

September 2, 2015

The regular business meeting of the Lockport Town Board was conducted at 7:30 p.m. on Wednesday, September 2, 2015, at the Town Hall, 6560 Dysinger Road, Lockport, New York.

Present were: Supervisor: Marc R. Smith

Council Members: Mark C. Crocker
Paul W. Siejak
Patricia Dufour
Thomas J. Keough

Also present: Nancy A. Brooks, Town Clerk; Michael J. Norris, Town Attorney; Larry Haseley, Town Historian; Timothy Mulvey (developer) and Tim Arlington (Architect) for the proposed expansion at 1010 Davison Road, subject of one of the Public Hearings, and media representatives.

After the Pledge of Allegiance, Supervisor Smith opened the meeting as follows:

PUBLIC HEARING: to consider a request from Mulvey Construction for Dimensional Deviations from the Town Code for a parcel in a PUD (Planned Unit Development) located at 1010 Davison Road, Lockport.

Supervisor Smith asked Mr. Arlington to come forward for a brief presentation on the proposed project and to explain the reasoning for the request for deviations from the Town Code. Mr. Arlington explained the request for deviations stating that the owner, Tim Mulvey, wishes to further develop the PUD parcel at 1010 Davison Road to include four additional buildings. At the time Mr. Mulvey obtained his Planned Unit Development, the Town's Code required lot sizes within the PUD to meet the same lot requirements of those in a B-1 zoning district, meaning they would require 125' frontage. Mr. Mulvey now wishes to build four new buildings (professional offices) on the site with 100' frontage which would require the Town Board to approve the dimensional deviations from the Town Code for lot size.

The floor was opened for public comment. There being no one to speak on the matter, the Public Hearing was closed.

PUBLIC HEARING: on a proposed Local Law to Impose a Moratorium on the Disposal of Sludge, Sewer Sludge, Septage, and Bio Mass.

The following individuals spoke on the issue:

Mr. Nate Carr of Quasar Energy Group, spoke in opposition of the moratorium, briefly explaining the process of applying Class A biosolids on agricultural land. He explained the anaerobic digestion process which utilizes microbes to break down organic wastes into non hazardous bio gases, methane which is available as an energy source and a biosolid fertilizer suitable for crop application. The anaerobic process uses several source materials including: sewer sludge, food wastes, fats and greases (all natural, organic sources). He stated that land application of biosolids is used by farmers to increase land nutrients needed for crops, improves drainage and is found to be more economical than using other organic fertilizers. The product is high in nitrogen and pot ash and is used on feed crops, not on produce. He reported that the entire process is regulated and approved by the New York Dept. of Environmental Conservation, the NYS Dept. of Agriculture & Markets, and also meets federal regulations. He also reported another benefit from the use of these biosolid fertilizers is that it prevents the organic source materials from being entered into existing landfills; further decreasing the need to expand or create new land fills. He stated he would answer any and all questions posed by the Town Board members and encouraged them to research the entire biosolids land application process and to visit their company for an onsite demonstration.

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Others who spoke in favor of the moratorium and in opposition to the biosolids land application process included:

Monica Daigler, residing on King Fisher Lane in Wheatfield, New York, stated that she has spent a good portion of the previous year researching this subject and was involved in helping the Town of Wheatfield to investigate this issue and to formulate their new law regarding the biosolids land application process. All of her research materials will be made available to Town Board members. Her concerns about the process are that it is self regulated, not enough testing is done and that the materials used in this product will find their way into our water systems and pollute them.

Michael Olmstead of Minnick Road in the Town of Lockport also urged the Town Board to research the source materials used in the making of the biosolid product, suggesting that the source materials are not being tested for hazardous material prior to their use.

Catherine L. Brown of West Lake Road in Wilson, New York reported that the sludges used to make this product are only tested for 9 heavy metals out of 27 and then are only required to be tested 4 -12 times each year. They are not tested each and every time they are sent to the biosolids processing plant. She reported that on several occasions, sewer sludge from the Town of Amherst, NY was found to have levels of cadmium, a highly toxic metal, much higher than the allowed limits set by New York State. This sludge could possibly be used at such biosolids processing plants and then be applied to crop fields. She is also concerned about airborne materials that may be dangerous when farmers are applying these products to their fields, in particular ecoli, viruses, neuro viruses etc. which remain in the soils and can make their way from fields into the water systems. She has done much research on the subject of the biosolids land application process and has copies of several studies done by various universities of which she will make available to Board members.

Julie Otto of Mapleton Road in Sanborn, New York also urged the Town Board to impose a moratorium and read a summary statement issued by the NYS Dept. of Environmental Conservation with regard to the issue of biosolids which quotes “the Department does not dictate the preferred method of use, the decision to select or use a disposal option lies within the municipality with regard to biosolids. She also has a great deal of information that she will make available to the Town Board including a list of items which can legally be put into the local sewer systems, and in turn, will be found in sewer sludge which can then be made available for the production of biosolid fertilizers.

Robert Luskin of Ambleside Drive Lockport, NY stated that he has used compost from the City of Lockport’s Waste Water Treatment Plant on several occasions and that there are several signs indicating that the use of the compost is not intended for food gardens – but only for flower gardens.

There being no further comments, Supervisor Smith closed the Public Hearing.

He then read the Town’s policy on public participation at open meetings and began the regular business meeting as follows:

PUBLIC COMMENTS:

Robert Luskin of Ambleside Drive thanked the Town Board for providing the hazardous waste drop off and paper shredding service to residents in August. He had a large amount of paper shredded and was pleased to see its disposal right on site. He added that this service helps to prevent identity theft and helps residents to feel more secure.

No others spoke and the Public Comment segment was closed and the regular business meeting was opened as follows:

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1. Approval of Minutes

MOTION (2015-228): to approve the minutes of Town Board meetings conducted on 08/03/2015, 08/05/2015, and 08/19/2015 was made by Council member Siejak and seconded by Council member Keough. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

2. Approval of Payment of Bills

MOTION (2015-229): to approve the payment of bills for September was made by Council member Siejak and seconded by Council member Crocker. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

The bills for September include Vouchers # 34668 – 34871 on the amount of \$1,040,085.69.

3. Communications

The Town Clerk read a list of candidates for the volunteer fire service as follows:

Kenneth G. Birke.....Wright's Corners Fire Co.
Rachel S. Birke..... Wright's Corners Fire Co.
Timothy J. Birke.....Wright's Corners Fire Co.
Gregory J. Birke.....Wright's Corners Fire Co.
Louis I. Trembley.....Wright's Corners Fire Co.
Sarah M.R. Morrison.....Wright's Corners Fire Co.

MOTION (2015-230): to approve the above named individuals for volunteer fire service in the Town of Lockport was made by Council member Crocker and seconded by Council member Keough. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

4. Building Inspector's Report

Councilwoman Dufour read the Building Inspector's Report for the month of August which states that 63 permits were issued; \$7,840.00 was collected in fees; and the estimated cost of construction was \$3,127,880.00.

MOTION (2015-231): to approve the Building Inspector's Report as submitted was made by Council member Dufour and seconded by Council member Crocker. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

5. Supervisor's Monthly Financial Report

MOTION (2015-232): to approve the Supervisor's Monthly Financial Report for the period ending August 31, 2015 was made by Council member Keough and seconded by Council member Dufour. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

6. Resolution Authorizing Engineer to Seek RFP's for Soil Bores – Phase 1A Water Line Replacement Project

MOTION (2015-233): on a motion by Council member Dufour and seconded by Council member Keough, the following resolution was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

WHEREAS, the Town of Lockport has authorized Wendel, the Town's Engineers, to prepare request for proposals for Soil Bores for Phase 1A Waterline project, and

WHEREAS, Wendel has completed the necessary plans and specifications, and now therefore be it

RESOLVED, that the Lockport Town Board authorizes that the request for proposals be available as follows:

- Request for Proposals Available: Tuesday, September 8, 2015
- Written Proposals Due: Tuesday, September 29, 2015 at 2:00 p.m.

7. Resolution to Authorize Engineer to Seek RFP's for Wetland Delineation on Phase 1A Waterline Replacement Project

MOTION (2015-234): on a motion by Council member Siejak and seconded by Council member Crocker, the following resolution was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

WHEREAS, the Town of Lockport has authorized Wendel, the Town's Engineers, to complete the request for proposals for Wetland Delineation for Phase 1A Waterline project, and

WHEREAS, Wendel has completed the necessary plans and specifications, and now therefore be it

RESOLVED, that the Lockport Town Board authorizes that the request for proposals be available as follows:

- Request for Proposals Available: Tuesday, September 8, 2015
- Written Proposals Due: Tuesday, September 29, 2015 at 2:00 p.m.

8. Resolution to Authorize Engineer to Seek RFP's for Replacement Gutters for Highway Garage

MOTION (2015-235): on a motion by Council member Dufour and seconded by Council member Keough, the following resolution was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

WHEREAS, the Town of Lockport has authorized Wendel, the Town's Engineers to complete the request for proposals for the Replacement of Gutters on the Highway Garage, and

WHEREAS, Wendel has completed the necessary plans and specifications, and now therefore be it

RESOLVED, that the Lockport Town Board authorizes that the request for proposals be available as follows:

- Request for Proposals Available: Tuesday, September 8, 2015
- Written Proposals Due: Tuesday, September 29, 2015 at 2:00 p.m.

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9. Resolution Opposing the Allowance of Microbeads to Enter Area Water/Sewer Systems

MOTION (2015-236): on a motion by Council member Crocker and seconded by Council member Dufour, the following resolution was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

WHEREAS, over the past decade, manufacturers of personal care products have been adding microplastic particles (microbeads) to products, like facial scrubs, soaps, and toothpaste; and

WHEREAS, microbeads can range in size from about a millimeter to as small as a grain of sand; and

WHEREAS, it is estimated that a single product may contain as many as 350,000 plastic microbeads; and

WHEREAS, scientific studies demonstrate that these microbeads are polluting New York's waterways, including Lake Ontario; and

WHEREAS, a study in 2014 found as many as 1.1 million microbeads per square kilometer in Lake Ontario; and

WHEREAS, the State of Illinois has already restricted products using microbeads and many other States are considering the same; and

NOW THEREFORE, BE IT RESOLVED that the Town of Lockport Town Board is requesting the support of the Niagara County Legislature to enact a law banning the sale of plastic microbeads in personal care products in Niagara County, and encourage the State Senate to join with the State Assembly in passing the Microbead-Free Waters Act for New York State in order to protect the ever so fragile health of the Great Lakes and other water bodies in New York State.

10. Resolution to Re-Appoint Michael James to the Lockport Board of Assessment Review

MOTION (2015-237): to re-appoint Michael James to the Town of Lockport Board of Assessment Review for a five-year term to expire 9/30/2020 was made by Council member Dufour and seconded by Council member Siejak. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

11. ACTION AFTER PUBLIC HEARING: Request for Dimensional Deviations to the Town Code in a Planned Unit Development (the Mulvey PUD)

MOTION (2015-238): on a motion by Council member Keough and seconded by Council member Dufour, the following resolution was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

WHEREAS, Mulvey Construction, Inc. has submitted an application to this Board requesting dimensional deviations of the Zoning Code of the Town of Lockport in a Planned Use Development (PUD) Use District pursuant to Town Code Section 200-83 for property located at 1010 Davison Road and referenced by SBL No. 123.04-2-43; and

WHEREAS, the Town Code requires a minimum lot size designated for any eligible use be as required for the District in which the use is allowed and the proposed use is for professional offices which is permitted in a Local Business (B-1) Use District and permitted within a PUD; and

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WHEREAS, the Town Code requires a lot width of 125 feet in a B-1 District and applicant is requesting a dimensional deviation of the lot width requirement for four lots (three with 100 feet and one with 102.24 feet); and

WHEREAS, a Public Hearing was held on September 2, 2015; now therefore be it

RESOLVED, that this Board as permitted by Town Code Section 200-83 grants the dimensional deviation of the lot width requirement for four lots (three with 100 feet and one with 102.24 feet) as presented in the applicant's request and Apex concept plan dated June 9, 2015.

12. **ACTION AFTER PUBLIC HEARING: LOCAL LAW TO IMPOSE A MORATORIUM ON THE DISPOSAL OF SLUDGE, SEWER SLUDGE, SEPTAGE AND BIO MASS**

MOTION (2015-239): on a motion by Council member Siejak and seconded by Council member Crocker, the following resolution was put to a ROLL CALL VOTE and was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

LOCAL LAW # 6 of 2015

A Local Law "Imposing a Moratorium upon the Disposal of Sludge, Sewage Sludge, Septage and Bio Mass"

Be it enacted by the Town Board of the Town of Lockport as follows:

SECTION 1. FINDINGS, PURPOSE AND INTENT.

The Town Board of the Town of Lockport currently has under consideration and review potential amendments to the Town Code in regard to solid waste and recycling. Matters pertaining to solid waste and recycling activity within the Town emphasizes the need for suitable regulation under existing and clearly established standards in an effort to plan for and protect the health, safety and well being of the citizens of and property in the Town of Lockport. The existing provisions contained in Chapter 156 of the Town Code of the Town of Lockport may not create and meet such appropriate standards and controls to allow for a harmonious balance and to protect the health, safety and well being of the citizens and property in the Town of Lockport. The Town Board desires to review and address, in a careful manner, provisions relating to solid waste and recycling and the disposal of sludge, sewage sludge, septage and bio mass on a comprehensive and town wide basis and to amend and/or adopt appropriate provisions to achieve these purposes.

Further, the Town Board understands that other local municipalities have recently enacted and/or amended local laws regarding solid waste and recycling and the disposal of sludge, sewage sludge, septage, and bio mass. The Town Board further understands that certain of these local laws are currently being challenged by the New York State Department of Agriculture and Markets and/or through private litigation. In order to determine the outcome of these challenges, the Town Board of the Town of Lockport finds it prudent and necessary to adopt a moratorium applicable to solid waste and recycling and the disposal of sludge, sewage sludge, septage and bio mass.

This moratorium is intended to ensure that no approvals for such land use application be granted or permitted until this Board can complete its planning studies and has had the opportunity to consider and enact appropriate amendments to the Code.

SECTION 2. AUTHORITY.

This Local Law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law of the State of New York, and pursuant to the police powers of the Town of Lockport. This Local Law is further enacted pursuant to the zoning authority vested in the Town of Lockport and to the authority set forth in the Municipal Home Rule Law Section 10(1)(ii)(a)(1) and 10(1)(ii)(d)(3). To the extent that any provision of this Law is inconsistent with any other Town Law, including Town Law Sections 261, 262, 263, 269, 270, 271, 274(a) and 274(b), such Laws are expressly superseded by the provisions of this Law, as authorized by said Sections of the Municipal Home Rule Law.

SECTION 3. APPLICATION.

This Law shall apply to any and all solid waste and recycling and disposal of sludge, sewage sludge, septage and bio mass with the Town.

SECTION 4. DURATION.

This Law shall be in effect for six months from and after its adoption.

SECTION 5. SCOPE.

During the effective period of this Local Law, no Board or Agency of the Town shall accept, process, review, recommend or grant approval for solid waste and recycling processing or the disposal of sewage, sewage sludge, septage, or bio mass. No permit shall be issued for such activity, and no application shall be accepted or processed for such activity during such time. Such activity is hereby banned during this time.

SECTION 6. EXISTING ACTIVITIES.

Any or all projects with the Town having a current permit to dispose of sewage, sewage sludge, septage or bio mass shall not be affected by the terms and provisions of this Local Law.

SECTION 7. SEVERABILITY.

The invalidity of any word, section, clause, paragraph, sentence or part or provision of this Local Law shall not affect the validity or any other part of this Local Law which shall be in effect.

SECTION 8. EFFECTIVE DATE.

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

13. Res. Auth. the Town Attorney to Enter Stipulation with Suburban Rapids, LLC

MOTION (2015-240): on a motion by Council member Siejak and seconded by Council member Crocker, the following resolution was duly ADOPTED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

**TOWN OF LOCKPORT
RESOLUTION**

WHEREAS, Suburban Rapids, LLC commenced an Article 7 Tax proceeding challenging the tax assessment for 2014-2015 tax year under Case Index No. 153564/14 for Parcel Nos. 152.00-1-10 (6763 Minnick Road) and 153.00-1-30 (6773 Rapids Road); and

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WHEREAS, the Town Attorney has negotiated this matter at court conferences and conferred with the Town Assessor; and

WHEREAS, it is the recommendation of the Town Attorney with approval of the Town Assessor that assessments of the following parcels for the 2014-2015 tax year be set as follows:

SBL	2014-2015 Original	2014-2015 Final
152.00-1-10	\$2,866,000	\$2,213,890
153.00-1-30	\$1,875,000	\$1,448,380;

NOW THEREFORE BE IT RESOLVED, that the Town Attorney is authorized to enter into a stipulation setting assessments of the following parcels for the 2014-2015 tax year be set as follows:

SBL	2014-2015 Final
152.00-1-10	\$2,213,890
153.00-1-30	\$1,448,380;

AND BE IT FURTHER RESOLVED, that the Town Supervisor is authorized to issue refunds to the Petitioner or Petitioner's attorney upon receipt of the Court Order for the ad valorem overpayments received for the 2014-2015 tax year as follows:

Lockport Fire Protection District	\$1,082.64
Lockport Sewer District 3	\$3,708.97
Lockport Water District 3	\$ 840.63

14. Town Board Comments

Councilman Crocker thanked everyone for attending the evening's meeting and gave a brief report on the most recent electronic recycling drop off held on August 29, 2015. He stated that normally about 24 bins are filled and 9,000 lbs of recycled goods are collected, however, on the 29th, there were 29 bins filled and approximately 10,000 lbs of recycled goods were collected. He is very pleased that the recycling program is doing so well and thanked all those who have participated.

Councilwoman Dufour also thanked all those in attendance for their participation at this evening's meeting, especially those who commented at the Public Hearing regarding the disposal of sludges and bio mass. She stated she appreciated all their comments and the materials that will be made available to the Town Board and assured residents that Town Board members will do much reading and will thoroughly research the matter before any decisions are made.

Additionally, she spoke on the Rapids Community Day and the re-dedication of the Rapids Owl Landmark; thanking Larry Haseley, the Town Historian who spoke at the event and gave a history of the "Owl" and the person it was originally erected in memory of, Uncle Joe Edwards. She also congratulated Nancy Brooks and her committee for a very successful and wonderful event commemorating such an historic part of the Town's heritage.

Lastly, the Councilwoman reminded residents of the following upcoming activities:

Memorial Tree Plantings at Day Road Park – the program is on hold until spring.

Town Newsletter – the fall issue will soon be out with a great deal of information.

October 18 – Fall Festival at Town Hall from 1:00 -3:00 p.m.

Computer Classes at Town Hall - October 8th (Windows 8)
November 12th (Computer Basics)

Information and registration for both classes are available at the Town Clerk's Office

Councilman Siejak thanked all persons on both sides of the issue who spoke at the Public Hearing on the disposal of sludge, sewer sludge, septage and bio mass. He assured them that the Town Board will thoroughly evaluate all the information on the subject.

The Councilman also reported on the following:

Refuse Pickup Schedule: due to the Labor Day holiday, refuse pickup will be one day late the week of September 7th – 11th.

Brush Pickup Schedule – the next pickup is scheduled for the week of Sept. 21st. All brush must be put to the curb by 7:00 a.m. on that Monday.

Free Rabies Clinic – to be held at Lockport Town Highway Garage on Saturday, Sept. 19th from 9:00 – 11:00 a.m. Residents should bring proof of previous rabies inoculations for their pets.

Schools Reopen – The Councilman reminded residents that school reopens and urged drivers to be careful, to look out for students walking, and to be sure to stop for stopped school buses.

Viet Nam Veterans Photo Album – local Viet Nam veterans will have a photo album of war pictures which will be on display at the Kenan Center, 413 Locust Street, during the period of September 12th - October 11th.

Councilman Keough reported that NYS Senator, Rob Ortt, will be sponsoring a trip to Washington, D.C. for World War II veterans on October 21, 2015. Interested veterans can contact Sue at 716-434-0680 to make reservations.

Niagara Military Affairs Council Presentation – the Councilman reported that a representative of NIMAC will attend the October 7th Town Board meeting at 7:30 p.m. for a brief presentation concerning the Niagara Falls Air Base and current status of the base.

15. Supervisor's Comments/Reports

Supervisor Smith also re-iterated the comments of the Board members stating that the Board will do much research on the subject of the moratorium passed earlier in the evening. He assured residents that the Town Board will do their very best to do what is best for the Town of Lockport.

The Supervisor also thanked Highway Superintendent, David Miller, David Miller Jr. and Ginny Miller for the work they did to restore the Rapids Owl Landmark, as well as Larry Haseley for helping to educate people about a truly historic part of the Town of Lockport.

16. Adjournment

MOTION (2015-241): to adjourn was made by Council member Keough and seconded by Council member Dufour. The motion was CARRIED: AYES-5, NAYS-0. Voting AYE: Crocker, Siejak, Dufour, Keough and Smith.

PAGE 10 – Continuation of minutes of Lockport Town Board meeting conducted on 09/02/2015.

The meeting ended at 8:37 p.m. The Lockport Town Board will next meet at 1:00 p.m. on Wednesday, September 16, 2015.

Respectfully submitted,

Nancy A. Brooks, RMC, MMC
Lockport Town Clerk