

Present: Supervisor S. Broderick; Councilmembers A. Bax, B. Ceretto & B. Geiben & R. Morreale; Dep. Sup. B. Conrad; Chief Previte; Bldg. Insp. T. Masters; Finance Director/Budget Officer M. Blazick; Eng. R. Lannon; Attorneys J. Catalano & R. Parisi; WPCC Ch. Op. J. Ritter; Hwy Supt D. Trane; Water Foreman M. Townsend; Grant Writer Bernie Rotella; 2 Press; 50 Residents and Dep. Clerk C. Schroeder

The Supervisor called the Public Hearing to order, followed by the Pledge of Allegiance, led by Boy Scout Troup #824.

Public Hearing #1 Re: Proposed Local Law Re Amendment of a PUD Concept Plan.

The Clerk read the public notice for the record:

NOTICE IS HEREBY GIVEN that pursuant to Section 20 of the Municipal Home Rule Law of the State of New York, and pursuant to a resolution of the Town Board of the Town of Lewiston, the said Town Board will hold a public hearing at the Town Hall, 1375 Ridge Road, Town of Lewiston, on the 13th day of November, 2017 at 6:00 p.m., Eastern Standard Time, to hear all interested parties and citizens regarding the adoption of a Local Law for the Amendment of a Pre-Existing Planned Unit Development (PUD) Concept Plan for property located on Upper Mountain Road, SBL# 102.00-1-14.1. This property is presently owned by Donald Smith. Further information, including access to the full text of the Proposed Local Law and a copy of said Amended Planned Unit Development Concept Plan, may be obtained at the Town Clerk's office, Ridge Road, Lewiston, New York.

By Order of the Town Board of the
Town of Lewiston
October 23, 2017

The Supervisor opened the public comment period on the proposed local law.

Bill Justyk, James Drive, loves the project and praised the builder.

Marguerite DiMino, Bronson Drive, presented a signed, notarized petition by more than 20% of property owners opposing the Upper Mountain Road PUD. She asked if any Board member has gone on the Rubino's website. She has. They have been selling real-estate for 34 years. They started building homes in 1991. In 2003, they completed a 29 home subdivision in Clarence. They have built Campbell Meadows (8 4-unit complexes) and Amber Meadows (44 patio homes). They have never built anything of this magnitude. Can they handle it with all the things facing them? At the 10/12 Work Session, Geiben was excused. The Board knew they would table it. Where were the Rubino's? Did someone tell them it would be tabled? At the October RTBM, Bax said he needed more time to study this. Catalano said there was a 61 day window. When did he talk to the Rubino's to extend it to November 13th? I feel that everything is being preplanned. Do you work for us or the Rubino's? The Rubino's threaten a lawsuit. They have a pre-approved Plan. They can start building now. Where does the lawsuit come in?

Dan Wittten, Elder at NFBC shared a letter written to John and Joe Rubino: We, the leadership of Niagara Frontier Bible Church, are excited to hear the possibility of new neighbors coming with your development of the property adjacent to the church. Our mission at NFBC is "On mission with God to produce fully devoted followers of Christ". These new residents, along with the current residents of Upper Mountain Road, are always welcome to worship with us.

Thank you for your time to review our concerns with the current playground that is on our property we are leasing to the Municipality of Lewiston. Your creative solution to donate land to the church to help re-build the playground and provide public walking access has been an item of praise within the body of believers at NFBC.

This short note is our show of support to the development of the Upper Mountain property adjacent to NFBC.

Karyl Siejka, Bronson Drive, asked about the minutes when the PUD was approved in the 80's. She and several others heard they were not available. The Building Inspector told her to make a request of the Town Clerk as she has a file.

Tracy McLaverty, Creek Road, said he hasn't pinned himself to this particular development but this has peaked his interest. He's listened for a long time and heard people say it's not a good thing. Why isn't it a good thing and why is it a good thing? I judge things that way, personally. This has been going on for a long time, and I have yet in all of my attention, to hear one single argument against the development. This development has been waiting to be developed. One of the biggest threats they received is the fact that people don't want development in their backyards. I'm a taxpayer in this Town. I know how these things work. I've been a developer and have gone thru the mill. I think we've gone a long way on this particular development. It's beginning to look something like a shakedown. How much will you give us if we let you? They have given quite a lot. I think it's about time that this decision was made on the basis of its merits. If it's not good enough, it shouldn't happen. If it is, it should!

Amy Wilson, Bronson Drive, said they are not against development. Their homes were once part of a development. What we don't like is being railroaded. We know what has been going on since the 1950's. The lots were supposed to be 100'x200'. That's fine. It's not that we're against any development. We're against 66-ft lots. That's city living. That's going to force people out. You're going to lose a tax base, you're not going to gain one.

Don Anderson, The Circle, said it's not about the Rubino Brothers. It's not about progress. Development is good at times. To me, this is simply a public safety issue. Bronson Drive cannot handle construction trucks. The reason why the original PUD was passed in the 1980's was because there was an access road off of Upper Mountain for all the heavy construction trucks and to handle all the additional traffic. To me there is a simple solution to make everyone happy. Build the access road off Upper Mountain Road first and I will go door-to-door and support this project if that happens.

Sharon Pifer-Rugg, Bronson Drive: You know my feelings on this project. My parents have a double lot that would mean 2½ homes in their backyard. If this plan goes forward, I wish we could add 10-feet of greenspace between their home and the backyards of the new homes. I'm told by a realtor friend of mine that I might look into a term called "adverse possession". If you have been using the property, which my parents have that Wally Moll was gracious enough to allow them to use. I'm going to look into this. If you have been using this property for over 10 years, it can actually become yours."

Bax MOVED to close the Public Hearing. Seconded by Geiben and carried 5-0.
Time: 6:20 p.m.

WORK SESSION:

AGENDA: Additions: Paid Family Medical Leave Act (Parisi).

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

Local Law: Amendment to Upper Mountain Road Concept Plan:

Catalano said the first step in adopting the local law is to declare the Town of Lewiston as Lead Agent for SEQR.

Geiben: Am I correct that if the concept is approved, everything that has been said at each one of these public hearings is taken under advisement by the Planning Board while they are going down the next step?

Conrad: Absolutely. What the Planning Board has done and continues to do is take every comment from the other agencies that have reviewed the project, including the Town Board and incorporate that into our review moving forward to pinpoint the answers and resolutions to the issues that have arisen out of this project. If this moves forward tonight, we can start developing more detailed answers out of the issues that

haven't been able to be finalized until we move to the next phase. The next phase is where we are going to get a lot of the answers we have been asking all along... The whole process of the public hearing will be repeating again for the new plan, if developed. The Planning Board will have another public hearing, as will the Town Board. The new phase of development allows the engineering to go forward where a lot of these answers will come from that engineering work to give you detailed answers.

Geiben MOVED to declare the Town of Lewiston as Lead Agency for the SEQR on the amendment to the PUD Concept plan. Seconded by Bax and carried 4-1 (Morreale).

Catalano said the next step would be to declare a Negative Declaration of the SEQR. Engineer Lannon was asked to comment.

Lannon: I have prepared Part II and III of the Long Environmental Assessment Form. It is our recommendation, based on the information provided in Part I that a Negative Declaration would be our recommendation. The second part would be for the Town to consider acting on the Concept Plan as it is presented. We would recommend a traffic study be done, by phase, in order to determine impacts on Bronson Drive. Phase I comes out on Bronson Drive. Phase II also out on Bronson Drive. There is no Phase III yet so there is no Upper Mountain Road connection. I want to look at the traffic conditions at that point. The aspect of truck traffic during construction might come out in the detailed plan phase. That is something we can discuss with the developer to have a haul road, construction access road off of Upper Mountain Road, not Bronson Drive. They can construct a haul road. I would suggest they put the stone down where the road would ultimately go. The stone bedding would be right there. They can use that, without paving it, to access the site during construction of Phase I and Phase II. That is a discussion we have not had yet but it is certainly something we could discuss in the detailed phasing.

Bax MOVED to declare a Negative Declaration for SEQR, Part II & III. Seconded by Ceretto and carried 4-1 (Morreale).

Geiben MOVED to authorize the Supervisor to sign SEQR Documents, Part II & III for the amended PUD. Seconded by Ceretto and carried 4-1 (Morreale).

Bax MOVED the Local Law on the Amendment to the Pre-Existing PUD Concept Plan, located at Upper Mountain Road, SBL# 102.00-1-14.1, for discussion. Seconded by Geiben and carried 5-0.

Morreale said he was at the Planning Board when they approved the recommendation of the Concept Plan, pending approval of a traffic study. It is my belief the traffic study should have been done first. In the Planning Board minutes, a resident asked if the traffic study would include Bridle Path. The Chairman said it would include the whole area.

Morreale proceeded to read the traffic study that was submitted. The Annual Average Daily Traffic on Upper Mountain Road between NY Rt. 265 and the Tuscarora Indian Reservation was 8,861 vehicles per day (vpd) in 2011 according to the most recent NYSDOT data. The proposed development is expected to add approximately 1,300 vpd. It is anticipated that approximately 24 of the 100 proposed single family homes will use Bronson Drive to access Upper Mountain Road. The remaining 76 homes, as well as the townhouses are expected to use the new roadway connection to access Upper Mountain Road. "There was no traffic study done".

Morreale then read a portion of the Lewiston Town Code §360-129 detailing the criteria of review of recommendations for a PUD, "In considering and acting upon site plan review and approvals, the Town Board shall consider the public health, safety, welfare, comfort and convenience of the public in general, and the residents of the immediate surrounding area. The Town Board may prescribe such appropriate conditions and safeguards as may be required in order that the results of its actions shall, to maximize extent possible..." It also states "all proposed

lots shall be so laid out of such size to be in harmony with the development pattern of the neighboring properties.”

Morreale said he is not against development but he asked for a few things to be done with this PUD. 1) Financing Information, which he has not seen; 2) A Market Study, never turned in; 3) 4-lots, to be removed to increase the density of the project (He was told no); 4) A guarantee of an access road on Upper Mountain. “This is the reason I have a no vote on this right now. That is where I’m going to leave it at.”

Conrad said the Planning Board did, upon their approval, require a full traffic study. That never came back before the Board. We made a recommendation to approve the concept plan so we can move forward with the engineering, which was the idea to get all of these answers we were looking for.

Broderick reiterated that each phase would have a more extensive, detailed traffic study, as required at the Planning Board. Lannon concurred. He said the study referred to by Councilman Morreale was a Trip Generation Report. It is not a traffic study. It is an attempt to verify that one is not needed. That was what has been submitted. I agree with Conrad that the way that the PUD is written, in accordance with the Town Code, the traffic study comes at the detailed design phase. Right now, we are at the concept phase.

Lannon suggested the Board consider a motion to recommend a detailed traffic study, per phase, in accordance with the Town Code. Another thing to consider would be having a construction access road off of Upper Mountain Road.

Bax MOVED to approve a Local Law to amend a pre-existing Planned Unit Development Concept Plan located at Upper Mountain Road, SBL# 102.00-1-14.1, as written, condition of a road being built and utilized off of Upper Mountain Road beginning in Phase 1 for construction vehicles and that a Traffic Study being conducted at each detailed phase. Seconded by Ceretto and carried 4-1 (Morreale).

ABSTRACT:

Ceretto MOVED to approve the Regular Abstract of Claims Numbered 3084 to 3325 and recommended payment in the amount of \$254,226.74, plus a post audit of \$22,664.41. Seconded by Geiben and carried 5-0.

MINUTES:

The Finance Director noted an error in the minutes of 10/23/17. At that meeting, she asked for a transfer of funds from contingency A00-1990-0400-0000 to Building Contractual A00-1620-0400-0000 in the amount of \$12,932, for meeting room expenses in excess of grant funds. Blazick said this should have been transferred to Building Equipment, A00-1620-0200-0000.

Bax MOVED to approve the minutes of 10/23/2017, PH/RTBM, with the correction as noted. Seconded by Geiben and carried 4-0 (Ceretto abstained).

Bax MOVED to approve the minutes of 10/12/2017, Special Emergency Meeting and 10/12/2017 PH/Work Session. Seconded by Morreale and carried 4-0. (Geiben abstained).

DEPARTMENT HEAD CONCERNS:

Water: Townsend informed the Board that a fire hydrant was installed at 817 The Circle. Also, on Model City Road, a new regulator was installed in the Pressure Regulating Pit.

Grant Writer: Rotella said they are starting the NYS Archives Grant for the Building Inspector. That is 100% grant funded. He will start researching a grant for a dog shelter. Geiben asked Rotella to pursue looking into discussions of shared services for a dog shelter with the Town of Porter.

Finance: Blazick said they have received an invoice from Safe-lite Fulfillment in the amount of \$291.89 for an insurance claim. She asked for authorization to pay it post-audit. The Town will be reimbursed for this expenditure.

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

In doing year-end analysis, Blazick said several budget adjustments need to be made. She provided Budget Revision Edit Lists, dated 11/9/2017 at 10:14:07 AM; 11/13/2017 at 11:17:28 AM; and 11/13/2017 at 11:43:35 AM.

Bax MOVED to approve the Budget Revisions dated 11/9/2017 at 10:14:07 AM. Seconded by Ceretto and carried 5-0. (Attachment A)

Bax MOVED to approve the Budget Revisions dated 11/13/2017 at 11:17:28 AM. Seconded by Geiben and carried 5-0. (Attachment A)

Bax MOVED to approve the Budget Revisions dated 11/13/2017 at 11:43:35 AM. Seconded by Morreale and carried 5-0. (Attachment A)

Blazick wanted to make the Board aware of emergency repairs to the Town Hall furnace. They have not received the final bill but she anticipates between \$1,000 and \$1,500. She asked permission to pay the bill when it comes in. Funds need to be transferred from A-fund Contingency, A00-1990-0400-0000 to Building Contractual, A00-1620-0400-0000.

Geiben said he would rather wait for the final bill to come in. If it doesn't come in by the end of the year they would encumber the funds.

Blazick said the police need to have three additional weapons purchased for the new officers. These are to replace the guns that are currently retained by the court security staff. She suggested the Board approve this purchase and transfer the amount from the B-Fund Contingency, B00-1990-0400-0000 to B003120-0200-0000. Actual re-class will depend on the invoice. This is for the Board's information until the invoice comes in.

At this time, Dep. Sup. Conrad thanked the Scouts for attending and participating in the meeting. He credited the leadership for being involved in scouting and the amount of work that goes into these organizations.

OLD BUSINESS:

Saunders Settlement Road Drainage Issue: Parisi said this issue has been taken care of. There is no action the Town Board has to take.

L.L. Amendment to Town Code §360-50, 360-108 and 360-114 (Lewiston #1): Broderick said there would be no action taken tonight.

L.L. Amendment to Town Code §360-29(B) (Niagara University Re-zoning): Parisi said no action can be taken as they are still waiting for the time period to run on the Lead Agency letters sent out to interested parties.

Cold War Veterans Exemption: Parisi said Lewiston never had a Town tax before, so there was no need for the exemption. The Exemption provides a discount to Cold War Veterans from 1945 to 1991 who served in one of the branches of the military. It gives them a discount towards their Town tax. Now that there is a Town tax, it's something the Board could consider. It would involve adopting a local law. Parisi said he would introduce a local law at a future meeting.

Bid – Fire Hydrant (NYPA): The Engineer said they solicited five bids and received five bids back. The low bid was about \$31,000/\$32,000. Lannon forwarded this information to NYPA for their approval. He has not heard back from them so no action can be taken.

At this time, Supervisor Broderick congratulated Al Bax and John Jacoby for their election to the Town Council. He also commended Vic Eydt and Fran Flannigan on running positive campaigns.

NEW BUSINESS:

Paid Family Medical Leave Act: Parisi said the NYS Family Medical Leave Act does not cover municipalities, per se. Municipalities can either “opt in” or “opt out” of it. It is something for the Board to consider between now and the Town Board meeting. It’s up to the Board if you want to opt in to those additional benefits under the new law. In general, Parisi said benefits for Town employees are negotiated as part of collective bargaining agreements (CBAs). If the Town does approve it, it will be above and beyond all the other benefits that are provided under those CBAs.

Geiben said there is not much of a window of opportunity to study the topic. Parisi agreed. They just became aware of this. I don’t think that most municipalities out there realize that they have to either opt in or opt out. By not acting on this, the municipality would not be providing the benefit.

Geiben asked if the Town could opt in at a later time with negotiations. Parisi said the Town could provide those benefits as part of negotiating a collective bargaining agreement or it could decide later on that it does want to provide the benefit. Parisi said he would provide a resolution at the next meeting. The Board can act on it at that time.

2018 Budget:

Bax MOVED to adopt the 2018 Final Budget, as presented. Seconded by Geiben.

A poll of the Board is as follows: Bax – Aye; Ceretto – Aye; Geiben – Aye; Morreale – Aye; Broderick – Aye. **Motion carried 5-0.**

Bax MOVED to approve the Assessment Rolls for the Special Assessment Districts, as presented. Seconded by Geiben and carried 5-0.

Niagara Wheatfield Athletic Association, One-lot Subdivision: The Planning Board, on October 19, 2017, approved a request from NWAA, for a one-lot subdivision on the south side of Saunders Settlement Road, SBL# 118.00-1-64, as presented.

Morreale MOVED to issue a negative declaration and approve the subdivision, as presented. Seconded by Bax and carried 5-0.

Site Plan Application – Riverwalk/Wolf Run: The Planning Board, on October 19, 2017, approved a Site Plan Application for Forbes Carpetto for property located on the southeast corner of Wolf Run and Riverwalk Drive, SBL# 73.18-1-91 & 73.18-1-89, pending approval from the Town Engineer and Town Attorney.

Parisi said this matter should be tabled pending review of the Town Engineer and Attorneys.

Eng. Lannon said they are creating one additional lot. They have to incorporate the drainage and revise the drainage district. It is a very minor issue. The drainage district would need to be modified to accommodate that lot.

Parisi said there are a lot of issues going on with this. First, they want to take part of the greenspace on an approved cluster development; secondly, you’re amending the property lines of approved and filed maps on two different subdivisions – you’re changing the greenspace on Riverwalk and changing Lot 16 on Wolf Run. The other issue, if you want to extend your drainage district, we would need an amended Map, Plan and Report. There is a decent amount of work the Town has to go thru to add that additional property to the drainage district. The site plan was approved by the Planning Board, subject to Attorney approval. At this point, I can’t provide Attorney approval, Parisi said.

Broderick asked if Parisi could address all his concerns in two weeks. Parisi said he would have an answer in the next two weeks.

Site Plan Application – LMK Realty @ Legacy: The Planning Board, on October 19, 2017, approved a site plan for LMK Realty Associates, LLC, to add a pool house and pool at the northeast end of Legacy Drive.

Morreale MOVED to issue a Negative Declaration on said project. Seconded by Geiben and carried 5-0.

Morreale MOVED to approve the Site Plan for LMK Realty Assoc., LLC. Seconded by Bax and carried 5-0.

Re-zoning Request – LMK Realty: The Planning Board, on October 19, 2017, reviewed a request from LMK Realty, Northridge Drive, SBL#101.12-1-21 & 102.12-1-41 to rezone the property from R-1, one-family residential to R-2, two-family residential. The Planning Board recommends denial of the rezoning request for the following reason:

- The approval would request in an illegal spot zoning of R-2 within an R-1 and PUD heavy area where the sole benefit would be to the applicant and no benefit to the general welfare of the community.
- The nearest R-2 properties are over a mile away from this project to the north. Rezoning of these properties to R-2 would not be in agreement and be well considered with the comprehensive plan.
- The area is heavily burdened with traffic, much of it generated by prior developments by the applicant.
- Approval of the R-2, as proposed, would only worsen that problem.
- An approval of R-2 in this primarily R-1 district would create an unfair advantage to the applicant over other developers building compliant projects within the Town's R-1 districts.
- There are no unique circumstances or hardships tied to this property that would prevent it from being developed under its current designation of R-1.

Dominic Massaro, Principle of LMK Realty, said they have gone before the Town's Planning Board in August concerning their 30 unit (15 buildings) Town Home Development. Massaro believes they have presented a well-designed project that merits the approval of the Town Board. He addressed some of the concerns of the Planning Board that denied the project.

First, he did not believe this to be illegal spot zoning in any manner. The Niagara County Planning Board reviewed this in detail and unanimously recommended approval to the Town Planning Board, as submitted. We are in a residential area and we are asking for a residential zoning change.

The Town's Comprehensive Plan seeks to encourage residential development that is compatible with adjacent usage. We have a residential to a residential, R-1 to R-2, and we are buffering the area. Everything necessary for this property already exists along Northridge Drive – water, sewer, etc. It has already been incorporated and dedicated to the Town in the 1990s. The proposed development is consistent with the surrounding usage. The affective traffic generated by this proposal would be negligible.

Irrespective of the recommendation of the Town Planning Board, which was a split decision, I would respectfully suggest consideration be given for approving our plan, Massaro asked.

Catalano asked that this be tabled as this is a re-zone request.

Bri-Estates Subdivision:

Lannon said the Town of Niagara Town Board is considering a proposal for the construction of a 119-lot residential subdivision on 40 acres of land along Colonial Drive. The proposed subdivision is considered an unlisted action and the Town Board is coordinating the review pursuant to 6 NYCRR Part 617 of the Environmental Conservation Law (SEQR). The Niagara Town Board is requesting Lead Agency under SEQR for the proposed subdivision. The Lewiston Town Board has until November 22, 2017 to consent or contest.

Parisi said there was no need to take any action unless the Town Board had any objections. Letter received and filed.

Sanborn Historical Society:

Morreale said the Sanborn Area Historical Society (SAHS) requests the Town authorize Grant Writer Bernie Rotella to make application to the Greenway Commission to approve \$50,000 to fund the outfitting of the Church/Legion Museum at the Sanborn-Lewiston Farm Museum. The project would include the purchase of display cabinets and miscellaneous fixtures, manikins, church related items, etc. for displaying artifacts.

Broderick said they have done great things at the Farm Museum. The Town has given them quite a bit of Greenway Money to do many projects. There are several projects in the works within the Town that need to be done. At this time, Broderick said he would hold off on this request and ask that the SAHS re-apply next year.

Upper Mountain Fire Company:

The Upper Mountain Fire Company requests that Brendan Fiore be added to the Fire Company roster. **Broderick MOVED for approval. Seconded by Geiben and carried 5-0.**

Personnel – Request for Sick Leave payment:

Dave Sherriff, Dog Control Officer, requests approval for 20-half sick days, as he continues be to out of work due to an injury.

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

Set Final Audit/RTBM: The Board scheduled the Final Audit/RTBM for December 28, 2017 at 6 PM. (Broderick said he would not be in attendance. Ceretto said she was questionable.)

PRIVILEGE OF THE FLOOR:

Rosemary Warren, Griffin Street, said the Town spent a lot of money on upgrading the Main Meeting Room. She wished they would have spent more money on microphones or taken a course in public speaking. Next, she commented that the Fund Balance in the A-Fund is getting too high.

Nancy Correa, Riverwalk Drive, shared Councilman Morreale's frustration on not receiving the finance letter from the Rubino Brothers. Those are public documents that the Board agreed to put on the website. Correa said she is aware the Town Clerk has problems with receiving items on time. She said there has to be a concerted effort, including the attorneys, engineer and department heads that these items be brought to the Clerk on a timely basis to be put on the website.

James DiAdoti presented what he considered an outrageous water bill. His bill normally averages \$130-\$140. His current bill is \$819.00. He was told by the water clerk that his bill had been under-estimated because the old water meter wasn't reading properly. Mr. DiAdoti was told to contact the Supervisor in the morning to discuss this.

November 13, 2017, 2017, PH / Work Session

Don Anderson, The Circle, had a question on the condition that was added to the Upper Mountain Road PUD for public safety to keep construction traffic off of Bronson. He asked if the Board would go on record to make it clear that it is their intention on passing that condition to keep the construction traffic off of Bronson.

Bax went on record saying that was the intent of his condition.

Karyl Siejka asked if there was any talk of Bri-Estates expanding into the Town of Lewiston. Broderick said he had not heard anything about that. As far as he is aware, it is 100% in the Town of Niagara.

Regarding the Upper Mountain Road project, Siejka asked how they can be assured that none of the construction traffic would come down Bronson Drive. Bax said the construction vehicles would utilize the new access road off of Upper Mountain Road. "If the Rubino Brothers do not like that idea, then their project does not move forward."

Geiben MOVED to adjourn. Seconded by Bax and carried 5-0. Time: 8:20 p.m.

Transcribed and
Respectfully submitted by

Carole N. Schroeder
Deputy Town Clerk