

Present: Supervisor D. Brochey; Councilmembers A. Bax, B. Ceretto, Wm. Conrad & R. Winkley; Eng. C. McGrew, CRA; Attorneys M. Davis & B. Seaman; Highway Supt. D. Janese; WPCC Ch. Op. J. Ritter; Police Chief C. Salada; Bldg. Insp. T. Masters; Finance Director M. Blazick; Dep. Sup. M. Briglio; 2 Press; 6 Residents and Dep. Clerk C. Schroeder

The Supervisor called the Work Session to order, followed by the Pledge of Allegiance and a moment of silent reflection.

AGENDA

Additions: Finances, Senior Van Driver (Brochey); Environmental Commission Resignation (Bax);

Deletions: Cell Tower Fees (Conrad)

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

ABSTRACT

Bax MOVED to approve the Regular Abstract of Claims Numbered 5923 to 6359 and recommended payment in the amount of \$443,371.82, plus a post audit of \$5,788,561.54*. Seconded by Ceretto and carried 5-0.

* A check for \$5,575,262.62 was to transfer funds from Key Bank to First Niagara Bank.

ENVIRONMENTAL COMMISSION:

Bax MOVED to accept the resignation of Dawn M. Timm from the Town Environmental Commission and Modern CAC, effective immediately, with regret. Seconded by Winkley and carried 5-0.

Despite moving out of the Town, Mrs. Timm will continue her position as the County's Environmental Coordinator and welcomes the opportunity to assist the Town and/or Environmental Commission on matters relating to the environment and solid waste.

DEPARTMENT HEAD CONCERNS:

Town Clerk: The Clerk said the Niagara County Health Department hosted a Free Rabies Clinic on 7/11 at the Highway Garage. With the help of her staff, 11 new dogs were licensed and many records were updated. Residents were very pleased that staff was available for licensing.

Secondly, she said she submitted a letter stressing that it is very important that Board Members and department heads understand that when they submit a voucher for payment, they have to include a receipt with it. This is a requirement of the State Auditor. If a receipt is not attached, the voucher will not be processed.

Lastly, the Clerk's office received a request from the Salvation Army to place a donation drop box in the Town Hall parking lot and Senior Center parking lot. The locations are maintained daily including snow removal by the boxes in the winter as well as pick up in and around the boxes.

Bax asked if there would be any liability issues. Attorney Seaman recommended the Salvation Army provide an indemnification agreement for his review. The Clerk said she would look into this.

Bax MOVED to table, Seconded by Winkley and carried 5-0.

Building Inspector: The Building Inspector said he has an application from Hilltop Country Antiques, 5154 Townline Road for a temporary sign to be erected until 8/13/15 on behalf of a fundraiser for the Niagara County SPCA, He asked if the Board would waive the \$35 permit fee.

Bax MOVED to waive the permit fee. Seconded by Winkley and carried 5-0.

Finance: The Finance Director responded to the recent reports of a downgrade in the town's bond rating by Moody's Investor Service. She said the downgrade was not the result of any one year. Blazick told the Board the bond rating service had issues with how Lewiston manages its fund balances – namely its operating funds – the A (whole town), B (part-town) and Highway Department accounts. The last time we had a positive fund balance in those funds was in 2011. That's what they are looking at. They're looking at the trend of that. Moody's is fully aware of recent efforts by the Town to curtail its expenses. Their real concern is with revenue. There are so very few sources of revenue. Blazick suggested the Town do more with its tax-free entities. Going forward with the 2016 budget, Blazick suggested the Town needs to plan better while also towing the line when it comes to department spending (payroll and expenditures). Looking backwards is not going to help us. Pointing fingers is not going to help in any situation. Our biggest concern has to be how we move forward and what we are going to do to remedy this situation.

Highway Supt: Janese said they are experiencing the same issues with the failing country curbs on Sara Court like that of Lauren Court. He wanted to bring this to the Board's attention. He suggested the Town Engineer take a look at this.

Janese said a decision must be made regarding the second Muck Pump, whether they replace or rebuild. It's dry right now but when they get into September if these pumps are not on-line we will have a problem. Janese said he is unable to get 3 quotes for the pumps repair. The Finance Director said it was her understanding they were going to obtain quotes for new pumps. It was agreed to discuss this at the next meeting when the engineer would be there. The Assistant Engineer said she would bring this to the Engineer's attention.

WPCC: Ritter said he had a request from the Sanborn Historical Society to borrow an air compressor during the Sanborn Farm Days, July 25 & July 26.

Winkley MOVED for approval. Seconded by Bax and carried 5-0.

GAMBINO WATER BILL:

Jerald Gambino requested a correction to a water billing error of \$84.37 for property at 4384 Autumn Lane.

Bax MOVED to credit Mr. Gambino \$84.37 towards his water bill. Seconded by Winkley and carried 5-0.

LONG WATER BILL:

A request was submitted by Harry Long for a reduction of his water bill due to a broken pipe in his basement. The bill was \$805.00. The sump pump had taken the water to the ditch and not the sewer. Any help from the Town Board would be appreciated.

Ritter said he wrote a letter to the water clerk that Mr. Long should pay the average usage which is approx. 900 cu ft. That would be his normal bill if the pipe had not broken.

Winkley MOVED to adjust Mr. Long's water bill for the average usage of 900 cu. ft. Seconded by Bax and carried 5-0.

CIMINO WATER BILL:

The Cimino's experienced severe damage to their inground pool during the past winter. The winter cover was damaged due to the heavy snowfall, which led to the drainage of the water in the pool to keep it usable. The total volume of water is 32,000 gallons. They are asking for some relief toward their water bill.

Ritter said there is no documentation that the liner was damaged. This is something we don't forgive. Page 2 of the of the 2015 Sewer Use Agreement said each municipality may offer to forgive sewer charges for filling a newly constructed and/or erected swimming pool, or for pool liner replacement provided a copy of a valid building permit is submitted as proof or a representative of the municipality verifies that the work has been completed. Ritter said he would converse with Darlene Norwich from the water department. They will notify the homeowner that their request does not meet the criteria per the Tri-Community Agreement.

RIVERWALK SUBDIVISION BARRICADES:

At a previous meeting, the Highway Supt was instructed to remove the barricade on Riverwalk Drive. Attorney Davis said he spoke with the Fire Inspector who confirmed his concerns were based on safety and emergency vehicle access. He was pleased to hear that the barricades had been removed. He would like to see the road finished properly and brought into compliance with the Fire Code for a thoroughfare for emergency access. Davis said the Fire Inspector can cite the developer for violations of the Fire Code.

EXCAVATION PERMITS – TUG HILL, MAWHINEY MINE

Attorney Davis said attorneys representing Tug Hill and Mawhiney Mine have contacted the Town asking for their permits. Davis said there is a court order ordering the Town to issue a permit to Mawhiney. He said he sent emails to the Town Board, Building Inspector and Town Clerk recollecting what his opinion of the meeting was and that the permit would be forthcoming. Davis said the Supervisor and Building Inspector have a different view of what needs to be done. Davis said his recommendation would be to issue the permit based on the Court Order.

Regarding Tug Hill, Davis said this is a situation that the current Town Board inherited. They were not around when the permit was originally issued by the State. Subsequently, a Memorandum of Understanding (MOU) was executed between the Town and Tug Hill representatives to avoid any litigation regarding their ability to excavate their mine on site. That MOU requires the Town, in exchange for a payment of fees, to issue a permit that runs concurrently with the State Permit. Davis recommended that that permit be issued also.

Brochey said it is his understanding that the application for the Mawhiney permit is incomplete. The Building Inspector said some of the information is wrong. Also, the Town did not receive the application fee of \$15,200.

Davis: Did you and the Town Clerk reject the application that was submitted saying there was not enough information?

Masters: She accepted it and forwarded it to the Town Board for their input. The Town Code says to file it in triplicate with the Town Clerk. It provides the information that is required on the permit application. That information was incomplete on the application. His response at the Clerk's counter that day was, "here's the application, then we'll talk about whether we will pay the \$15,200.00 or not."

Davis: He has to pay the \$15,200.00, pursuant to the Court Order. What is being said tonight is different than what was sent to me in emails over the last couple of weeks. The emails from the Building Department and Clerk's office was that the permit application is not complete.

Winkley asked the Building Inspector to notify Mawhiney as to what he needs to do to complete the permit. Masters said this is not his responsibility. He gave this information to the Town Clerk.

The Supervisor was asked to follow-up with the Town Clerk regarding this correspondence to get this moving forward.

Regarding Tug Hill Environmental, Davis recommended issuing that permit. They are operating pursuant to the NYSDEC Permit and MOU with the Town.

Bax MOVED to issue the Excavation Permit for Tug Hill Environmental, LLC. Seconded by Winkley and carried 5-0.

HIGHWAY FUNDING FOR ROAD PATCH WORK:

Bax said the Highway Supt. is looking for funding of \$40,000 for road patch work. Bax asked if there was an account where these funds could come from. The Finance Director said there were funds available in the General Repairs Construction. Janese said he would work with this. Bax recommended he, Janese and Blazick meet to discuss funding.

GREENSPACE:

Bax said he was under the impression that residents were supposed to have gotten a letter to invite them to a meeting regarding greenspace behind their homes. He would follow up with the Town Clerk about this.

WPCC – WATCHPERSON

Bax MOVED the hiring of Steven Arora off the Niagara County Civil Service list for the position of Watchperson, P/T at the rate of \$14.71/hour. Seconded by Conrad and carried 5-0.

RECYCLING TOTES:

Bax said the issue of larger cart based totes have been discussed numerous times. Some residents would be in favor while others, would not. Bax said residents can purchase carts directly from Modern by calling the Sales Department. Pick-up would remain weekly. Bax said he would report back on this.

ROOF REPAIR STATUS:

The Board inquired about the roof repair at the Senior Center and WPCC. Brochey said there is a NYPA Capital Account – H99 that has been sitting dormant since Fred Newlin was Supervisor. It has been sitting, unused and untouched. There is \$146,000 in that account. After some discussion, **Winkley MOVED to authorize the Town Engineer to go out to bid for roof replacement at the WPCC and the Senior Center to include HVAC units. Seconded by Bax and carried 5-0.**

RECREATION FEES – LEGACY DRIVE:

Seaman said there is some confusion as to whether recreation fees were paid or not for Condo units at Legacy Drive. The Developer disputes the fees based on differing interpretations of the Town Code. Seaman said there is some confusion in the code as to what constitutes a unit. Based on their reading of the Statute, the Developer said they owe \$2,500. Seaman said it is not spelled out in detail in the Code. He would draft language for amendment to the Town Code for better clarification. In the meantime, in order to avoid litigation, Seaman drafted a Resolution for consideration.

Conrad MOVED the following resolution, as written. Seconded by Bax:

WHEREAS, LMK Realty Associates, LLC ("LMK") is currently developing property in the Town of Lewiston at Legacy Drive; and

WHEREAS, the Town has no record of LMK paying the recreation fees required by Town Code §306-5(F) for said development; and

WHEREAS, the Town's Building Inspector has informed LMK that it owes \$10,250.00 for recreation fees, an amount that LMK disputes based on differing interpretations of the Town Code, and

WHEREAS, LMK has offered to pay \$5,000.00 to the Town in satisfaction of the disputed recreation fees; and

WHEREAS, the Town does not believe the amounts involved warrant the cost of litigating the disputed issues. Now therefore be it

RESOLVED, that the Town accepts LMK's offer of \$5,000.00 in full satisfaction of the recreation fees owed for the Legacy Drive Subdivision pursuant to Town Code §306-5(F), and be it further

RESOLVED, that upon payment to the Town of \$5,000.00 the fees owing pursuant to Town Code §306-5(F) be deemed paid.

Motion carried 4-1 (Brochey cast the dissenting vote.)

POLICE:

a) *Retirement:* **Winkley MOVED to accept the retirement of Chief Christopher Salada from the Lewiston Police Department effective July 30, 2015, with regret. Seconded by Bax and carried 5-0.**

b) *Unused Vacation:* **Winkley MOVED to reimburse Christopher Salada for unused vacation, personal time and sick time, as per the Town Employee Manual. Seconded by Bax and carried 5-0.**

MEDICAL EXAMINATIONS FOR VOLUNTEER FIRE COMPANIES:

A request was made from Sharon Hockenberry, Niagara Falls Memorial Medical Center to go out to bid for the medical examinations for the Town's volunteer fire companies. WNY Occupational Health is very interested in providing these services at a very reasonable cost.

Winkley MOVED to table. Seconded by Bax and carried 5-0.

NEW GRANT FINDER:

Brochey said there is an on-line grant writing service that would provide up to 10 personal computer systems to search for any available grants on-line at a cost of \$2,390 for two years. The Village would be willing to contribute 10% of the cost. Town's grant writer Bernie Rotella said that is what he does. No action was taken on this matter.

TIME WARNER – MOTION FOR STATIC ADDRESS TO MONITOR CAMERAS:

Brochey said he spoke to the Town's IT person who said he could hook-up cameras so the Police Dept and Town Supervisor could monitor the gas pump area at the Highway Garage. They could hook-up a static address to the computer monitor at a cost of \$20/month to provide static monitoring. This would comply with the State Auditor's recommendation. They would request a remote IP address for use at Town Hall. After discussion, the Board agreed to move the DVR Recorder from the Highway Garage to the Town Hall.

Winkley MOVED to approve the IP Static Address to monitor the camera at the Town Garage at a cost of \$20/month. Seconded by Ceretto and carried 5-0.

NYPA POWER CREDIT REFUND:

Supervisor Brochey said the Town has to work out a plan to initiate the power credit. They are not able to apply this as credit on the water bill, as what was done in the past. The Town would have to set up a process for the credits. It must be written in black & white so there is no question as to eligibility. Brochey said he would meet with the Assessor's office and Water Department to assemble a data base of the residential energy users. Bax suggested using the water bills roll as the basis for creating the data base. Seaman said the Town has to come up with a plan. That could be part of it to create the data base.

PROPOSED AGREEMENT W/ TEAMSTER'S RE PENDING GRIEVANCE:

Seaman said this pertains to the pending grievance regarding the position of Water/Waste Water II Operator, vacated upon the retirement of Robert Nablo. About three (3) weeks ago, Seaman said he, the Supervisor, Councilman Conrad and the Teamsters Union sat down in an attempt to come to an agreement that would resolve the pending grievance. After a fairly lengthy meeting, a proposal was made and at the time, Conrad and Brochey agreed a positive resolution would be to create a second, similar position in the water department. It would be a position that would continue until one of the two individuals, Townsend or Zahno, retired or left employment. At the time, it was something our representatives thought might work. It was circulated to the union. They have gone thru the steps to ratify and pass that agreement. Seaman said it won't take effect unless the Town Board is in agreement and votes for it. It is in the Court's hands at this time if that is the way the Board wants to resolve the grievance that was filed.

Brochey: I'll admit that initially I was on board with it. After 3-4 days of debating that, I have changed my mind because I looked at the fact that it would cost the Town an additional \$10,000 a year. Both men are qualified to do the same job. One is more qualified than the other. After giving it some thought, I'm not happy with the idea.

Bax: The contract language is clear that when you have two individuals who are similarly qualified for a job; experience and longevity are what controls... I agree with you Mr. Supervisory that incurring an additional \$30,000 in expenses doesn't make sense at this juncture. I'm in support of letting the grievance handle it.

Winkley: Attorney Seaman did a good job. It is extremely difficult negotiating. You came out with a good plan that even the union agreed with. It does cost more but we're going to have a cost incurred with this too. Either way, we are going to have to pay. I will make a motion. You always make a motion in the affirmative.

Winkley MOVED to accept the agreement. Seconded by Conrad. The vote resulted in 1 Aye (Conrad) and 4 Nays (Brochey, Bax, Ceretto and Winkley). Motion Failed.

Conrad: I made a commitment to these gentlemen and the Supervisor when we shook hands and approved of this idea. I'm a man of my word. I keep my word to those gentlemen. In that case I voted "yes".

Ceretto: I'm following with the union contract. These men voted on this contract. The contract is very clear. I'm sticking with the contact.

Seaman said the grievance at this point has not been settled. I don't know what the union will do with it but I would suggest that you hire Brian Doyle to handle any further litigation or discussions with the union regarding this.

Winkley MOVED to hire Brian Boyle to negotiate on this matter. Seconded by Ceretto and carried 5-0.

SENIOR CENTER:

Bax MOVED to accept the resignation of Bill Fitzpatrick as senior van driver. Seconded by Conrad and carried 5-0.

Bax MOVED to hire John Cich as P/T Senior Van Driver effective August 1 at a rate as established by the Senior Director. Seconded by Winkley and carried 5-0.

FINANCE:

Blazick said she is requesting a transfer of the balance in the Contingency Fund to the Attorney's Contractual budget to cover outstanding legal fees.

Winkley MOVED to transfer \$14,200.00 from Contingency A00-1990.0400.000 to Attorney Contractual and Litigation A00-1420.0400.0000. Seconded by Conrad and carried 5-0.

Attorney Davis asked for an executive session re Consultation with Attorney re Tower litigation update.

Winkley MOVED to enter into executive session for consultation with Attorney. Seconded by Bax and carried 5-0. Time: 7:30 PM.

**EXECUTIVE SESSION*

Present: Brochey, Bax, Ceretto, Conrad, Winkley & Davis

Issues Discussed: Tower Litigation Appeal

No Action Taken.

Motion by Winkley to adjourn. Seconded by Ceretto and carried 5-0. Time 7:45 PM.

* Minutes taken by Attorney Davis.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk