

A meeting of the Town Board of the Town of Lewisboro, Westchester County, New York, was scheduled for May 23, 2005 at 7:30 p.m. at the South Salem Library, 15 Main Street, South Salem, New York 10590.

PRESENT: Supervisor - James Nordgren  
Councilmen - Jessica Bacal, Pat Daigle, Allen Hershkowitz, Sue Whalen  
Town Clerk - Kathleen G. Cory  
Town Attorney - Leslie B. Maron

Also attending was the Deputy Supervisor Joann Vasi.

The Supervisor called the meeting to order at 7:33 p.m.

REFUSE LICENSE – Meeting with Suburban Carting Representatives

The Board met with Perry Mitrano and Paul Barley of Suburban Carting Corp. to discuss issues relating to the company’s billing and recycling practices. The Town Clerk had reported receiving several complaints that Suburban Carting improperly raised their fees and also charges late fees when customers are not in arrears according to the Town’s refuse law. Mr. Mitrano said they would review their billing practices and make refunds.

Mr. Nordgren questioned the representatives about the recycling practices of Suburban Carting and asked for suggestions to increase the level of recycling by their customers. Mr. Mitrano said the level of recycling is very high from their Lewisboro customers. He explained that even though customers may see the workers placing blue bags of recycling into the refuse bins on their trucks the material does get recycled. Mr. Mitrano said they truck all their recyclables to a recycling facility in New Jersey. After further discussion the Board voted to approve a renewal of the refuse license to Suburban Carting.

On motion by Mr. Nordgren, seconded by Mrs. Whalen, the Board voted as follows:

THE VOTE: Yes - Nordgren, Bacal, Daigle, Hershkowitz ,Whalen (5)  
No - None (0)  
Absent - None (0)

RESOLUTION

RESOLVED, that the Town Board hereby authorizes the renewal of a license to collect residential and commercial refuse in the Town of Lewisboro for Suburban Carting Corp.

GOLDENS BRIDGE – Landscaping of East Parking Lot

Mr. Nordgren reviewed the process of obtaining bids for additional landscaping at the Metro-North parking lot on the east side of Route 684 in Goldens Bridge. He proposed awarding the project to the low bidder as the project is to be completed by late June.

Ms. Bacal questioned the bid process and asked if the Town's Director of Finance was authorized by law to request bids for projects. Mrs. Jacobson said she prepared the documents on behalf of Mr. Nordgren. Mr. Nordgren asked the Town Attorney to research that question and also determine if the Town Board had to formally vote to authorize a bid.

Mr. Nordgren reviewed the bid from Scanlan Landscaping of New City, New York. State Senator Vincent Leibell has said he will provide funding in the amount of \$40,177 for the project.

Mrs. Whalen asked who decided to do this project and who authorized it. She said the Board wasn't involved. Mr. Nordgren said the Board decided. Mr. Hershkowitz said a group of Goldens Bridge neighbors were involved. Mrs. Whalen questioned exactly what type of plantings were proposed. Mr. Nordgren reviewed the project, stating that Metro-North had budgeted \$10,000 for use by the Town in providing additional landscaping at Goldens Bridge. Ron Tetelman had prepared a landscaping plan. A subsequent bid indicated the cost would be \$35,000 which the Town Board said was too expensive. In October of 2003 the Town got another bid for \$8,000 from Cedar Hills in Katonah and accepted it, but nothing was ever done. In March of 2004 the Beautification Committee consisting of GeorgeAnn Stewart, Ms. Hutcher, Ellen Brief, Jackie Dzaluk and Glenn Ticehurst came to Mr. Nordgren with a plan drawn by Mr. Ticehurst, who is a landscape designer. Mr. Nordgren said he called State Senator Vincent Leibell and asked him for financial assistance and he said "yes."

Mr. Nordgren said the committee then met with Senator Leibell and Metro-North. Mrs. Whalen noted that the Town Board was not involved in the process. Mr. Nordgren said the committee completed applications and received approval for the work from Metro-North. Mrs. Whalen said she had no objection to the project, but just wondered how it came about.

Ms. Bacal said she agreed with Mrs. Whalen that the Town Board should have been included in the project. In the past the procedure has been to have a member of the Town Board along with the Supervisor get involved in projects. She said she lives in Goldens Bridge and would have appreciated being involved.

Mr. Nordgren read an email from the Town Attorney in which he said he reviewed the bid and had no legal objection. Mrs. Jacobson reviewed the references provided by the low bidder and noted that all plantings must be approved by the landscape architect. The Board voted to award the contract for the planting to Scanlan Landscaping, Inc. but will wait on the contract for the wall painting.

On motion by Mr. Nordgren, seconded by Mr. Daigle the Board voted as follows:

THE VOTE:	Yes	- Nordgren, Bacal, Daigle, Hershkowitz ,Whalen	(5)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board hereby awards the bid for additional landscaping at the east parking lot in Goldens Bridge to Pat Scanlan Landscaping, Inc., 14 Plains Drive, New City, New York 10956 in the amount of \$42,825.

TRAILS COMMITTEE – Appointment of Members

Mr. Nordgren said the Chairman of the Trails Committee, Vi Patek, has asked to appoint members to the committee. 26 people have volunteered to help with trails clearing. Paul Lewis and Robert Goett have been proposed as members of the committee. Mr. Lewis would be the representative from the CAC and Mr. Goett would act as representative from the Parks and Recreation Advisory Committee.

On motion by Mr. Nordgren, seconded by Mr. Daigle the Board voted as follows:

THE VOTE:	Yes	- Nordgren, Bacal, Daigle, Hershkowitz ,Whalen	(5)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that Paul Lewis and Robert Goett be and hereby appointed to the Trails Committee for terms ending December 31, 2005.

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Mr. Nordgren noted there are three more candidates for the Trails Committee and asked if the Board would like to interview them or take Mrs. Patek’s recommendation. Mrs. Whalen said the Board has interviewed Mr. Cowles already and she is comfortable appointing him without another interview.

Ms. Bacal said the Board should follow their own procedure and should be making the appointments to committees rather than the chairman. The Board reviewed the difference between trails volunteers and trails committee members. Committee members have a responsibility to attend meetings and recommend the establishment of trails. The volunteers will work on trails maintenance.

On motion by Mr. Nordgren, seconded by Mr. Hershkowitz the Board voted as follows:

THE VOTE:	Yes	- Nordgren, Bacal, Daigle, Hershkowitz ,Whalen	(5)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that Fred Cowles be and hereby is appointed to the Trails Committee for a term ending December 31, 2005.

Mr. Nordgren said he will ask the two other candidates to come and meet with the Board.

TOWN OFFICIALS AND EMPLOYEES – Authorize Raise for Laura Stone

After a discussion of procedural issues, the Board authorized a raise for Laura Stone as follows:

On motion by Mr. Nordgren, seconded by Mr. Daigle the Board voted as follows:

THE VOTE:	Yes	- Nordgren, Daigle, Hershkowitz ,Whalen	(4)
	No	- Bacal	(1)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board hereby grants a \$5,000 salary increase to Laura Stone retroactive to pay periods #9 and #10.

LOMBARDI, MICHAEL – Authorize Step Increase

On motion by Mr. Nordgren, seconded by Mr. Daigle the Board voted as follows:

THE VOTE:	Yes	- Nordgren, Bacal, Daigle, Hershkowitz ,Whalen	(5)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board hereby grants a step increase to Michael Lombardi.

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Ms. Bacal said she was in favor of granting this increase because it is being done in the normal course of business.

LAWSUIT – Attorney’s Report re Lawsuit re Wetlands Law

The Town Attorney advised the Board on the status of a lawsuit against the Town concerning wetland enforcement.

INSURANCE – Discussion re Coverage for Wetland Inspector

The Board discussed the issue of liability insurance coverage for the wetland inspector, Jay Fain. The Town Attorney advised the Town Board that they must make a policy decision on the question. Mr. Maron advised that under Public Officers Law Section 18 the municipality can defend and indemnify employees, elected and appointed officials, etc. by local law or resolution. He said other towns have local laws that clearly outline procedures for such indemnification and specify who is covered and who is not. He has prepared a draft of a local law for the Board members to review.

Mr. Maron noted that by assigning specific duties to the wetland inspector the Board has made him a “public official”. He said the Town’s insurance policy says it covers “public officials” and the attorney for the New York Municipal Insurance Reciprocal (NYMIR) is looking into the question of coverage. Mr. Maron said a public official can be someone who is not elected but may have some authority of the sovereign to issue appearance tickets, etc. He cited as an example the Building Inspector who is an appointed official and also a public officer because he has the power to issue appearance tickets. Mr. Maron said NYMIR is reviewing whether they are providing coverage for the wetland inspector.

Regarding the local law, Mr. Maron said it was his intention that the law would cover appointed officials such as the wetland inspector. The Town could also make it apply to pending cases. Ms. Bacal asked how the Town would cover an official if the insurance company won’t. Mr. Maron said it would be paid by the Town’s funds.

The Board discussed insurance coverage for volunteers such as members of the Conservation Advisory Council. Ms. Bacal stressed that there is a difference because they make recommendations only, not decisions. She said there is no risk for those serving as board members and employees because NYMIR covers them. Ms. Bacal said perhaps the Town should limit coverage for volunteers. Mr. Nordgren said he disagreed completely; the Town has to have volunteers covered. He urged the Board to vote now. Mr. Maron said the Board cannot vote now because his proposal requires a public hearing and adoption of a local law. Mr. Nordgren urged the Board to adopt a resolution providing insurance coverage for Mr. Fain.

Mr. Maron suggested waiting to hear from NYMIR. Mr. Nordgren said if NYMIR doesn’t cover Mr. Fain the Town must. Ms. Bacal said the Board needs to talk about that and find out what the ultimate risk is, and what it would cost to provide the insurance that isn’t provided by NYMIR. Mrs. Whalen suggested asking NYMIR what the cost would be for a rider. Mr. Daigle asked what other towns do in this situation.

Mr. Nordgren proposed a resolution that the Town provide liability insurance coverage for the wetlands inspector. The motion was seconded by Mr. Hershkowitz. After further discussion Mr. Nordgren withdrew his motion and made a new motion that for the wetland inspector the Town will find a way to cover him for liability. Ms. Bacal suggested wording that said the Town “will explore options.” Mr. Nordgren said Mr. Fain needs certainty. Ms. Bacal said he may not get it right now.

Mr. Daigle said the Board will find a way to cover him through a rider. Ms. Bacal said that may not be an option. Mrs. Whalen said she isn't sure a rider is available to the Town in this lawsuit because if the Town does get a rider it may be on a going-forward basis, and she is not sure it would be retroactive. Mr. Maron said the Board should talk about it in executive session because it has to do with litigation strategy.

Mr. Maron reported on the status of the litigation noting that the Town agreed to lift two stop work orders on the Plaintiff's property. The plaintiff has two weeks to file an amended complaint and the Town will have 60 days to respond. Mr. Nordgren stressed the urgency of advising the members of the Planning Board as to their insurance coverage. Ms. Bacal said the Planning Board is covered, adding that other towns have the same type of coverage.

EXECUTIVE SESSION – Litigation, Employment History

On motion by Mr. Nordgren, seconded by Mr. Hershkowitz the Board voted 5-0 to go into executive session for the purpose of discussing pending litigation and the employment history of a particular person.

On motion by Mr. Nordgren, seconded by Mr. Hershkowitz the Board voted to come out of executive session.

ADJOURNMENT

On motion by Mr. Nordgren, seconded by Mr. Hershkowitz the Board voted to adjourn at 9:45 p.m.

Kathleen G. Cory  
Town Clerk