

PRESENT: Supervisor S. Broderick; Councilmembers A. Bax, W. Geiben (via ZOOM), J. Jacoby & J. Myers; Finance Director J. Agnello; Atty. T. Seaman; Eng. B. Lannon; Water Foreman D. Zahno; Highway Supt. Trane; Building Inspector Masters; Assist. Building Inspector Zimmerman; WWTP Chief Opt. J. Ritter; Parks & Recreation Director Dashineau (via ZOOM); 27 Residents and Clerk D. Garfinkel

EXCUSED: Dep. Sup. W. Conrad

Supervisor opened the meeting with the Pledge of Allegiance and a moment of Silent Reflection.

Clerk read Public Hearing 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 14th day of December, 2020 at 6:00 p.m. at the Town Hall, 1375 Ridge Rd., Lewiston, NY and will be available through video/teleconference. In person attendance may be limited. The meeting will be live streamed via Zoom software and the public may participate in the live stream via Zoom. Said Public Hearing is regarding the adoption of a proposed Local Law entitled “A Local Law Amending Article XXVIII of the Zoning Code – Solar Energy Systems,” an abstract of which is as follows:

The proposed Local Law makes certain revisions to Article XXVIII of the Town of Lewiston Zoning Code, including but not limited to the following: increasing certain setback requirements, increasing certain screening requirements, clarifying the approval process, requiring the submission of a construction schedule for utility-scale solar energy systems, requiring a screening plan for utility-scale solar energy systems to include native vegetation, requiring screening for the construction phase of utility scale solar energy systems, limiting Electrical Energy Storage Devices to the Industrial districts, and setting standards and fees for continued operation of solar energy systems.

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, or can be emailed upon request. Additionally, the complete text of said Law is on the Town’s website and can be accessed by any party at: www.townoflewiston.us

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

Dated: November 24, 2020

Supervisor invited residents to speak.

Fraas, Janet – Moore Road – Fraas is a resident of Moore Road and a taxpayer. Fraas is here with several other residents of Moore Road because they are trying to stop the building of a second Solar Farm on their road.

An email was sent to the Town Supervisor and the Town Clerk describing the problems that occurred during the building of the first Solar Project on Moore Road. Many massive dump trucks, flatbed trucks unloading heavy construction equipment, tractor trailers constantly up and down the road. There was continuous air and noise pollution.

Kevin Thompson, the owner of property on Moore Road, is planning a second Solar project, less than a quarter of a mile from the first one. Petition letters were sent to Mr. Thompson explaining the problems the residents experienced during the last project. Kevin Thompson does not live on Moore Road, nor in the Town of Lewiston.

The residents are asking Thompson to have the entrance to his project be from Route 104. 104 is built for heavy truck traffic. No response has been received from him.

Many residents use Moore Road to walk their dogs, children, grandchildren, jog. This is the residents last ditch effort to stop using Moore Road to build another project.

The residents are asking the Board to set limits in the new law, to have no more than one project built on one road, or in the close proximity to previous projects.

Coder, Duane – Moore Road – When Coder lived at 2595 Moore Road, there was logging taking place across the street for the first solar farm. The trucks are so large, they were unable to get into the driveway, and drove on his front yard. Coder requests the Board have them come in and out of the project via Ridge Road.

The road has recently been paved, after years of complaining, and these trucks are running off the road and the road is already being broken off of the sides. They do a lot of damage to the road.

Fura, Larry – Moore Road – Fura wants to touch on what Mr. Coder said. It doesn't take long for the road to get beat up. Basic farm equipment tears up the road. The large trucks just destroy the new road. If the project moves forward, coming in and out by Ridge Road would be appreciated.

One thing the residents found disturbing, is pine trees were to be put in, they were, but they were put in behind the fence. They should have been placed near the road, to block the view.

They start very early so a limit on the construction hours could be put in the law, that would help.

Casper, Joyce – Moore Road – Casper understands solar could be the way of the future. But if you want solar in your area, why not buy the land. Legally the owners can leave at any time. In ten, fifteen years dump it. So, now there would be two dumped solar fields on Moore Road. Who takes care of this?

Why will the Town not protect the residents. There is absolutely no shoulder on Moore Road. The ditch is very close to the edge of the street. Casper has been forced off the road by a truck, while walking her grandson, and left to jump in a ditch. She has been forced to jump on to the hood of a car, with her dog, because the driver was not paying attention. Moore Road is not made for truck traffic. It was a dirt road until the 70's.

Casper is concerned with buses during the construction. They had a heck of a time.

Georgius, Chris – Project Developer – NextEra Energy Resources – NextEra has been developing two solar storage projects in the Town, prior to the Solar Moratorium being enacted. One is Moore Road Solar, which is not operational and has not been permitted as of yet.

Niagara Solar is a proposal solar plus battery energy storage project. It is intended to permit this project after the Moratorium is lifted. It is to be constructed on land owned by Kevin Thomson, who is in attendance by ZOOM.

Both projects contemplate solar with battery energy storage and are located in Rural Residential zoning districts. Based on the proposed ordinance, which limits energy storage to Industrial Districts I-1 & I-2, the energy storage components of these projects would not be permitted.

NextEra believes energy storage should be permitted in Rural Residential Districts. They are here today; not only to voice their opinion, but offer the Board a meeting with the subject matter experts.

Energy Storage is important because it can rapidly provide electricity to the grid, in order to meet energy demand when it is needed. Regarding the safety, as one of the first developers, NextEra ensures the Town feels safe and comfortable during the any development process. NextEra can offer Fire Safety Training and work with the Town's first responders, fire officials to demonstrate how to safely extinguish any fire and how to dispose of the materials.

NextEra's storage facilities are equipped with HVAC cooling systems to ensure they operate within the prescribed temperature range and have built in fire suppression safety and fire mitigation technology.

NextEra also employ's software controls to proactively shut down battery cells in the event of excess heat. There is a 24-hour control room to monitor all site, that can remotely shut-down each facility if need be.

Georgius is confident that NextEra can provide safe reliable products that benefit the Town of Lewiston. Tonight, is merely a summary of what can be offered.

NextEra is more than happy to work with the Town to participate in a comprehensive discussion about energy storage and answer any questions. As stated earlier, energy storage should be permitted in Rural Residential Districts, same as solar.

NextEra understands it's the Town Board's job to balance economic growth while projecting the health, safety and welfare of the community.

Nichols, Andrew – Ridge Road – Nichols has spoken to the Supervisor many times in the past year. Nichols is not opposed to solar. This is not really who is for this or who is against this.

The point is, that these residents live in an R District. The point is, there is industrial land in the Town. There are brownfields within the County. The number of brownfields, Superfund, waste lands in both Niagara and Erie County that can never be utilized for anything. There are hundreds of thousands of acres, that are perfect locations.

Nichols does not understand why the Town Board and the Town Attorney are stuck with this idea that RR is the right place to zone these projects. It does not belong.

The Nichols family has been here, on his farm for over 140 years, in Niagara County for over 200 years. This is what we do, protect our land. That is what the residents are asking the Board to do, protect the land.

Nichols provided an article from the Association of Towns magazine outlining a court case, where the Town was going to protect their lands. The Town's have the jurisdiction to do this. The residents are asking the Board to stand up and do that.

Nichols is also an engineer, and understands the technology. There are a lot of things that can be done, but this project sounds like an industrial project, and doesn't belong next to the farms.

Nichols has received over eight letters and a phone calls, asking for his land. They want to develop solar farms, but he won't.

Scully, Brian – Swann Road – As Nichols has stated, the residents major concern is the zoning. These projects do not belong in a Rural Residential area, when there are areas in the Town that are zoned for industrial.

One of the applications submitted before the Moratorium, is registered to the same name on an unused piece of industrial property right now. An unused greenhouse would be a great piece of property to put a solar panel, rather than in the middle of Nichols farm.

Why not the brownfields? The easy answer is, it costs a lot of money to prep the land. Farm land is easy, everything is already done.

Almost a year ago, there was a lovely presentation, hearing specifically that the residents would almost not know the project was there. It would be shielded from the road by a berm, shrubbery and the screening that would be on the fence. The current project on Swann Road is hardly masked from the road. The proposed law, stating the project will be screened, is not saying much, because they are hardly screened at all.

Gormley, Tobin – Swann Road – Gormley compared the current law to the proposed law. While speaking Seaman told Gormley has the laws reversed. Gormley is quoting the proposed law.

In a portion of the proposed law, it is stated "may be required". Gormley asked who is deciding if it may or may not be? The Board, the Attorney, the residents?

Gormley lives across the street from the project on Swann Road. He gets to see it every day. Gormley invited the Board to come and stand there and look at it. There has been no significant reduction in what is seen. Gormley can see the whole project, as can everyone else who drives down Swann Road.

The screening is inadequate, it is not what was said to be. Give the residents what you say you were going to.

Sanoian, Cindy – Swann Road – Sanoian recalls being here about a year ago and getting some laughs when she asked if the trees were going to be Charlie Brown trees. Well, you know what? That is exactly what they are. The Board lied to the residents about the screening. It is disgusting, it is appalling.

Not only the visual, but what is being done to the land. It's unbelievable that the Board is allowing this to happen. This is a residential area; industrial solar facilities do not belong in the Town of Lewiston. Calls on the cell phones are just being hung up.

Sanoian said Broderick told her he wouldn't mind looking at one. Let's put one in Academy Park and let's see how many people think it's great. What the Board is doing to the Town of Lewiston is a disgrace. The Board should be ashamed of themselves.

Thompson, Kevin – owner of property on Moore Road – Thompson is in support of the Local Law, and sympathizes with the residents concerns about the appearance of Solar Farms.

Thompson wants it known that he had nothing to do with the project on Swann Road. This is a totally different project. The property is over a mile long and specifies that no solar panel be within 1,000 feet of Moore Road or Ridge Road, and behind old growth trees.

If that solar farm fails to properly camouflage their project, it is not necessarily the Board's fault.

The project is planned closer to Moore Road, and the plan was to access it from there. Thompson received the petition from the residents and called Ms. Fraas and told her he has no opposition to the project being accessed from Ridge Road.

Thompson asks this project not be lumped in with other projects that may have been improperly planned and executed.

Ms. Fraas said Thompson did call her and told her they will try, through his project manager, if they can come in from Ridge Road. She has not heard back that he would commit to that.

Bax MOVED to close the Public Hearing, Seconded by Myers and Carried 5 – 0. (6:30 pm)

TOWN BOARD WORK SESSION December 14, 2020 6:00 pm

AGENDA APPROVAL

Additions: Geiben – Dog Park Fence repair

Bax MOVED to approve the Agenda as amended, Seconded by Myers and Carried 5 – 0.

ABSTRACT APPROVAL

Bax MOVED to approve the Regular Abstract of Claims numbered 20-01530 to 20-01689 and recommend payment in the amount of \$1,605,000.11, plus a Post-Audit of \$14,022.05, Seconded by Jacoby and Carried 5 – 0.

APPROVAL OF MINUTES – 11/23/2020 – Regular Town Board Meeting

Myers MOVED to approve the Regular Town Board meeting minutes of November 23, 2020, Seconded by Geiben and Carried 5 – 0.

SUPERVISOR BRODERICK

Delete members – Upper Mountain Fire Co.

Bax MOVED to remove Wilson, Michael – Forest Rd and Wilson, Luke – Bronson Dr. from the Upper Mountain Fire Co. roster, Seconded by Geiben and Carried 5 – 0.

2018 Water System Improvement Project – Change Order No. 1

Milherst Construction, Inc. will take an eighty-calendar day suspension of the Contract time of completion. No project construction activity is to be performed during the period of December 24, 2020 and March 14, 2021. This is a winter month pause. If there is an issue with the completed construction, Milherst Co. will go out.

Bax MOVED to approve Change Order No. 1 – Reference No. 11124642 and authorize the Supervisor to sign, Seconded by Jacoby and Carried 5 – 0.

Building Inspector Masters spoke with Broderick regarding the outfall building on Lower River Road that the Parks Dept. uses. Masters has some very serious concerns with the windows, roof and doors. These items need to be taken care of immediately. Masters suggest the floors be looked at also.

Broderick would like to request Lannon submit a proposal/design and bid packet to have these items fixed. Masters and Ritter should be included in the process.

Bax MOVED to direct GHD to prepare a bid packet for work on the windows, doors and roof at the outfall building on Lower River Road, Seconded by Jacoby

Carried 5 – 0.

The Board has approved, and will receive Greenway money for a basketball court at Kiwanis Park. It has been discussed to go out for bid. Broderick would like to request Lannon submit a proposal/design, survey and bid packet for the basketball court.

Bax MOVED to direct GHD to prepare a proposal / design, survey and bid packet for the basketball court at Kiwanis Park, Seconded by Jacoby

Bax asked if the drainage issue is the reason the basketball surface deteriorates so quickly. Lannon said that could be part of it. The primary reason for the survey is so no new drainage issues are created.

Carried 5 – 0.

Executive Session – Consultation with Town Attorney – this will be held at the end of the meeting.

COUNCILMAN BAX

Sewer Refund – Cain – Hillside Drive

Bax MOVED approval of a sewer refund to Cain – 951 Hillside Drive in the amount of \$48.93, Seconded by Myers and Carried 5 – 0.

Rezoning Request – Murnyack – Saunders Settlement Road

Murnyack is requesting rezoning of a Rural Residential piece of property to Industrial-Housing. Bax asks Board members if this is something the Board would consider.

Seaman said this is a request to change the Zoning Law. This is a lengthy involved process. The Board can take this up or decline to.

COUNCILMAN GEIBEN

Gift Card Giveaway Sale Permission – Senior Center

The Lewiston Senior Club is requesting permission to sell \$3.00 tickets during business hours at the Senior Center. The Board thanks the Senior Club for notifying them, but no action is needed.

Senior Center Van Driver termination

Senior Coordinator Olick requests the termination of Van Driver John Pieroni effective immediately.

Geiben MOVED to terminate Van Drive John Pieroni effective December 14, 2020, Seconded by Bax and Carried 5 – 0.

Senior Center Window & Door Replacement Project Bid Award

The Town received one bid – Swogier Construction in the amount of \$39,450.00.

Geiben MOVED to approve the bid from Swogier Construction in the amount of \$39,450.00, Seconded by Bax

Masters said the \$39,450.00 is for both alternatives, the Board needs to choose which alternative. If you remove the one (\$4,550.00) it brings it down to \$34,900.00.

Geiben MOVED to amend his motion to approve the bid from Swogier Construction not to exceed \$39,000, Seconded by Bax

Geiben asked Seaman if this meets his approval. Seaman said the Board needs to authorize the Supervisor to sign a frontend agreement.

Carried 5 – 0.

Agnello suggests the following fund transfer to pay for the project: Transfer \$18,000 from A Fund Contingency – A00-1990-0400-0000 to Senior Center Equipment – A00-7630-0200-0000.

Geiben MOVED to transfer \$18,000 from A Fund Contingency – A00-1990-0400-0000 to Senior Center Equipment – A00-7630-0200-0000, Seconded by Jacoby and Carried 5 – 0.

Geiben met with the Environmental Commission and the Commission concurs with the Board's Resolution regarding the NFSS, and have forwarded a similar resolution.

The Commission reviewed an application for stairs on Lower River Rd and recommend a Negative Declaration.

Declare Excess Equipment - Parks Truck Plow Blade

Parks & Recreation Director Dashineau requests the Board declare an 8' Plow Blade excess equipment and designate as scrap.

Geiben MOVED declare an 8' Plow Blade excess equipment and designate as scrap, Seconded by Bax and Carried 5 – 0.

Approve purchase of replacement furnace - Pletcher Road Recreation Building

The furnace at the Pletcher Road Recreation building needs to be replaced, and moved to a safer place within the building. Geiben received a quote from Steve's Heating and Air Conditioning in the amount of \$3,890. Masters said this needs to be done sooner rather than later to keep the pipes from freezing.

Geiben MOVED to accept the proposal from Steve's Heating and Air Conditioning in the amount of \$3,890, Seconded by Myers

Seaman said this is a public-works contract, so a contract needs to be prepared and approved by the Attorney.

Carried 5 – 0.

Approval tree removal quote: 663 & 708 Raymond Drive, 744 Curtis Court

Broderick said Trane can address 663 Raymond and the other two should go with the bid. Dashineau has two quotes, with the lowest being \$3,300. The price for 663 Raymond was \$400, so the final cost would be \$2,900. Seaman said a contract needs to be reviewed by him.

Bax MOVED to address the tree issues at 744 Curtis Court and 708 Raymond Drive be completed by Timber Tree Services, with 663 Raymond Drive being completed by Town Highway crew, Seconded by Jacoby and Carried 5 – 0.

Masters added, in regards to the Recreation building, he is reaching out for quotes to replace the electric panel. It was under water and needs to be replaced.

Agnello suggests the following fund transfer to pay for the furnace and the electric panel: Transfer \$6,400 from Recreation Contractual – A00-7310-0400-0000 to Recreation Equipment – A00-7310-0200-0000.

Bax MOVED to transfer \$6,400 from Recreation Contractual – A00-7310-0400-0000 to Recreation Equipment – A00-7310-0200-0000, Seconded by Jacoby and Carried 5 – 0.

Geiben, Broderick and staff members of the Parks Dept. walked the Dog Park outside fence area. There is a need for repair to the fence. Dashineau has secured a quote of \$3,997.20, from Fox Fencing, who originally installed the fence, to do the repair.

Jacoby MOVED to approve Fox Fence to repair the Dog Park fence at a cost of \$3,997.20, with a front-end contract approved by the Attorney, Seconded by Myers and Carried 5 – 0.

Dashineau submitted three bids on replacing the plow blade that was declared excess. Broderick spoke to Trane and will take one of his trucks for Parks to use as a plow. Trane will reach out Dashineau in regards to these purchases.

Trane requests Board approval to purchase a mower and 2 - Ford F-150 trucks for the Parks Dept. The trucks need to go out to bid, therefore a budget transfer needs to be approved prior to ordering.

Agnello requests the following budget transfer for this purchase: Transfer \$40,000 from Parks Personnel - B00-7110-0100-0000 and \$15,000 from Parks Contractual - B00-7110-0400-0000, for a total of \$55,000 into Parks Equipment - B00-7110-0200-0000

Geiben MOVED to transfer \$40,000 from Parks Personnel - B00-7110-0100-0000 and \$15,000 from Parks Contractual - B00-7110-0400-0000, for a total of \$55,000 into Parks Equipment - B00-7110-0200-0000, Seconded by Jacoby and Carried 5 – 0.

COUNCILMAN JACOBY

Site Plan Approval – Martin – Lower River Road

Planning Board recommends approval, to replace wooden stairs on the riverbank with steel stairs.

Jacoby MOVED to approve a Negative Declaration for the Site Plan for 4702 Lower River Road for steel stairs on the riverbank, Seconded by Bax and Carried 5 – 0.

Jacoby MOVED to approve the Site Plan for 4702 Lower River Road for steel stairs on the riverbank, Seconded by Bax and Carried 5 – 0.

ATTORNEY SEAMAN

Privilege of the Floor

Seaman would like to discuss this in Executive Session under consultation with the Attorney.

The Board has drafted / changed / revised rules of the floor within the last year. There has been behavior within these chambers that warrants revisiting.

The Town has three laws in the Code book related to the long defunct Parks & Recreation Commission. There is an active Parks & Recreation Advisory Committee, but the Code has three different sections that refer to three different old Recreation Commissions that existed.

The Commission that was abolished was not remove from the Code. Seaman will draft a short Local Law to remove this from the Code. There is some bookkeeping that needs to be done.

FINANCE DIRECTOR AGNELLO

Budget Revisions - Agnello requests approval of the following budget revisions:

Transfer of \$200.00 from Budget Officer Contractual - A00-1310-0400-0000, to Professional Report Contractual - A00-1220-0401-0000, to cover additional financial material filing for Moody's rating upgrade. Transfer of \$1,000.00 from Budget Officer Jr. Accountant Personnel - A00-1310-0100-0001, to Budget Officer Equipment - A00-1310-0200-0000, to cover the purchase of a computer. Transfer of \$470.00 from Bingo Inspector Personnel - A00-7989-0100-0000, to Buildings Equipment - A00-1620-0200-0000, to cover equipment expenses. Transfer of \$7,650.00 from Parks Contractual - B00-7110-0400-0000, to Parks Equipment - B00-7110-0200-0000, to cover the purchase of a replacement snow blade, landscape rake, and snow blower attachment. Transfer \$400.00 from Contingency - B00-1990-0400-0000, to Celebration Contractual - B00-7550-0400-0000, to cover work performed on the Bicentennial Celebration Logo. Transfer \$6,000.00 from Highway Retirement - DB0-9010-0800-0000, to Highway Hospital & Medical - DB0-9060-0800-0000, to cover medical insurance expenses.

Geiben MOVED approval of the following budget transfers: transfer \$200.00 from Budget Officer Contractual - A00-1310-0400-0000, to Professional Report Contractual - A00-1220-0401-0000; Transfer \$1,000.00 from Budget Officer Jr. Accountant Personnel - A00-1310-0100-0001, to Budget Officer Equipment - A00-1310-0200-0000; Transfer \$470.00 from Bingo Inspector Personnel - A00-7989-0100-0000, to Buildings Equipment - A00-1620-0200-0000; Transfer \$7,650.00 from Parks Contractual - B00-7110-0400-0000, to Parks Equipment - B00-7110-0200-0000; Transfer \$400.00 from Contingency - B00-1990-0400-0000, to Celebration Contractual - B00-7550-0400-0000; Transfer \$6,000.00 from Highway Retirement - DB0-9010-0800-0000, to Highway Hospital & Medical - DB0-9060-0800-0000, Seconded by Jacoby and Carried 5 – 0.

Ronco Phone Project Acceptance

The phone system project for the five (5) Town buildings has been completed. Agnello requests the Board approve the Supervisor to sign the Project Acceptance / Sign Off Agreement.

Bax MOVED to authorize Supervisor Broderick to sign the Project Acceptance / Sign Off Agreement, with Ronco, for the phone system project for the Town buildings, Seconded by Jacoby and Carried 5 – 0.

Each Councilmember now has a voicemail extension at Town Hall for residents to reach them.

2020 Engagement Letter – Drescher & Malecki

Agnello presented two (2) letters from the Town's external auditors. They are engagement letters to have Drescher & Malecki complete the Town's 2020 AUD and the 2020 Audit.

Bax MOVED to authorize Supervisor Broderick to sign the Engagement Letters with Drescher & Malecki to complete the Town's 2020 AUD & 2020 Audit for the Town of Lewiston, Seconded by Myers and Carried 5 – 0.

Broderick wants to express his satisfaction with Drescher & Malecki. They have been professional and a pleasure to work with.

Town of Cambria – Sanbornites Agreement

Cambria funds \$4,000 toward the Sanbornites for their programs. It is the same agreement for many years.

Geiben MOVED approval of the Agreement between the Town of Lewiston and the Town of Cambria Sanbornites Senior Citizens and authorize the Supervisor to sign, Seconded by Bax and Carried 5 – 0.

RESIDENT STATEMENTS

Glasgow, Paulette – The Circle Drive – Glasgow asked for clarification on the Gift Card Giveaway Sale Permission. Broderick thanked the Senior Club, but no action is needed.

Glasgow asked where the \$4,000 from the Town of Cambria goes. Agnello said it goes into the Sanbornites budget.

Chief Operator Ritter wants to recognize Operator Trainee Pete Fortino. Fortino attended 5 weeks of schooling, and scored top in his class.

Bax MOVED to enter into Executive Session, Seconded by Jacoby and Carried 5 – 0. (7:24 pm)

PRESENT: Supervisor S. Broderick; Councilmembers A. Bax, W. Geiben (by phone), J. Jacoby & J. Myers; Finance Director J. Agnello; Chief Previte; Atty. T. Seaman

Items Discussed: Privilege of the floor and personnel issue.

Jacoby MOVED to exit Executive Session, Seconded by Myers and Carried 5 – 0. (8:30 pm)

No Action Taken

Jacoby MOVED to adjourn, Seconded by Myers and Carried 5 – 0. (8:30 pm)

Transcribed and respectfully submitted by:

Donna R. Garfinkel, Town Clerk