

September 7, 2011

A Public Hearing and the regular monthly meeting of the Lockport Town Board was conducted at 7:30 p.m. on Wednesday, September 7, 2011, at the Town Hall, 6560 Dysinger Road, Lockport, New York.

Present were: Supervisor: Marc R. Smith

Town Council members: Cheryl A. Antkowiak
Paul H. Pettit
Mark C. Crocker
Paul W. Siejak

Also present: Nancy A. Brooks, Town Clerk, and Daniel E. Seaman, Town Attorney.

Following the Pledge of Allegiance, Supervisor Smith welcomed those present and opened the meeting as follows:

PUBLIC HEARING: Proposed Local Law to Amend the Property Maintenance Ordinance

The Town Clerk read the Notice of Public Hearing as was published in the Union Sun & Journal. The Supervisor opened the floor for any interested persons to speak. The following spoke on the matter:

Al Schafer asked if the Town had a list of parcels (most under foreclosure) that this new law would target. Supervisor Smith informed him that a list of properties could be obtained at the Town Building and Assessing office.

There being no one else to speak on the topic, Supervisor Smith closed and Public Hearing and opened the floor for public comments as follows:

PUBLIC COMMENTS:

Lester Busdiecker of Gardenwood Drive in the Woodlands, speaking as President of the Woodlands Home Owners Association, addressed the issue of poor drainage within the park. He stated that there are two main ditches that run through the park which are in need of cleaning. He fears that if left untouched, these ditches will cause flooding when spring time arrives. He also stated that the ditches are very overgrown with weeds and filled with debris to the point that residents fear wild animals may become a health hazard to small children. He would like Town Board assistance to have the ditch work completed. In addition, he would like a guard rail installed within the park and would appreciate help in seeing that one is installed for safety reasons.

Supervisor Smith commented that the Town's ditching projects for the year 2011 have already been approved and that any new projects will have to wait until 2012. He advised Mr. Busdiecker that he would have to contact David Miller, the Town Highway Superintendent to discuss the ditching issue.

Paul Black of Harding Ave Ext. read a prepared statement concerning Regional Greenhouse Gases and Executive Order 24 which regulates omissions of such gases. He stated that the Niagara County Legislature as well as other Niagara County towns and villages will be, if they haven't already, passing resolutions to oppose Executive Order 24 and call for its repeal. He stated that there is substantial evidence that there has not been any significant improvement in the reduction of such gases since the implementation of the new regulations and that these regulations/ restrictions have placed undue hardships on local industries and businesses within New York State. Mr. Black urged the Town of Lockport to issue a Town Board resolution in favor of repealing Executive Order 24. He also suggested that it might be advantageous for a Town official to attend the Niagara County legislative meetings to keep abreast of such issues.

Continued next page

There being no one else to speak before the Town Board, the public comment section was closed and the regular business meeting was opened as follows:

BUSINESS MEETING:

1. Approval of Town Board Minutes

MOTION (2011-191): to approve the minutes of Town Board meetings conducted on 08/01/2011, 08/03/2011, 08/10/2011 and 08/17/2011, was made by Council member Pettit, seconded by Council member Antkowiak. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

2. Approval of Payment of Bills

MOTION (2011-192): to approve the payment of bills for the month of September was made by Council member Siejak, seconded by Council member Antkowiak. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

The bills, as abstracted by the Town Clerk, consist of Vouchers #24900 - 25119 in the amount of \$545,276.39.

3. Communications

The Town Clerk read a list of candidates for volunteer fire services, approved by the Town Fire Prevention Bureau and awaiting Town Board approval. The candidates' names are as follows:

Gary Mahar (social).....Terry's Corners Fire Co.
Eric Weber.....South Lockport Fire Co.

MOTION (2011-193): to approve the above mentioned persons for volunteer fire service in the Town of Lockport, was made by Council member Antkowiak, and seconded by Council member Pettit. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

4. Building Inspector's Report

The Supervisor read the Building Inspector's Report for the month of August 2011 which stated that 76 permits were issued; \$13,462.00 was collected in fees; and the total estimated cost of construction was \$2,708,384.00,

5. Supervisor's Monthly Financial Report

MOTION (2011-194): to approve the Supervisor's Monthly Financial Report for the period ending August 31, 2011, was made by Council member Antkowiak, seconded by Council member Pettit. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

6. ACTION AFTER PUBIC HEARING: Adoption of a Local Law

MOTION (2011-195): on a motion by Council member Siejak, seconded by Council member Antkowiak, the following resolution was put to a ROLL CALL vote and was duly ADOPTED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

The Local Law in its entirety is as follows:

Local Law No. 6 of 2011

A local law repealing and re-enacting Chapter 132 of the Code of the Town of Lockport entitled Property Maintenance.

Be it enacted by the Town Board of the Town of Lockport as follows: Chapter 132 of the Town Code of the Town of Lockport is hereby repealed in its entirety and the following Chapter 132 is adopted in its place:

§ 132-1. Findings and determination.

A. The Town Board of the Town of Lockport hereby finds that the outdoor storage, accumulation, deposit or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed or unregistered motor vehicles, rubbish, debris, or solid waste upon private property threatens the health, safety and welfare of the Town residents. Outdoor storage, accumulation, deposit or placement of such items and uncontrolled weeds and vegetation creates a significant fire hazard, endangers the environment and groundwater, leads to infestation by insects, vermin or rodents, depreciates property values, and has a deteriorating and blighting effect upon the neighborhood and community.

B. The Town Board hereby determines that the outdoor storage, accumulation, deposit-or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed or unregistered motor vehicles, rubbish, debris, or solid waste and uncontrolled weeds and vegetation upon private property constitutes a public nuisance.

§ 132-2. Definitions.

A. As used herein, the following terms shall have the following definitions:

CODE ENFORCEMENT OFFICER - The Building Inspector or Code Enforcement Officer or their deputies or staff, or any other person having Code Enforcement authority in the Town of Lockport.

DEBRIS - Includes all materials resulting from the construction, excavation, renovation, equipping, remodeling, repair or demolition of structures, property or roads as well as materials consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such materials include but are not limited to bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, window frames, electrical wiring and components, plastics, carpeting, foam padding, linoleum, metals, or any combination thereof which are incidental to construction, excavation, renovation, equipping, remodeling, repair or demolition.

GARBAGE - Includes all putrescible animal and vegetable waste resulting from processing, marketing and preparation of food items, including the container in which packaged.

MOTOR VEHICLE - Includes all vehicles as defined by New York State Vehicle and Traffic Law 9 125. The term "motor vehicle" as used in this chapter shall also include all-terrain vehicles as defined by New York State Vehicle and Traffic Law 9 2281 and snowmobiles as defined by New York State Vehicle and Traffic Law 9 2221 and shall further include any vehicle intended for operation on land by means other than muscle power.

OUTDOORS - Includes anything not housed in a fully enclosed building.

Continued next page

OWNER - The owner as identified on the current assessment roll, or the managing representative of the owner.

RUBBISH - Includes all non-putrescible solid wastes consisting of both combustible and noncombustible wastes, including but not limited to paper and paper products, rags, wrappings, cigarettes, cardboard, tin cans, yard clippings, wood, glass, metals, plastics, tires, bedding, cloth, crockery, furniture, appliances and similar items.

SOLID WASTE - Includes all putrescible and non-putrescible materials and substances having served their original intended use or being spent, useless, worthless or in excess to the owner, including but not limited to household and commercial garbage, industrial waste, rubbish, debris, garbage, litter and ashes.

WEEDS OR VEGETATION - All brush, grass, weeds or other vegetation, which exceed the height of twelve (12) inches, on a premises which is improved by a residential, commercial, industrial building.

B. All other terms as used in this chapter shall have their common or ordinary meaning.

§ 132-3. Outdoor deposit or storage of waste.

A. No person, as owner, occupant, lessee or agent, or in any capacity, shall store, deposit, place, maintain, or cause or permit to be stored, deposited, placed or maintained outdoors any abandoned, junked, discarded, wholly or partially dismantled, unlicensed or unregistered motor vehicle or any solid waste, rubbish, or debris or weeds and vegetation as defined herein upon any private property within the Town.

B. This section shall not apply to:

(1) Any solid waste, rubbish or debris temporarily stored or placed in a container for collection or disposal.

(2) The maintenance of a mulch pile used for on-premises gardening or landscaping confined to an area to the rear of a residence and not exceeding 50 square feet.

(3) The temporary storage on a premises of a single motor vehicle meeting New York State inspection requirements which is unlicensed or unregistered but which is not dismantled, abandoned, junked or discarded. This exception shall only apply where the vehicle is stored on a stone or paved surface not closer to the street than the front facade of the building.

(4) The maintenance of any motor vehicle on a duly licensed automobile repair or sales business lot, properly zoned, while said vehicle is being repaired or sold, provided that this exception shall not permit storage of vehicles which will not pass a New York State vehicle inspection on any premises for a period in excess of 30 days.

(5) The maintenance or storage of farm equipment or materials used in a farming or agricultural operation or weeds or vegetation on farms on a premises in actual use for agricultural purposes.

(6) The maintenance or storage of operable farm equipment, business equipment or construction equipment for sale or in connection with a legally operating business.

(7) Vegetation consisting of maintained gardens and landscaping where actual care and maintenance is taking place on a regular basis.

C. For purposes of this chapter, every owner and occupant shall be strictly liable and fully responsible and shall be deemed to have permitted any condition on the premises they own or occupy.

§ 132-4. Inspection and report.

Whenever it shall appear that the provisions of this chapter are violated, the Code Enforcement Officer is authorized to make an inspection of the property involved and prepare a written report of the conditions found, which report shall be filed with the Town Planning Board.

§ 132-5. Notice of violation.

A. If conditions existing on the inspected property violate the provisions of this chapter, the Code Enforcement Officer is authorized to serve or cause to be served a written notice of such violation, either personally or by certified mail, upon the owner or owner's agent as well as upon the lessee or occupant of said premises. Failure to serve either an owner or an occupant or lessee shall not prevent enforcement against any party served.

Continued next page

B. Said notice shall contain substantially the following: the name of the owner, lessee or occupant of the premises, if known; the address or location of the premises; the identification of the premises as the same appears on the current assessment roll; a statement of the conditions on the property deemed upon inspection to be in violation of this chapter; a demand that the motor vehicle, solid waste, rubbish, or debris, weeds or vegetation determined to be in violation of this chapter be removed from the property on or before 10 days after the service or mailing of such notice; and a statement that a failure or refusal to comply with the provisions of this chapter and the notice given pursuant thereto within the time specified may result in the Code Enforcement Officer, or any authorized officer, agent or employee of the Town entering upon the property and removing such motor vehicle, solid waste, rubbish or debris, weeds or vegetation, and causing the same to be disposed of or otherwise destroyed and that the cost and expense of such removal and disposal or destruction and an enforcement fee in the amount of Two Hundred (\$200.00) Dollars shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.

C. Said notice shall also contain the date, time and location at which the Town Planning Board will conduct a hearing to determine whether the conditions upon the subject property constitute a public nuisance. Said notice shall state that the property owner, his/her agent, lessee or occupant is entitled to be heard at such hearing. The date of such hearing must be at least 10 days after service or mailing of the notice of violation.

D. Nothing contained in §132-4, 132-5, 132-6, 132-7 or 132-8 of this chapter shall require any report or notice as a prerequisite to the filing of an information or the issuance of a summons or appearance ticket for, or any prosecution of, a violation of any of the provisions of this chapter, or taking any civil action.

§ 132-6. Second inspection and report.

On or before the date of the hearing and prior to commencement of the hearing, the Code Enforcement Officer or other duly authorized officer or employee shall conduct a second inspection of the property and a written report of the conditions deemed in violation of this chapter found thereon with the Town Planning Board. Such inspection shall be conducted as close to the date of the hearing as practicable.

§ 132-7. Determination of public nuisance; removal by Town.

At the close of the hearing, the Town Planning Board may determine that the conditions upon the subject property which violate this chapter constitute a public nuisance. Upon a determination by the Town Planning Board that conditions upon the property constitute a public nuisance, the Code Enforcement Officer is empowered to authorize and direct officers, agents or employees of the Town to enter onto the property and remove any vehicle, solid waste, rubbish or debris, weeds or vegetation deposited, placed or maintained in violation of this chapter and dispose of or otherwise destroy the same. Any costs and expenses incurred by the Town and an enforcement fee in the amount of Two Hundred (\$200.00) Dollars when acting pursuant to this chapter to abate a public nuisance shall be assessed against the property involved and shall constitute a lien thereon to be collected as provided by law.

§ 132-8. Emergency actions.

A. Nothing in this chapter shall prohibit a municipality from entering onto private property to remove any solid waste, motor vehicle, appliance, rubbish or debris, weeds or vegetation whenever there exists an imminent threat to the life or safety of persons. Municipal authority pursuant to this section may only be exercised where there is an immediate necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crisis condition.

B. A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property's tax bill.

§ 132-9. Penalties for offenses; enforcement.

In addition to the remedies set forth in Sections 132-4 through 132-8:

A. A violation of S 132-3 of this chapter is a violation punishable by a fine of up to \$250 and/or imprisonment for up to 15 days. Each additional week of continuous violation of the terms of this chapter constitutes a separate violation.

B. The Town may seek injunctive relief in a court of competent jurisdiction and shall be entitled to a judgment for any expenses incurred, including attorney fees.

C. All remedies set forth in this chapter are alternative and cumulative, and the Town may enforce this chapter utilizing any remedy or combination thereof.

Continued next page

§ 132-10. Conflicts with other laws.

When the provisions of this chapter conflict with the provisions of any other local law or ordinance of the Town of Lockport, the provisions of this chapter shall prevail.

This Local Law shall take effect immediately upon filing with the Secretary of State.

7. Award Contract for Heating & Plumbing for Day Road Park Restrooms

MOTION (2011-196): to award the contract for the heating & plumbing for the Day Road Park restrooms to R. Peer Plumbing & Heating of Lockport, New York, in the amount of \$26,580 (\$17,600 for the plumbing and \$8,980 for the heating) was made by Council member Antkowiak, seconded by Council member Crocker. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

8. Approve Contract with Becker Farms

MOTION (2011-197): to approve a contract with Becker Farms to provide discount passes for their fall activities to Town residents, was made by Council member Antkowiak, seconded by Council member Siejak. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith.

9. Town Board Comments

Councilman Crocker reported on the Town debt, stating that over the last two decades the Town of Lockport has paid down over a million dollars in debt incurred to install or replace the Town's infrastructure. He also stated that during that time, the Town has also sought refinancing of some of the debt to reduce interest rates and lower the Town's overall indebtedness.

Councilman Pettit reminded residents that due to the Labor Day holiday, refuse pickup will be one day late this entire week. Additionally he suggested that residents cut the portion of the Town newsletter with the refuse schedule printed and place in an easy to see location for such occasions.

Councilman Siejak reported that the Town of Lockport Historical Society will hold their last meeting at the Pomeroy School this year, at 7:00 p.m. on Monday, Sept. 19, 2011. All persons are urged to attend, as the future of the historical society will be discussed.

Councilwoman Antkowiak reported that the Fall/Winter Newsletter should be out to residents by the first week of October. There will be many upcoming Town recreation activities listed. One such activity is Fall Festival to be held on Sunday, October 16, 2011 at the Town Hall from 1:00 – 3:00 p.m.

Another fast approaching event, not in the newsletter, is the Annual Health Fair – at Town Hall on Wed., September 28, 2011 from 12:30 – 3:00 p.m. There will be a wide range of health care vendors, nearly 30, to provide all types of testing and information for residents to take advantage of including blood pressure, hearing & eye tests, diabetes testing and flu shots. She urged all persons to attend.

Dale Association – she reminded residents that with winter approaching, transportation for the elderly or sick can be a major issue and she urged residents to take advantage of the many programs offered by the Dale Association to accommodate people in need of such assistance. The Dale Assoc. brochure listing all of the services offered is available at the Town Media Center near the Town Clerk's office.

Lastly, Councilwoman Antkowiak wanted to pay tribute to the loss of a great community volunteer, David Cushman, who recently passed away at the age of 81. David was a volunteer fireman with South Lockport Fire Co for over 55 years; holding several offices including, Chief, Assistant Chief, Line Officer, President and Exempt Pres. David was dedicated, committed and worked unselfishly to help his fellow community his entire life. He was a prime example of what a true hero is. The Town of Lockport is grateful to him and to his family for a life so well lived.

9. Supervisor's Comments

Supervisor Smith informed those present that once again, this is budget season and he and the Town Board will be working over the next few weeks to formulate a Preliminary Budget for 2012. He stated that the Town Board works very hard to keep costs to a minimum and they are hoping to have a net zero affect for residents when the budget is finalized.

10. Adjournment

MOTION (2010-198): to adjourn was made by Council member Pettit, seconded by Council member Crocker. The motion was CARRIED: AYES - 5, NAYS - 0. Voting AYE: Antkowiak, Pettit, Crocker, Siejak and Smith. The meeting ended at 7:55 p.m.

The Lockport Town Board will next meet at 1:00 p.m. on Monday, September 19, 2011.

Respectfully submitted,

Nancy A. Brooks, RMC, CMC
Lockport Town Clerk