6:00 PM

ZOOM: Councilman R. Morreale; 1 Press (Sentinel); 1 Resident

EXCUSED: Hwy Supt M. Zahno; Sr. Coordinator M. Olick

Supervisor called the Work Session to order, followed by the Pledge of Allegiance.

Clerk read legal notice into record.

NOTICE OF PUBLIC HEARING TOWN OF LEWISTON

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Town Board of the Town of Lewiston on the 11th day of March, 2024 at 6:00 p.m. at the Town Hall, 1375 Ridge Rd., Lewiston, NY on the adoption of a proposed Local Law entitled, "A Local Law Establishing a Six-Month Moratorium on new applications, approvals, and/or construction or installation of Solar Energy Systems and/or Solar Farms."

The purpose of this Local Law is to amend the Code to place a six (6) month moratorium on the processing, permitting and/or construction of ground mounted solar panels and solar farms within the Town of Lewiston to allow time for the research, development and adoption of a Solar Overlay to the Town of Lewiston Zoning Code together with any appropriate amendments to the Town of Lewiston Solar Code which regulates these types of uses. This time will give the Town Board the ability to complete all reasonable and necessary review, study analysis and, if warranted, revision to the Town of Lewiston Zoning Code as may be necessary to promote and preserve the health, safety and welfare of the Town of Lewiston and its residents.

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.

At such public hearing, all persons interested, who wish to be heard, will be heard. Dated: February 12, 2024

The Supervisor asked if anyone wished to be heard. No one wished to speak.

Myers MOVED to close the Public Hearing. Seconded by Jacoby and carried 4-0. 6:11 P.M.

Clerk read legal notice into record.

NOTICE OF PUBLIC HEARING TOWN OF LEWISTON

PLEASE TAKE NOTICE that a Public Hearing will be held by the Town of Lewiston, Niagara County, NY on the 11th day of March, 2024 commencing at 6:00 p.m. at the Town Hall, 1375 Ridge Rd., Lewiston, NY, on the adoption of a "A Local Law Regulating the Use of Transient or Short-Term Rentals within the Town of Lewiston."

Said law is intended to regulate the unauthorized proliferation of prohibited short-term rentals of non-owner-occupied properties within the Town of Lewiston and to amend various sections of the Zoning Code to modernize the definition of the "Bed-And-Breakfast Establishment', define the "Transient or Short-Term Rental" land use, and to identify and define, within the Zoning Code, where and under what circumstances said uses would be allowed.

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.

Dated February 12, 2024

Broderick said many people wish to speak so there will be a 3-minute time limit.

DelMonte, Francine – River Road

DelMonte has appeared before the Board a couple of times to express her strong opposition against short-term rentals. She has gone online and printed out the resolution that was posted on the Town website. It has raised a couple of concerns. An issue of this nature should have been drafted by an outside council. It has been something of a lot of conversation and concern within the community.

DelMonte has concerns with the number of penalties or fines for violations. Under the current zoning code, it can be up to \$5,000 per infraction. From her perspective, there should be a minimum and maximum in terms of fines and penalties that can be assessed against an owner that is in violation of this particular proposed resolution and the laws that exist today. Delmonte suggests the minimum fine should be \$1,000/day. To suggest that the ceiling is \$5,000, the local courts or the jurisdictions who have oversight on this can assess a \$50 fine. Legislation can stipulate floor and ceiling in terms of penalties being assessed against a violation whether it be civil or criminal. "To use the \$5,000 limit, from my perspective, gives a lot of flexibility to whoever be involved in these types of preceding's to have a very "low-ball" fine against a violator. I would encourage you to put in minimum and maximum fines on a daily basis."

Another concern DelMonte has is enforceability. "From what I understand, it can be the Town Prosecutor, Building Inspector, Town attorney, I don't know if the Town is fully staffed well enough to over-see and enforce this the way it should be." It's going to be encumbered more on the residents to report violators and violations which isn't so bad but who is really going to enforce this in a way that will stop that activity if it should occur? "That concerns me more than anything else."

Those are three of the things DelMonte thinks could be improved on this resolution. Penalties, enforceability and having had experience in law and government, she knows that legislation can be written where sometimes there are a lot of loopholes that lead to lawsuits. DelMonte is looking for this Town Board to put together a resolution, a law or a zoning code that wont subject the Town or other residents to lawsuits.

Murnyack, John - Ridge Road

Murnyack agrees with Ms. DelMonte, a law is very important and he encourages the Board to have the backbone to pass a law that strictly prohibits short term rentals. Murnyack has said before, his concern has always been, he knows his neighbors on both sides of his house. He doesn't want to be in a situation where there's people in and out next to him that he doesn't know.

"Theres a vegetable garden behind our house. People three doors over behind us were having a graduation party or something. All of a sudden, I look out the back and there were all these people in our garden. We had chicken wire fence around it. I went back there and said, what are you doing? They said we saw your garden we came over here to look and sample some of your berries. They were picking raspberries and strawberries and eating them. I said get out of here!" That's not right.

Munyack said when his sister was younger, the people next door had company and they had a child. They saw his sister out playing and that girl came over to play. They were running around the backyard and the little girl ran into a building and broke one of her permanent front teeth. That was a long time ago so he doesn't know from a legal stand point how that played out but today Murnyack would really be concerned about being sued by an act like that.

Lyle, Steve – Lower River Road

Lyle said as far as R-1's are concerned, we do not need any over-night rentals. "It's just not where we came to live." Lyle has heard some of the problems people have had and is against it.

Hopkins, Harold – Lower River Road

Hopkins said any proposal to outlaw or outright ban the operation of short-term rentals within residential districts in the Town of Lewiston appears extreme. Essentially, it is unconstitutional to deny American citizens their private property rights. The Town of Lewiston was and in measure continues to be agricultural in nature. During the Industrial Revolution of the 50's and 60's, it became more of a bedroom community for factory workers in Niagara Falls and Buffalo. As decades passed, the Towns economy grew as it embraced becoming more of a seasonal tourist destination.

Recently, it has become clear that common sense regulation is required to address the explosion of Airbnb's here and across the country. It remains a local issue to be addressed. If town concerns are regulation and enforcement, why not limit operation of short-term rentals to tax paying residents of the Town or corresponding jurisdictions? By doing so, you maintain leverage over the operation as well as maintain the sense of neighborhood or community integrity. Residents by nature must get along and work with their neighbors in order to successfully manage a business in the neighborhood.

Hopkins strongly opposes corporations or foreign nationals to be allowed to purchase and operate such an enterprise. Restrict the ownership and operation of short-term rentals to folks who have "skin in the game", your hometown constituents. By limiting development of short-term rentals to industrial districts, we deny the majority of taxpayers and voters their private property right to invest and develop their property as they deem appropriate. Such an unconstitutional approach will likely end up resolved in the court system, creating years of acrimony and division of noncompliance amongst residents. Common sense compromise is an order to maintain domestic tranquility. Please don't argue that this problem can't be managed or regulated given existing resources.

Witryol, Amy - Lower River Road

The Town of Lewiston code for decades has banned short term rentals like Airbnb's. Witryol disagrees with the proposal to partially lift the STR ban in commercially zoned areas in the Town because we already have enough STR's in the village – almost 50 of them. However, the biggest problem with this draft is, it lifts the ban in residential areas and it may imply we never had a ban. This may not be obvious to the Board but it sure is obvious to your attorney whose law practice relies heavily on the blessings of county political bosses. It's no wonder certain illegal operators have and continue to accept reservations for months past June 1st. The reason for the loopholes in your draft and why the Town has not enforced this ban is because the most lucrative illegal Airbnb's are hosted by a property management company whose owners are associated with big political donors.

The Town repeatedly promised to enforce its ban last summer but did not. Then it passed a moratorium that effectively prevented residents from enforcing the ban themselves. Town Code Section 360-14B states that any person assisting in a violation is liable for fines. Mr. Bax asserts the property managers are not violators because they are "employees of the property owners". That's ridiculous. employees are liable under our code anyway. "I worry what other fairytales the Board has heard from council." This draft waives the Boards right to fine for outstanding notices of violation, worse, it expressly lifts the ban from June 1st which means among other problems, violators can skate through day to day.

Fines are much too low to cover the Towns potential enforcement cost in many cases. To the three conscientious Board members, please seek comment from a specially qualified experienced and independent attorney to help you modify the draft to actually choose compliance by June 1st.

Witryol provided additional comments to the Clerk and said she also agrees that when you have an owner of these operations actually living in the neighborhood it makes a difference.

Crystal, Taylor – Fifth Street

Crystal owns and operates Lewiston Vacation Rentals, LLC and has been operating for the past 10 years with no issues until now. There have been around 6,000 stays and about 9,000 guests in this area. Last summer, there was a police report in the Sentinel regarding Lower River Road. Crystal came home and talked to the police to see what was going on. They informed him it was almost a waste of resources, people "crying wolf". The police kept coming out on complaints and found nothing. What is listed in the proposed law is not a true representation of what is going on. I haven't had any police officers come out to our properties in the past 10 years, most neighbors love talking to our guests. All of Crystal's rentals are in a residential area – that's where Airbnb's happen, they don't happen in the middle of nowhere.

Stein, Abigail – Big Vista Drive

Stein has stood in front of the Board before. She is a resident, a realtor and a host of a short-term rental. Stein has read through the law. The areas that Airbnb's are allowed don't make sense. These aren't desirable places people want to stay. Looking at what the Village has done and expanding to walkable areas, maybe a mile out from the Village should be allowed. Location wise, the law does not make sense. I cannot see people coming here wanting to stay in a rural area. There are only 10 short-term rentals. An option could be to limit new ones and grandfather in the ones that are already running with no issues.

Stein said if the Town plans on making a committee or a group to hear opinions, she was on a Village of Lewiston committee who made laws for the Village and would love to be a part of it if the Town decides to have one as well.

Roat, Janet – East Eddy Drive

Roat is for an ordinance against short-term rentals in the Town of Lewiston. Roat agrees with DelMonte. When she read the proposal, there is no means to enforce it and is asking the Board to look at that closely. It has to be substantial in order to be enforced. How are you going to enforce it? Is it going to be through the Zoning Board, Building Department?

We already have existing short- term rentals in the town, aren't they illegal according to the statute of Lewiston already on the books? What are we going to do about that? "To the people who are supporting short term rentals, as a homeowner, you are asking me to give up my livelihood, sense of safety and community of neighborhood so you can make a buck and I find that offensive."

Edwards, Annie – Escarpment Drive

Edwards is here to support Airbnb's and lives in her home and rents through Airbnb, single rooms per night. Edwards states her neighbors are vindictive and malicious. They have been since they moved in. They called Airbnb and told them their home is corrupt and for the safety of their clients, they should not be staying at her home. They were knocked off Airbnb and had to prove their innocence, there are no police reports. These are the kinds of people they are and the level they're operating. What gives us a chance? Is the Town going to contact them to give us the go ahead? The Edwards were non-compliant because of the neighbors and appeared in court twice. The judge threw it out and said it was ridiculous. Due to this, they did not know they could operate until June 1st. They were not able to post their Airbnb and are now 7 months out of income from their Airbnb and losing potential clients. There is not a place available for April 8th except ours because were not allowed to run them.

In closing, I want to know the validity that would be applied to the fact the neighbors have to agree to us running an Airbnb because they made their statements clear. Would the Town back us? If you come out and do your inspection and we get a permit to operate and put it on our doors, is this going to put the fear mongers at ease or are we going to have to continue with this harassment?

Boreanaz, Robert – Delaware Avenue

Mr. Boreanaz is an attorney in Westen New York with the law firm Lipsitz Green Scime Cambria. They have been representing clients on land use and zoning for decades. Local Law 1-2024 is a classic case of a municipality eliminating one's property rights to use, control and allow others to use their own property. As currently proposed, Local Law 1-2024 violates both State and Federal laws and constitutions.

As a preliminary matter, Councilman Morreale must withdraw himself from consideration of this local law. The reason for that is, his daughter would benefit from its passing. If Local Law 1-2024 were passed, it would provide this Councilmember's daughter with a competitive advantage, she owns a short-term rental on Center Street in the Village. If the proposed Town law was passed, it would significantly reduce the number of short-term rentals in the area and therefore reduce

competition for the councilmember's daughter. The proposed law would therefore drive-up costs of short-term rentals in the area to her benefit. As a result, this councilmember must recuse himself from consideration of this law.

The proposed law rests upon faulty foundation. The proposed law falsely states circumstances to justify its implementation. Specifically, the proposed law falsely states that the preliberation of short-term rentals of non-owner-occupied properties has resulted in significant negative impacts to the health, safety and welfare of residents in the Town. That's what the proposed law is based upon. This statement is false. Board members have already on the record acknowledged they are not aware of any significant negative impact on the health, safety and welfare of residents resulting from short-term rentals within the Town. Some of you are on record admitting that these are only concerns and purely speculative.

The proposed local law falsely states that modification of the zoning law is required due to safety concerns. Again, Town Board members are already on record publicly stating there is no documentation of any safety concerns raised by short-term rentals within the Town. The proposed law relies not on actual data but rather on feelings that short-term rentals could possibly bring noise, damage to personal property, rummaging of gardens, poor upkeep, large gatherings, parking issues or late-night disturbances. Where are the police records? What records has this Town reviewed and relied upon to demonstrate that short term rentals actually cause these proportionate disturbances in this town?

If the Town is going to change zoning laws and peoples use of property based upon unsubstantiated fears of disturbances, then perhaps the Town should consider banning graduation parties in the summer and family gatherings because God forbid, those parties may possibly result in late night disturbances, large crowds, unwanted people attending in neighborhoods and parking issues. The Village of Lewiston has significantly more short-term rental properties then the Town does.

The Village has taken a much more sensible approach, the Village has decided not to eliminate or restrict short-term rentals but rather regulate them in a sensible way by monitoring and enforcing when short-term rental property owners in fact do present disturbances or problems. Don't pass this local law on this faulty foundation, as it will result in litigation.

Copelin, Jenna - Lower River Road

Do you know how many short-term rentals will be permitted to continue operating and welcome guests to Lewiston with this proposed law? The answer is one. You will close nine down. Not 500. It's not a severe issue. It's nine. Stopping all short-term rentals by June 1st which is 80 days from tomorrow, is not an adequate balance as stated in the law. It will result in nine short-term rental owners having to contact hundreds of travelers and telling them that the Town of Lewiston does not want them or their business and that they need to go somewhere else despite your attempt to welcome guests with approving short-term rentals in business zones only. These zones are highly undesirable.

Guests do not want to stay by the Bridge Commission or on a vacant lot by the thru-way and they certainly do not want to stay by Modern Disposal. Choosing these areas goes against your comprehensive plan to welcome tourists to the area.

Mr. Jacoby, you are stated in the newspaper assuring the Planning Board that residents who invested their life earnings into homes will be protected. My husband and I are those people. We invested our life savings and more into a beautiful historic home that I love and want to share and spend my time with in the future. All of the homeowners, all ten of us with short-term rentals have done the same. There are only ten, most of which have been operating for over 10 years. Short-term rentals are not a problem, they are an asset. The law can mandate local ownership just like Wilson did. I think they did a beautiful job incorporating the 45-minute restriction. All ten of us are within 45 minutes of the property. It's something that is an appropriate compromise.

Copelin's property allows inclusion to the water front in the Town of Lewiston. There is no facility that people can come to the area and enjoy the water front. Someone who may be less fortunate and can't afford a major house on Lower Niagara River Road can come and spend a weekend with their family. They can rent it out and share, in my case, a nice large home that can accommodate fifteen people. Moms, dads, grandpas, grandkids, an uncle from across the country. It's a great meeting spot and it's an opportunity to share with people from all over the world. I don't see anything wrong with it. We want to play by the rules, we want to be accommodating. Write any rule down, we'll follow it. Come right now and see the place, you'll see all the fire exits, you'll see the smoke alarms, the CO2 detectors. We have 2.5 acres, there's plenty of room. We can put up fences, trees, whatever you want we can do to accommodate. It's a huge asset. It's not something that is over done and people are taking advantage. Theres ten, just let us continue to do what were doing.

Cappuccilli, Anthony – James Drive

Cappuccilli said he wanted to make a few points. Similar to what Copelin said, there aren't many short-term rentals operating right now. It feels like this law is coming from a noisy few rather than the general consensus of the people that we live with. I know in my neighborhood, there are some short-term rentals that operate and you wouldn't even know that that's what's going on there. I know people have said "we want to know who our neighbors are", most people that own Airbnb's around here know their neighbors, treat them well and have relationships with them. They know who own and takes care of these properties.

I understand there are people who come and stay at those houses that they may not know. Many of them have operated for years without any sort of issue or complaint prior to this. I find it unfair to push out people who have already made a decision to invest in the Town we live in and I don't think it's right that they will now be forced to "figure it out". There are people who have invested hours of time and thousands or millions of dollars into these properties and now will be asked to stop doing what they've been doing successfully for years already. These are beneficial to our Town. We have things like the river here. The only way to stay on the river would be to allow short-term rentals in these areas. It's one of those things that draw people to come here, the river and being close to the Village (if you can't get into an Airbnb in the Village). Theres a lot of things our Town has to offer but limiting Airbnb's to non-desirable places, I don't feel is the right thing to do in order to bring people here. "As someone who has lots of family members from out of town, I love that they can come and stay and see the beautiful parts of the Town and I love they can see why everyone here loves it so much."

Bergey, Carrie - Porter Center Road

Bergey has been a host for over seven years. I divide my time between the two coasts and I rent out my home while I travel. There have been a lot of really great points brought up tonight. Everything from the lack of verified evidence suggested in the code, in addition to the few rentals that will be impacted by this. Whether or not this warrants this extreme censure of the short-term rentals, it will ultimately reduce tourist income for local businesses. I employee a lot of people, my property is probably one of the nicest ones on the street and you wouldn't know it was an Airbnb because it is still also my home.

While you are considering moving forward with this, it is important to protect homeowners who are not short-term rental owners against these future incidences. This is entirely possible to do without eliminating short-term rentals all together; like the Village regulations and the few other options mentioned. It is important we avoid any exclusionary zoning ordinances. These include certain types of land uses from communities and ones that are at risk for regulating racial and economic diversity. Our short-term rentals bring that in. It creates potential for discrimination against a lot of protected parties whose livelihood depends on short-term rental income. As we move forward, we need to consider how important it is that everyone be protected and looked out for in this. We can't just exclude those who are making money and just assume they're making money at another expense. I think there's a lot of opportunity for everyone to come together and really have a conversation about how we can do it in a way that is supportive of both sides of this issue.

Attorney Zoghlin submitted a letter on behalf of Ms. Witryol that she asked to be included in the comments bringing up some points of criticism for everyone's consideration, these will be circulated to the Board.

Waechter MOVED to close the Public Hearing. Seconded by Myers and carried 4-0. 6:50 P.M.

AGENDA Additions: Broderick – April 8th Board Meeting

Myers MOVED to approve the agenda, as amended. Seconded by Jacoby and Carried 4-0.

APPROVAL OF MINUTES

Jacoby MOVED to approve the minutes of 2/26/2024 RTBM. Seconded by Myers and carried 4-0.

ABSTRACT

Waechter MOVED to approve Regular Abstract of Claims Numbered 23-03781 thru 23-03784 and 24-00424 thru 24-00476 and recommended payment in the amount of \$717,569.83, plus a post-audit of \$23,699.27. Seconded by Jacoby and carried 4-0.

RESIDENT STATEMENTS:

DEPARTMENT HEAD STATEMENTS

Clerks Office

The Clerk's office received a notice from the Niagara Falls Country Club located at 505 Mountain View Drive that they applied for their alcoholic beverage license for on-premises consumption at the Halfway House and Beverage/Golf Cart.

Police Chief Previte

Previte would like to thank the Town Board for hosting the swearing in for the new officers. The Police Department received a recommendation from the insurance company regarding the department vehicles to be put out of service at 100,000 miles. In reviewing the vehicles, we only have one that meets this criteria and has 130,000 miles on it. Previte is asking to replace that vehicle (#274) in accordance with the insurance company's recommendation. The new vehicle will cost \$47,869.08 which includes swapping the equipment. Agnello recommends we transfer the funds from the B-Fund balance to the police equipment line.

<u>Jacoby MOVED to replace police vehicle 274 and transfer funds from B-Fund to Police</u> Equipment. Seconded by Waechter and carried 4-0.

There will be an active-shooter drill this week Thursday at the Errick Road Elementary School and Colonial Village Elementary School.

Chief Operator WPCC Ritter

On February 8th, the Town received two bids for the WPCC SCADA project. O'Connell Electric Company, Inc. bid \$1,387,158.00 and Goodwin Electric Corporation Bid \$1,759,000.00. Ritter requests to accept the bid of O'Connell Electric Company, Inc. in the amount of \$1,387,158.00.

Jacoby MOVED to accept the bid from O'Connell Electric in the amount of \$1,387,158.00. Seconded by Myers and Carried 4-0.

Recreation Director Tim Smith

The annual Easter Egg Hunt will be at the Senior Center Saturday, March 23rd at 11:00 a.m. Tim Hortons will be helping out with the event. Smith invites the Board to attend.

NEW BUSINESS - None

SUPERVISOR BRODERICK

Town Hall will be closed Monday, April 8th due to the Solar Eclipse. The Work Session Scheduled for that night will be moved to Thursday, April 11th at 6:00 p.m.

Broderick MOVED to reschedule the Town Board meeting from April 8th to April 11th at 6:00 p.m. Seconded by Waechter and carried 4-0.

Finance:

GASB 75 is a general accounting standards board's rule. We have to have an actuarial evaluation of our retirement services. This company will do that for us and we have used them for many years in

the past. This is a two-year contract that has gone up \$200 since our last contract making the total cost \$6,000.

Jacoby MOVED to approve the presented contract subject to attorney approval. Seconded by Myers and carried 4-0.

The Finance Director asked for approval to process the following 2024 budget revision:

1. A request to move \$47,870.00 to the Police Equipment budget B00-3120-02400-0000 from the Fund Balance budget B00-1000-0599-0000 to cover the replacement of Police Car #274 as suggested by the insurance company.

Jacoby MOVED for approval as presented. Seconded by Waechter and carried 4-0.

Broderick was provided a rendering from GHD of the Lower River Road Park now called Riverfront Park. This is the last phase of the Park and will include a second pavilion, a kayak launch, a boardwalk along the water and a handicapped accessible walkway. The engineering total is \$1,460,000.00. This will have to go out to bid. Broderick will be going to Greenway for the funding.

Waechter MOVED to approve the Riverfront Park Development as presented. Seconded by Jacoby and carried 4-0.

Jacoby said he is really excited about this, next to the short-term rentals, this is what he's heard about the most from people. Not only is it a kayak launch, were giving a wonderful opportunity for everyone to enjoy the waterfront. You can fish, you can kayak, you can picnic and I can't imagine a better usage of Greenway Funds. Broderick agrees.

Waechter asked what the proposed completion or proposed timeline of the project? Lannon said we hope to bid the project later this spring and hopefully finish it this year. A lot depends on delivery of some of the equipment.

Lannon presented a joint application for a permit to be sent to N.Y.S.D.E.C, U.S. Army Corp. of Engineers and NYS Dept. of State.

<u>Waechter MOVED to have the Supervisor sign the presented application. Seconded by Myers</u> and carried 4-0.

<u>COUNCILMAN JACOBY</u> – Nothing to Report

COUNCILMAN MORREALE

Morreale wanted to comment on the Riverfront Park. Many years of planning, talks and meetings. It's beautiful and breathtaking if you go down on a sunny day. The more we do to it, I think the residents will enjoy it. The way we did that park, it will be basically maintenance free besides cutting the grass. It will be there for a long time for Lewiston residents to enjoy.

COUNCILMAN MYERS

The Sanborn Historical Society will have an antique show and sale on March 16th 9:00-4:00 & March 17th 10:00-4:00 there will be a \$4 admission for the two-day event with a basket auction and food available. Their regular meeting will be on March 26th at 7PM at the Farm Museum, special program Antique Dolls Down Memory Lane.

<u>COUNCILWOMAN WAECHTER</u> – Nothing to report

Meyers MOVED to adjourn. Seconded by Waechter and carried 4-0. 7:07 P.M.

Transcribed and Respectfully submitted by:

Tamara L. Burns Deputy Town Clerk

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