

**PRESENT:** Supervisor S. Broderick (ZOOM); Councilmembers W. Geiben (ZOOM), J. Jacoby, R. Morreale & J. Myers; Dep. Sup. W. Conrad; Finance Director J. Agnello; Atty. A. Bax (ZOOM); Water Foreman D. Zahno; Building Inspector Masters (ZOOM); Highway Supt. Trane; Police Chief Previte; Senior Center Director Olick (ZOOM); Parks & Recreation Director Dashineau (ZOOM); Town Engineer Lannon (ZOOM); 6 Residents, Press (ZOOM) and Clerk D. Garfinkel

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

### AGENDA APPROVAL

Agenda Additions: Geiben – Recreation hires and Excess Senior Center chairs; PUD Pond - Essex.

**Morreale MOVED to approve the agenda as amended, Seconded by Jacoby and Carried 5 – 0.**

### RESIDENTS STATEMENTS

Murnyack, John – Ridge Road – Murnyack asked if the Board knows how many small businesses operate in the Town. Murnyack doesn't believe anyone knows. A lot operate out of their homes. Covid has created a situation where more people are working in their homes. It has given the opportunity for Code Enforcement to go after these people and in some cases, they overlook it.

Murnyack asks the Board – Is the Board going to address, in some point in time, somehow that a small business, like auto detailing, electrical work, out of their house..... that is small business operating here in the Town? If it's in a residential area, it's not allowed according to code.

According to Mr. Masters, these situations, can only be rectified by either a stop order, or the Town Board address this.

In Murnyack's professional career he worked with building depts in many different Towns. Building Inspectors in these places have tried to work with the individual to try to make it work.

Working with the Building Dept. here in Lewiston has changed, it used to be practical. Murnyack said now it is black and white in Code Enforcement. They are taking an individual, who grew up in this Town for 33 years, who has a small business in this Town, with 90% of his work done for residents in this Town. But the answer from Code Enforcement is, move to another Town, we don't want you in our Town. Murnyack feels this is totally wrong. Residents should be able to work with Code Enforcement.

In December of 2020, a zoning change went in front of the Board and Murnyack is not sure it went through the right process. It went to Code Enforcement, they threw it on the agenda, and the Board went ahead and said, "no, we're not going to do spot zoning". Code Enforcement said the individual created its own problem so we're not even going to consider anything else. Murnyack said that is totally wrong.

Who oversees the Building Dept.? Murnyack puts this on the Town Board. Someone needs to investigate what is going on in the process.

Murnyack was dragged in before Judge Sheeran because of a violation of a couple trucks being parked on his property. It escalated to the point where they were threatening a \$5,000/week fine if they weren't removed. Murnyack has a whole list to be submitted to Masters and Broderick of other people with the same violations that he doesn't believe they are being addressed.

The Judge told Murnyack to work with Code Enforcement. Code Enforcement's answer is there is nothing you can do, take your business and move to a different town.

Murnyack asks Board members to look at this situation. It should be rectified. The Board shouldn't be driving any resident out of Town.

Murnyack, Roberta – Ridge Road – Murnyack's son grew up in this Town. He has done business for

many residents in Town.

He worked in the park in the Village. He had a very decent, very good bid that he submitted, but apparently it was too low for the Board. They wanted higher bids. Why?

Murnyack's son has a business. He lost \$7,000 on the piece of property because the code would not justify his business on that piece. He was told by a Board member, who refuses to admit that he said it, to look up on Route 31. Which he did. He bought a piece of property and is now being told by the Code that he can't do anything on this piece of property, move to another Town.

There are other individuals running the same type of business, with the same type of equipment on their personal property. Murnyack does not understand this. She feels like this is discrimination against the name Murnyack.

Lyle, Steve – Lower River Road – Lyle thanked Councilman Jacoby for his service and dedication to the Town. He has always taken the job seriously, paid attention, attended committee meetings.

#### DEPARTMENT HEAD STATEMENT

Attorney Bax circulated a resolution regarding The Patios at Essex Ridge. There is a request for a minor change in the depth of the drainage pond. It also has a contingency of its approval and would require the HOA perpetual maintenance thereof. This takes it off of the Town's hands. Bax would suggest the Board move on this tonight.

Morreale questioned #1 which states – “Developer to provide documentation to the Town demonstrating the homeowner's association's will forever and into perpetuity be required to mow and maintain the shallower portions and/or dry portions of the revised pond area”.

Morreale questioned, who will take care of the lower area when it is loaded with debris? It is Lannon's understanding that the entire pond will be maintained by the HOA. The pond itself remains the same footprint, same size, same location, it is just shallower in a larger area than what was originally proposed and approved.

Morreale questions what this Resolution means; the Town has no liability for cleaning, mowing or anything? Lannon said that is his understanding.

Broderick said no, the dry area will be mowed and maintained by the HOA. The original agreement with a stormwater district will be in effect. Broderick has gone back and forth and understands Highway Superintendent Trane is not happy with this.

There will be monies set aside in an account that if that pond ever needed service, other than the mowing in the dry areas the actual retention area would need to be taken out of those funds.

Morreale said then the Town is liable? Broderick said yes, to the original agreement that went through, this is a modification that there will be a dry area, and a wet area. They will maintain the dry area and the Stormwater District will be required to take care of the rest, which will be overseen by the Town.

Geiben understands the HOA will take care of the circumference and the stormwater drainage area. It doesn't mean the Town has to do it; the Town can contract out. Broderick said yes.

Morreale recalls past conversations that the Town is trying to get out of the pond business and not burden the Highway Department.

Trane asked if this will not set a precedence for a Stormwater District? Where is there any information or documentation of the District? Is there documentation to be submitted to the Town? How come none of that has been provided?

Trane received the resolution when he entering Town Hall tonight. He heard about it but was never given a copy. With the lack of paperwork and information Trane requests the Board table this.

Jacoby said the Board gets these things at the last minute, and this seems to be at least mildly controversial. Jacoby asked if there is urgency to this.

Lannon said the developer has expressed an interest in resuming work on finishing the construction of the pond. That is the only urgency.

Morreale said the Highway Superintendent would like us to wait and feels this could be tabled for two weeks so Trane could have his questions answered.

Trane said at the last meeting he was told it would be addressed later, and it never was. Broderick said this has been discussed since the last meeting.

Michael Metzger, Metzger Civil Engineering and Phil Nanula, owner of Essex Homes were present.

Metzger said the questions regarding the maintenance of the pond has been kicking around for a bit. As a refresher, during the original approval of the project, there was a lot of discussion on this. A determination was made at that time that the pond maintenance would be taken care of through the establishment of a Special Drainage District.

It was part of the approval resolution of the Board when the project was approved. It was very clear that the maintenance was going to be by the Town. It does not have to be the forces on the Highway Dept. It could be handled through a private contractor through the drainage district.

Within the last six-months, the concern about the actual mowing of the green area adjacent to the pond was discussed. Once the determination was made, when the project was approved, other things that were dependent on that decision went into place.

A Homeowners Association (HOA), was created and approved by the State Attorney General's Office and put into place. To make any changes to the HOA would be extremely difficult.

Having said that, there are provisions within the HOA that allow for mowing of land that is part of the common area. In discussion with Nanula he feels comfortable along with his Attorney that there would be the ability for the HOA to take care of that aspect of the pond maintenance.

Other aspects of the pond maintenance, based on the approval condition, the drainage district would be established for the pond maintenance and other forms of maintenance. That has always been the understanding and the HOA was set up for this to happen.

The developer will agree to take care of the mowing portion of this provided the rest of the maintenance follows suite with what was previously agreed upon and made a part of the approval of the project.

Morreale asked, if construction starts, three homes sell and two or three years go by and the pond needs to be cleaned and there is not enough money to clean it?

Phil Nanula said that can't happen. Through the condo status that was granted by the Attorney General stipulates 15% of the project needs to be under contract in order to close on the first home. Approximately 14 units would need to be sold/under contract in order to deem the project effective.

Nanula feels there are two issues. One – maintenance – Nanula was informed of the concern and said that he could cover the mowing within the circumference of the common area maintenance. The

Stormwater Management District is all throughout and the declarations are approved by the State Attorney General. Because that is what was dictated within the approval of the project. The second issue is the modification of the pond itself.

Trane said the Stormwater District was unknown to the Town, this will set precedence. Correct?

There has been no information on this and Trane has seen nothing. Trane asked if the pond size needs to be readdressed with the Attorney General. Nanula said no.

Trane asked why the maintenance of the pond would need to be? Metzger said that is in the document. The document states pursuant to Town approve that there be a stormwater district.

Trane said the Town has not approved the ponds yet, the depth or the change of it. This is the time to make a move. This has to be on the Town's approval.

Until it's figured out, Trane wants the Board to look at this and how it may set a precedence with the Stormwater District. Trane feels the Board should table this until all documentation is received. The Town will end up eating this because the developer doesn't want it.

Metzger and Nanula said that is not accurate. The documents were all dictated by both Planning Board and Town Board approvals. This was at the Town level.

Nanula said a request came to his company asking can you assist us in the maintenance. Under common area maintenance this can be included without having to go back and redo documentation to the Attorney General.

In regards to the pond design, during construction bedrock was hit. In the development of any projects there are always things that arise that require modifications. This is one.

The Town Engineer reviewed the engineer design, and believes they are in agreement. That is the issue that was thought to be on the agenda. The Stormwater Management District does not need to be addressed.

Trane said under common law the pond is included, the whole pond. Nanula said yes, the pond and the Stormwater District. Trane said the HMO can take care of that. The whole thing should be included.

Nanula said in the document there are stipulations of all these conditions and there is nothing in the budget or the HOA that was pre-approved and submitted based on the cost that needs to be maintained in the project based on the method it was approved. This was an issue directed to the developer, not requested by the developer.

Metzger said that during the approval process there was discussion on how the maintenance was going to be handle for the stormwater ponds. Metzger said as the developer they do not care. It could be through a special district or the HOA, but a decision needs to be made.

To unravel everything to have to do with the HOA would just be an absolute nightmare, and unfair.

Trane asked instead of the homeowners paying the HOA, to maintain the pond, they will pay the Town. Metzger said it will be charged in their taxes. Trane asked what is the reason behind the Town receiving the fund, instead of the HOA?

Nanula said the HOA is a living breathing document that is filed with the State Attorney General. It took a year to get approved. Only residents in this development will pay the cost associated with the Stormwater District. What is the concern if it gets charged in their taxes or the Association?

Jacoby feels Nanula and Metzger are both the victims, not of this situation, but of – this happens all too often with relatively complex matters. It is not complex for Nanula and Metzger, they deal with this over and over. The Board got this today and are being asked to vote on it.

Nanula was surprised it was given today, he thought it was to be discussed at the last meeting.

Jacoby said it is not concrete enough, in his mind, to vote on this tonight. Jacoby would like to have Trane say he is satisfied.

Nanula asked – it was his understanding they were present tonight for the minor modification to the pond. The stormwater district has already been approved. Nanula has no understanding as to why this is being discussed.

It is not uncommon in site development work that you need to look at variations that occur, based on underground conditions. The engineers worked together to create a solution.

If this is not resolved tonight, the developer is working up against weather. This needs to be done as a condition of the Site completion and road dedication.

The road was paved in May, 2021 and there are interested parties for homes.

Conrad said the only item on the agenda is the minor adjustment to the pond itself.

Geiben understands Trane is very concerned about the responsibility that these drainage ponds have on the Town Highway / Drainage Dept. This particular arrangement seems to protect the Town's interest. The HOA will take care of the circumference of the pond, all shallow areas, grass trimming and weeds, the heavy part of the pond and changing of the filter. That takes it off the Town.

This is a very good working agreement and designed to protect the Town.

Broderick agrees. This is how the PUD was approved originally. If we were starting from scratch Broderick doesn't believe it would be done this way, we didn't have the history we have now.

The district was approved and that is how it was always intended to be. It would not be fair, after a major investment, to turn around and change this midstream.

Lannon said the discussion about the Stormwater District and the approval of that prior is separate and distinct from the pond. It would be the same discussion if the pond went in as originally proposed, or proposed with a minor modification. They are two separate issues.

There will be maintenance of the pond as previously approved configuration, or the proposed configuration.

Bax asks Lannon if it is his position with the revenue raised, there will be enough money for repairs? Lannon said the fees need to be established, but that is the intent. Collect revenue from each lot.

Trane said once this is approved, the Town will have no teeth to change any of the water districts. This is the only negotiating tool. Once the Board approves this, the Town is done, we are stuck with the stormwater district. Trane asked Bax if that is correct.

Bax said once you change the depth in the pond, or in the way the Town collects the fees?

Trane said the PUD in front of the Board tonight.

This was being addressed by Attorney Seaman, therefore Bax apologizes for not being up on this entirely. Bax's understanding on the stormwater district is it would be its own separate taxing entity. The lots that are identified in the district would share in the cost of the maintenance.

Trane is concerned with once this change in the pond is accepted, the Town can't make any more changes, can it?

Bax believes the only change being requested is the depth of one section of the pond.

Morreale asked if the minor adjustment can be approved without number 1. Which reads: Developer to provide documentation to the Town demonstrating the Home Owner's Association's will forever and into perpetuity be required to mow and maintain the shallower portions and/or dry portions of the revised pond area.

Broderick said this has already been approved. Trane's looking at it as it is a loop-hole to get out of this. This decision was approved in 2018. Trane is now saying let's change it, let's get rid of it.

Bax asked Trane, when you say loop-hole – because the developer is now requiring a modification

to the PUD, that we can now change the rules of the game. Trane said yes. He was against it back then and is against it now.

Nanula said he is not here to challenge the PUD but have an engineering revision to a structure. This has nothing to do with opening up the gate to change the PUD. The PUD approval is done.

This is a very minor creation of management of circumference of space with water modification.

Jacoby asked Bax if the Board approves this PUD Minor Adjustment tonight does it in anyway modify the drainage district that is in effect right now? Bax's opinion is it will not impact the drainage district as established previously, and approved.

Geiben said he is comfortable with the Resolution. It does not totally resolve the issue Trane has concerns about but it does on this particular PUD.

**Broderick MOVED to approve the following Resolution, Seconded by Geiben**

**WHEREAS**, the Town of Lewiston approved a Planned Unit Development ("PUD") project in 2018 known as Escarpment Estates and currently known as The Patios at Essex Ridge; and

**WHEREAS**, the developer of the PUD project is in the process of Phase I construction; and

**WHEREAS**, the developer had previously submitted requests for minor adjustments to the PUD plan, which were approved by Resolution of the Town Board, and

**WHEREAS**, the developer has now submitted a request for an additional minor adjustment to the PUD plan stating the need for said adjustments were discovered during the development of the project, specifically during the excavation of the pond; and

**WHEREAS**, the developer requests an adjustment to the north pond at the Patios at Essex Ridge site so that they may reduce the depth of the pond and therefore minimize the excavation of rock that is necessary, and

**WHEREAS**, GHD, the Town's Engineer consultants, have confirmed that the basic geometry of the pond will remain the same, the footprint of the pond will remain the same, and the resulting pond will fully comply with the state's storm water requirements, and

**WHEREAS**, the resulting pond will result in a shallower depth of excavation such that certain portions of the excavation will remain dry and subject to vegetation growth, and

**WHEREAS**, the developer has confirmed that any mowing and or maintenance of the resulting shallower portions and/or dry portions of the resulting pond will forever and into perpetuity be mowed and maintained by the home owner's association associated with the development, and

**WHEREAS**, the developer's submissions and statements before this Board have been fully considered; and

**WHEREAS**, the Town Building Inspector, Highway Superintendent, and Engineer have reviewed the request for a minor adjustment and have no objections to the developer's request,

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the Town Board of the Town of Lewiston hereby finds that the requested adjustment is minor in nature, is needed in light of engineering and technical considerations discovered during anticipated development; and be it further **RESOLVED**, that the developer's request to reduce depth of the north pond at the Patios at Essex Ridge, in accordance with the plans submitted to the Town in conjunction with this request, is hereby approved as a minor modification to the PUD, conditioned on the following:

- 1) Developer to provide documentation to the Town demonstrating the home owner's association's will forever and into perpetuity be required to mow and maintain the shallower portions and/or dry portions of the revised pond area, and
- 2) The submission of such documentation will be subject to review and approval of the Town Attorney, and
- 3) Such review and approval to occur and be documented prior to issuance of any certificate of occupancy for the development.

**Carried 5 – 0.**

APPROVAL OF MEETING MINUTES – None presented for approval

AUDIT PAYMENT

**Myers MOVED to approve the Regular Abstract of Claims numbered 21-02981 to 21-03150 and recommend payment in the amount of \$1,186,059.25, plus a Post-Audit in the amount of \$14,109.66, Seconded by Jacoby and Carried 5 – 0.**

PENDING / OLD BUSINESS – None

NEW BUSINESS – None

SUPERVISOR BRODERICK

Upper Mountain Fire Company – Roster addition / removal

**Geiben MOVED to remove Leven, Dan from Upper Mountain Fire Co. roster, Seconded by Morreale and Carried 5 – 0.**

**Geiben MOVED to add Berak, Carl – Annover Drive and Heikoop, Caleb – Country Club Trail to the Upper Mountain Fire Co. roster, Seconded by Myers and Carried 5 – 0.**

Sewer Refund – Empson – Calkins Road

**Morreale MOVED to approve the sewer refund for Empson – Calkins Road in the amount of \$56.44, Seconded by Jacoby and Carried 5 – 0.**

Engineering – Lannon

The railroad crossing to complete the Waterline project should be finished by November 29<sup>th</sup>.

A draft of the Park Pavilion Project should be completed and ready for review within the next week.

Final touches being done on Lewiston Town Wide Drainage district. Hopes to present next meeting.

Finance

Agnello requests approval of the following budget revisions:

Transfer \$5,000 from Parks Personnel - B00-7110-0100-0000 to Parks Contractual - B00-7110-0400-0000, to cover contractual expenses.

Transfer a total of \$9,500 with \$5,200 from Highway Insurance - DB0-1910-0400-0000 and \$4,300 from Highway State Retirement - DB0-9010-0800-0000, to Highway Gasoline and Diesel - DB0-5110-0400-3510, to cover fuel expenses.

**Geiben MOVED for approval as printed, Seconded by Jacoby and Carried 5 – 0.**

COUNCILMAN GIEBEN

The Senior Center chairs that were needed, have been ordered and delivered. There are excess chairs that need to be put on Auctions International. Olick said there are approximately 225 old chairs.

Dashineau would like to take a look at them, for the Ice Rink, prior to auctioning off. Myers also would like to reach-out to the Non-for-Profit organizations.

**Geiben MOVED to declare the Senior Center banquet chairs excess, with amount to be determined by Senior Center Director Olick, Seconded by Morreale and Carried 5 – 0.**

**Geiben MOVED to place the excess Senior Center banquet chairs, with amount to be**

**determined by Senior Center Director Olick, subject to another department needs, on Auctions International, Seconded by Morreale and Carried 5 – 0.**

Geiben thanked Recreation Director Dashineau and Parks Director Trane for their hard work to get the Ice Rink open. It has been very well attended.

Dashineau requests hiring of two (2) Recreation Aides.

**Geiben MOVED to hire Collesano, Christopher and Ingram, Lawson at a rate of \$12.50/hour, Seconded by Jacoby and Carried 5 – 0.**

COUNCILMAN JACOBY

Jacoby read a letter of resignation from Captain Joshua Cain effective November 19, 2021, addressed to Chief Previte.

**Jacoby MOVED to accept the resignation of Joshua Cain as Captain, effective immediately, Seconded by Morreale and Carried 5 – 0.**

**Jacoby MOVED to appoint Michael Salada as provision Captain, acknowledging prior Civil Service requirement, together with Chief Previte canvassing all qualified individuals for the position and satisfy a notice provision in the Town of Lewiston handbook, Seconded by Morreale and Carried 5 – 0.**

**Jacoby MOVED to formally create the position of Lieutenant for the Town of Lewiston Police Dept., Seconded by Morreale and Carried 5 – 0.**

**Jacoby MOVED to appoint Brandon Hall as Lieutenant, acknowledging that Civil Service requirement and satisfy the notice provisions of the Town of Lewiston Handbook, Seconded by Morreale and Carried 5 – 0.**

**Jacoby MOVED have Emily Richeal go from part-time to full-time to fill Brandon Hall's position, with the wage being per the Contract, Seconded by Geiben and Carried 5 – 0.**

**Jacoby MOVED to hire Juan Paul - part-time, to fill Emily Richeal's position, with the wage being per the Contract, Seconded by Morreale and Carried 5 – 0.**

COUNCILMAN MORREALE

WPCC Chief Operator Ritter requests Operator Joe Schuey attend Waste Water School in August, 2022. The cost is \$2,650 with funds from SS1.

**Morreale MOVED to allow Operator Joe Schuey to attend Waste Water School in August, 2022, with funds from SS1 in the amount of \$2,650, Seconded by Jacoby and Carried 5 – 0.**

**Morreale MOVED to hire Joslyn Pinson - part-time Watch Person at the Treatment Plan, at a wage of \$15.22/hour, Seconded by Jacoby and Carried 5 – 0.**

COUNCILMAN MYERS

The Sanborn Business and Professional Assoc. will be holding activities throughout December at the Sanborn Farm Museum and throughout Sanborn to celebrate the Christmas holiday.

**Morreale MOVED to adjourn, Seconded by Jacoby and Carried 5 – 0.** (7:30 pm)

Transcribed and respectfully submitted by:

Donna R. Garfinkel, Town Clerk