not necessary for the Town to be asked to exercise its eminent domain powers to acquire this small portion what is known as Legacy Drive. In the beginning when the applications were made for construction we did point out to the former assistant Town

attorney that there was some confusion that had occurred with the developer's application for their permit where it appeared that the Town staff believed that this was property owned by the developer. We did bring it to the attention of the Town attorney at the time, Mr. Leone, that this property was deeded to three individuals – each with an interest in the land and therefore each with a need to consent or not consent to any purchase or acquisition of the property by anyone else. In 2006, there commenced a lawsuit by two of the three owners of this property a lawsuit with the NYS Supreme Court, Niagara Co. That case is still officially on the records of the court but the developer's representatives have not chosen to pursue what they could have achieved in litigation perhaps without burdening the Town with the domain process. They could have sought and procured, if they were successful on their merits, a requirement from the Court to take this property simply by a matter of partnership law. There was a dispute to whether there was a partnership. All of this should be helpful to you considering whether or not it is necessary for you to take this action of eminent domain.

Also, in the course of this dispute, we were urged to work out our differences, be patient and not ask the Town to get involved with what is mostly private and a family-type of a dispute. That seemed to be the best way to go for many, many months – ultimately years. During the course of it the Town's Engineer did assure my now deceased client that the Town would never consider by proceeding by eminent domain.

The Town Attorney did hit on the operative word as to whether or not this is predominantly a public purpose. You're being asked to achieve what is predominantly a private goal and not a predominately public purpose. Nothing has changed we believe in terms of a safety issue until something precipitated it involving the construction lenders or owners of the development project. The details of which can be shared but I won't do it at this time. We think there is predominantly a private purpose. We do believe there is an alternative to provide as the fire marshal has suggested a second ingress and egress in case of an emergency should Legacy Drive not be able to be used by residents of these condominiums directly. We think that the private developer could construct a second road from Legacy to Scovell Drive. That would provide multiple ingress and egress in addition to Legacy drive. That seems like it is a solution. It's one that a private party may not want to incur the cost of but I think it is much better than asking this Town to exercise its emanate domain powers when this is primarily a private purpose being served here.

We do believe to ask the Town to incur the time, expense and talents of the Town Attorney and the cost of an eminent domain proceeding is an unfair waste or burden on the taxpayer's money. We think it would also constitute a violation of the NYS Constitution Article on prohibiting gifts to private enterprise and private parties. We ask to the Town to seriously consider A) Are there alternatives? B) What's the rush? It's been like this a long time. What's precipitated we believe are things totally related to private objections, not Town objections, Public purpose objections.

I have letters that were sent to the Town from Mr. Sicoli on Nov. 5, 2005 urging them not to issue any construction permits because we did have a private property interest here unbeknownst to the Town. There were two more letters, one of Aug. 12, 2007 that I sent to Mr. Leone providing him proof of the private ownership interest here. Thirdly, there was a further letter from me to Mr. Leone on Oct. 15, 2007, indicating that the private dispute is already in court and asking the Judge to make some determination. That was further reiterated by Mr. Sicoli in a letter to the Town Board back on April 1, 2008. I will provide them to the Town Attorney. We urge you to consider if it's Town business or are you really being asked to accomplish some private business.

As there were no further public comment, the Supervisor asked for a motion to close the hearing.

Bax MOVED to close the Public Hearing, Seconded by Marra and carried 5-0.

Palmer MOVED to accept Lead Agency status. Seconded by Winkley and carried 5-0.

Dowd indicated that a Short Environmental Assessment form has been prepared on behalf of the Town of Lewiston identifying the property and SBL describing the consideration of

the property for public purpose including dedication of the road, know as Legacy Drive, etc., indicating that it applies to the existing zoning and is currently in a residential area. Whether or not any approval permits would be required from other agencies - they are not. No other permits would be involved. Dowd said there is no reason for you not to do the Environmental Assessment tonight. You have 90-days to issue your findings and determination as to whether or not it will serve a public purpose and whether or not you should go forward with the condemnation. You have 90-days to make that decision. Either way, you need to finish SEQR before you can get to the next step of determining if you want to continue to go forward. If you don't believe there will be any adverse environmental impact associated with this project, I would ask the Board to move for a negative declaration.

Palmer MOVED to accept a Negative Declaration on the property further identified as SBL# 101.12-1-37, Seconded by Bax and carried 5-0.

Dowd said the Board now has 90-days to determine whether or not it is going to move forward. In the meantime, there is an appraisal being done. That, of course, will have an impact on your decision, he said.

Bax MOVED to table until the next meeting. Seconded by Marra and carried 5-0.

Reiter said the Board will take a 10-minute recess before opening the Regular Meeting.

Transcribed and
Respectfully submitted by

Carole N. Schroeder
Deputy Town Clerk