

December 8, 2014

Public Hearing

6:15 PM

Present: Supervisor D. Brochey; Councilmen A. Bax, B. Ceretto, Wm. Conrad & R. Winkley; Dep. Sup. S. Edwards; Attorneys M. Davis & B. Seaman; WPCC Ch. Oper. J. Ritter; Building Inspector T. Masters; 3 Press; 10 Residents and Dep. Clerk C. Schroeder

The Supervisor called the Public Hearing to order. The Clerk read the notice into the record:

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Town Board of the Town of Lewiston on the 8th day of December, 2014 at 6:15 p.m., at the Town Hall, 1375 Ridge Road, Lewiston, New York, on the adoption of a proposed Local Law entitled, "A Local Law Abolishing the Office of Receiver of Taxes and Assessments and Transferring All Powers and Duties of that Office to the Office of the Town Clerk," an abstract of which is as follows:

Said Local Law abolishes the office of Receiver of Taxes and Assessments in the Town of Lewiston and transfers all of the powers and duties of that office to the Town Clerk. Said local law supersedes the provisions of Town Law Article 3, Section 201(1) (a) as it pertains to the Office of Receiver of Taxes and Assessments. Should the law be passed by the Town Board it would be subject to a mandatory referendum and will be submitted for the approval of the qualified voters in the Town of Lewiston at a special election at a time to be fixed by resolution of the Town Board.

The complete text of said Law is on file at the Office of the Town Clerk, and is available for review by any interested person during business hours.

At such public Hearing, all persons interested, who wish to be heard, will be heard.

By Order of the Town Board
November 24, 2014

The Supervisor called for Public comment.

There being none, Bax MOVED to close the public hearing, Seconded by Conrad and carried 5-0.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk

Present: Supervisor D. Brochey; Councilmen A. Bax, B. Ceretto, Wm. Conrad & R. Winkley; Dep. Sup. S. Edwards; Eng. R. Lannon; Attorneys M. Davis & B. Seaman; Hwy. Supt. D. Janese; WPCC Ch. Oper. J. Ritter; Sargent F. Previte; Building Inspector T. Masters; 3 Press; 10 Residents and Dep. Clerk C. Schroeder

The Supervisor call the worksession to order, followed by the Pledge of Allegiance.

AGENDA

Brochey said he had a legal issue for executive session re contractual matters. Bax asked to remove the Street Lighting for Oak Run Ph. 3 and the Resolution for the Microturbine Project for the WPCC.

Conrad MOVED to approve the agenda, as amended. Seconded by Bax and carried 5-0.

LOCAL LAW #6 – ABOLISHING THE OFFICE OF RECEIVER OF TAXES

Bax MOVED to approve the adoption of Local Law #6, 2014 abolishing the office of Receiver of Taxes & Assessments. Seconded Conrad.

The Clerk polled the Board:

Councilman Bax – Aye
Councilwoman Ceretto – Aye
Councilman Conrad – Aye
Councilman Winkley – Aye
Supervisor Brochey – Aye

Motion carried 5-0.

Bax MOVED that Local Law #6, 2014, abolishing the office of Receiver of Taxes, be set for referendum at a date to be determined by the Town Board, upon consultation with the Town Clerk. Seconded by Winkley and carried 5-0.

ABSTRACT

Bax MOVED to approve the Regular Abstract of Claims Numbered 3587 to 3835 and recommended payment in the amount of \$271,668.93, plus a post audit of \$1,068,255.56. Seconded by Winkley and carried 5-0.

DOMINIC MASSARO – LEGACY DRIVE

Mr. Massaro thanked the Board for the opportunity to speak. He is here, along with his partner Lisa Keating, of LMK Development in an attempt to work on the issue of a fee schedule with the Building Department on their approved development at Legacy Drive.

Massaro said they have approvals for two buildings currently under construction and two that have been completed at Legacy @ Lewiston. We also have approval for apartment complexes which they are planning to build. We have a pending loan with a bank that requires us to produce a bonafide building permit which Mr. Masters is prepared to do.

The only issue we have is concerning the fee schedule, Massaro said. I was prepared to make remarks on the basis that certain infrastructure and other related fees that Mr. Masters brought to my attention previously should not be applicable to our project only on the basis of the fact that under our Planned Unit Development (PUD), we already previously provided all the infrastructure that we've turned over to the Town, as part of our development agreement. I've come to find out in researching the information from what we have done previously that we had previously paid for those particular fees. I don't want to backtrack from what we've done before. I just want to ask the Board's consideration for an accommodation for those fees based upon on where they are now

versus when the project was originally approved several years ago. So, on that basis, the fee schedule according to Mr. Masters today for a 16-unit apartment building absent the building permit fee of \$2,100 which I am prepared to pay. The sewer and infrastructure fees however total almost \$11,000 per building. On a 5-unit apartment building, the Town is asking us to contribute in excess of \$50,000 for the privilege of connecting into the infrastructure that we have previously provided, tested out and is operating successfully. All I'm asking today for the Town Board's consideration is that the fee schedule that we provided before we initially paid \$4,175 per building in lieu of \$10,500 per building. I'm just asking that, because the project was approved during that time period and the economics of our project were brought about during that prior time schedule, that all the money and effort done to resurrect that project to date, that we be afforded the opportunity and ability to pay the schedule based on what it was before. In researching what we have done prior, it appears that we did pay those fees before. I do not wish to backtrack to what we did before. I think it would be fair and equitable on the part of the Town to review us in that particular way. We're not trying to get out of the fees. We would like to have the same schedule that we paid before with the higher building permit cost, which I have no problem paying. We have been working with Mr. Masters. He has reviewed the updated apartment drawings for the project to be in compliance with NYS & Town Building Codes. That process is ongoing. He and I have been interacting daily. We're working those details out along with our architect and consultant. With that, I would just like to make that request of the Town Board. I would just like to be able to move forward with the fee schedule that was in place when the project was originally approved in 2008.

Conrad: As far as the apartment buildings, has anything changed or are they basically the same.

Massaro: The design is the same. All we've done is update the design to be in compliance with building codes at the present time.

Masters: The difference would be that the two that are built now are 8-unit condos. The plans in front of me now are 16-unit apartments. You have 16 dwelling units as opposed to 8 dwelling units. The fee is based on dwelling units.

Massaro: I did receive from the Building Inspector the information on how the fees were calculated. I'm just looking that, if possible, we could revert to the older fee schedules. It would be a help to us. It has a lot to do with the economics of the project. We've already gone more than 100% with the Town in trying to resurrect this project...

I have no problem paying the \$2,100 building permit fee tomorrow. That is all I need for my construction loan which I have a commitment that expires at the end of this month. I have to get an occupancy permit from Mr. Masters before I can occupy the building. It will take me 5 months to build the building. What we can do at that time, if it is acceptable to the Board and Mr. Masters, is we re-compute together the old fee from what we had based upon the new apartment of 16-units to see what that net difference is from what you want to charge us versus what we feel the old rate would be. If we could pay that at the time of occupancy permit issuance. There would be no infrastructure cost to the Town until the buildings are occupied anyway. What it does is allow me to get my construction started and it would allow the Town Attorneys to review the situation. It's a solution to the issues at hand.

Brochey: Are you paid up in full with everything up to this point?

Massaro: Yes.

Masters: Recreation fees have not been paid.

Massaro: Recreation fees have been handled already by separate correspondence from my attorney that I'm aware of.

Masters: The last correspondence I saw was from Ryan Smith to your attorney but there was no resolution.

Seaman: It has not been resolved.

Massaro: I think there was an issue with the interpretation of the Town Code over lots, buildings, units. There was an extrapolation. I will leave that for you folks to work out. Basically, we've paid everything to date.

Winkley: I can understand his deadlines and if it's not going to cause any problems...

Masters: As long as the fees are paid before the occupancy permit.

Massaro: The compromise I suggest allows me to close my construction loan, allows us to build the buildings and keep the project active. You have the option at the time I make application for the occupancy permit to take whatever action you wish... We will either come to some resolution with the attorneys or basically, I'm going to have to capitulate and pay it all. You're charging me over \$100,000 for the ten buildings that I want to build, two of which are built already to connect into an infrastructure system that I provided and turned over to the Town at our cost – in excess of \$1,000,000. It is what it is. If that's the cost of doing business than that's the cost of doing business. I'm suggesting that it is lesser in other municipalities and it should be. It should be reduced.

Ritter: These fees haven't been to my knowledge updated since 1986. When I came on board here the last Supervisor and Finance Director said we have to raise these fees. They've gone to the Board a couple of different times until we decided in April 2014 what they were going to be. They are what they are.

Conrad MOVED to authorize the Building Inspector to grant the building permit with the understanding that there is still an issue to be resolved with the fees. Seconded by Winkley and carried 5-0.

SPECIAL USE PERMIT FOR BED & BREAKFAST

The Planning Board, on November 20, 2014 reviewed and approved a Special Use Permit request for Frank Garcia, 1488 Ridge Road, SBL# 102.02-2-33.2 for a Bed and Breakfast.

Winkley MOVED to schedule a Public Hearing for said Special Use Permit on Monday, December 22, 2014 beginning at 6:00 p.m., Seconded by Conrad and carried 5-0.

JDSP – SNOW PLOWING

Brochey said he would like to close the park road from Pletcher Road to Lower River Road for the winter, leaving an area opened up to where the toll booths once stood for cross country skiers. The Highway Supt. said he still has the barricades. He sees no problem closing it off. He would just like some compensation from the Park's Dept. to offset the cost for the salt when plowing. He would meet with the Parks Supt. to discuss this.

WPCC – PURCHASE OF CAMERA

Jeff Ritter said the purchase of a long-range pipe inspection crawler camera system would have to be approved by the Niagara County Sewer District before going out to bid. The cost of the camera is estimated at \$80,000, Ritter said.

Seaman: Just so that the Board is aware of what they are talking about, Jeff wants to buy an expensive piece of equipment. The Sewer District, in the past, has allotted \$20,000 to the Town, each year. Jeff wants to use that allotment for the next several years to pay for this camera. The Sewer District has said that would work but they have not said that they would commit 2015, 2016 or 2017 monies to it. The Town would have to re-apply every year. There is a chance they won't. There is no guarantee that money is going to be available every year. If there is some reason it isn't available, the Town (Village, Town of Porter and Youngstown) is still on the hook to pay for this camera. Although they have expressed that they see why it wouldn't happen, they won't go on record saying "yes" they will commit the money. There is no guarantee they are going to have the money every year.

Ritter said the purchase of the camera is exactly what the Sewer District is looking for. It is for the abatement of I & I and would help with a new program coming out called Capacity Management Operation & Maintenance (CMOM), a DEC mandated program for cleaning and videoing sewer lines to locate cracks or broken pipes and sources of infiltration

COLONIAL VILLAGE PARK

Ceretto said that Lewiston Fire Co. #2 had new park playground equipment put in over the summer. Anything that could have been salvaged from the old equipment was removed from the grounds. What is left is plastic and junk. The President of the fire company has asked numerous times that this junk be removed and it has not. Ceretto is asking that the excess equipment be removed quickly.

Janese said he has better equipment to remove these items. He would take care of this as soon as he is able to.

DEPARTMENT HEAD CONCERNS

Bax said he has been approached by several department heads to be able to voice their concerns and issues they may have at a public forum. Bax said if they want to have their comments heard, they should come to a Town Board meeting. Bax asked to place an agenda item for Town Board meetings for department heads to get up and speak.

Bax said the department heads have read articles in the newspapers. They thought that some of the things that were published, intentionally or otherwise, were misleading and not fair to their departments. Bax said they should air this all out and make sure that everything is on the up-an-up and everyone has the ability to voice their opinions and then the Board can make a joint decision.

Ceretto asked if they wouldn't rather address their concerns at worksession. This is a public meeting also. I think the worksession would be better. Bax said he did not have a problem with this. He asked that the Clerk put this on the agenda as a normal re-occurring event. They will have two opportunities to speak if there is an issue.

STREET LIGHT REQUEST, HEWITT DRIVE

Conrad said there had been a request for consideration of a street light at 1001 North Hewitt Drive. This request was forwarded to the Lighting Advisory Board for review. The Lighting Board responded that this location did not meet the criteria of the Code; however, they did respond that it was an area that could use a light for public safety concerns.

Conrad MOVED to direct the Town Engineer to contact National Grid regarding the installation of the Street Light in the vicinity of 1001 N. Hewitt Drive, Seconded by Bax and carried 5-0.

The Highway Supt. said he had requested a street light at the entrance to the Highway Garage but has had no response to his request.

Bax MOVED to forward this request to the Lighting Committee, Seconded by Winkley and carried 5-0.

NOTICE OF CLAIM, DAMAGE TO POOL

Brochey said a tree branch from the green space area fell on to a pool liner at 774 Michelle Court destroying the liner. The homeowner requested reimbursement for the cost of the liner. Brochey said insurance will not cover the claim because the liner is 15 years old. The homeowner is now requesting the Town pay the \$500 deductible for the liner.

Seaman said this could be done if the homeowner agrees to enter into an agreement settling any possible claim against the Town.

Winkley MOVED to refer this claim to the Town Attorney, Seconded by Bax and carried 5-0.

SEWER REFUND CREDIT (POOLS)

This item was tabled due to the absence of the Finance Director.

HIGHWAY DEPARTMENT ISSUES

Janese said he requested an estimate from Moley Magnetics for rebuilding the second Muckland Pump. Janese said the cost should not exceed \$25,000. Moley Magnetics estimated the cost coming in lower. Janese said he would like to have both pumps fully operational by spring.

Brochey asked to table this request until the Finance Director could respond to where the funds would come from.

At this time, Attorney Seaman said the Highway Supt. would have to obtain sealed bids for this project based on the current procurement policy. Seaman strongly suggested that the procurement policy be revised to coincide with General Municipal Law §103, which sets levels of \$35,000 for public work contracts and \$20,000 for purchases of goods and services. Those would be the limits for sealed bids. Seaman said he would prepare a new policy for adoption at the Reorganization Meeting.

Janese said he had been asked if he had any update relative to the drainage for Riverwalk. Lannon said he has been working on this. He had spoken to the Regional Engineer two weeks ago. He informed me that NYS Office of Parks will be issuing an easement to the Town governing the operation and maintenance of the storm sewer the Town would like to connect to. Prior to that, Lannon had asked if the Town could advance its project concurrent with any paperwork and he respectfully declined that request. We are awaiting an easement from NYS Parks that is coming out of Albany. I was told I would have that last Friday. I checked today and I have no update from State Parks as to when to expect that easement.

Lannon said they are also looking at advancing the demolition of four buildings on Joseph Davis Park property. These are currently within a temporary fenced in area.

ABOLISH POSITION OF JR. ACCOUNTANT

The following Board action is required by Civil Service to reclassify Katelyn Allan to Police Department Account Clerk:

- 1) Abolish the position of Jr. Accountant, effective 12/31/14.
Winkley MOVED for approval. Seconded by Bax and carried 5-0.
- 2) Appoint Katelyn Allan to Account Clerk for the Police Department, effective 01/01/15.
Winkley MOVED for approval. Seconded by Bax and carried 5-0.

EXECUTIVE SESSION

Winkley MOVED to enter into Executive Session regarding a legal issue and consultation with Town Attorneys re union negotiations and settlement of an invoice. Seconded by Conrad and carried 5-0. Time 7:40 p.m.

*Executive Session:

Present: Brochey, Bax, Ceretto, Conrad, Winkley, Edwards, Seaman, Davis

Issues Discussed:

1. Collective bargaining matter.
2. Pending litigation.
3. Settlement of potential litigation matters.

Winkley MOVED to exit Executive Session and reconvene worksession. Seconded by Bax and carried 5-0. Time: 8:20 p.m.

Action Taken:

1. **Bax MOVED to authorize settlement of possible claim regarding damage to pool liner for \$500 payable to Tom Swift. Seconded by Ceretto and carried 5-0.**
2. **Conrad MOVED to authorize settlement of disputed invoices with Nussbaumer & Clarke for \$20,000. Seconded by Winkley and carried 5-0.**

*Minutes taken by Attorney Seaman

Ceretto MOVED to adjourn, Seconded by Bax and carried 5-0. Time 8:40 p.m.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk