

A meeting of the Town Board of the Town of Lewisboro, Westchester County, New York, was scheduled for August 22, 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, and Deputy Town Clerk Florence Furdyna.

Mr. Nordgren called the meeting to order at 7:34 p.m.

GOLDENS BRIDGE – Landscaping of East Parking Lot

Mr. Nordgren noted that the \$40,000 grant from State Senator Vincent Leibell for landscaping of the east parking lot at the train station has been received. It was noted that the landscaping is taking well thanks to the watering efforts of Joel Smith, Facilities Maintenance Manager.

TOWN PROPERTY – ADA Compliance and Facilities Upgrades – Discussion re Town House Addition

Architect Edward Ozols of South Salem addressed the Board regarding a proposed addition to the Town House which would include a handicapped accessible bathroom. Mr. Nordgren stressed that the plans have been drawn to meet ADA guidelines. They do not address work space, working conditions, and other employee needs. He said the Board could tackle those issues if it wanted to but it is quite involved. Mr. Nordgren said since the Town has the plans, \$50,000 has been donated through the office of Assemblyman Adam Bradley, and the Town is in violation of ADA requirements, why not do this asap. The question is, “what is ADA-compliant?” Mr. Nordgren noted that the plans presented last week were just “the opening salvo in the conversation.” He noted that the architect and the Architecture and Community Appearance Review Council members are present. He said he thought approval would be given by the Town Board last week, but the architect has just met with one of the Town Justices and the court clerk to go over the needs of the Town Court, and also met with a representative of the police department regarding restraining prisoners.

Mr. Nordgren reviewed questionnaires filled out in the late 1990’s outlining the needs of various offices. He noted that a downstairs space where the Supervisor can meet with the public would comply with program accessibility. He also noted the needs of the Town Clerk for a private space in which to issue marriage licenses. The Court is also concerned about separation from detainees. Mr. Ozols explained how his plans meet those needs.

Mr. Ozols said primarily the plans address ADA compliance rather than enhanced work space. There is a little more space with the addition of an ADA compliant bathroom and a holding area for prisoners. An addition to the building has been planned which would replace the court

clerk's office space used for the bathroom and holding area. He said important things to consider for ADA compliance are ingress and egress, bathrooms and accessibility. He said it is impossible for an older building, especially an historic building, to comply with all the ADA requirements applied to new buildings. Mr. Ozols said historic buildings, especially when they are residential-type buildings without second-floor access are usually considered to be acceptable if you have ground floor spaces that are accessible and those are the ones the public are most likely to use. As far as ingress and egress there always is a public egress to the building that satisfies ADA regulations. There is a ramp to the rear door but the door is narrower than required for wheelchair access. By reviewing the interior doors of the Town House the architect said he came up with the doors that need to be widened. Many need to be widened to the required 2 feet 10 inches. Regarding exterior doors, the ADA ingress and egress can be met by the rear door.

Mr. Ozols said the building does not really comply with the New York State Building Code. He suggested the Town look at those when making ADA changes. Exit signs and emergency lighting needs to be addressed. There is some coverage now but it has to be enhanced. Mr. Daigle asked if this modification would trigger that. Mr. Ozols said it should. Since doors will have to be widened the Town should be providing exit lights outside those doors. Mr. Nordgren asked Mr. Ozols to discuss the bathroom requirements. Mr. Ozols said the bathroom can be unisex. Requirements are that one has to be able to turn a wheelchair around, and safety bars are required at certain heights and lengths. That dictates the size and layout of the bathroom. Mr. Nordgren also noted there is a 50 square foot private meeting room which is intended to also serve as a holding cell for police detainees.

Mr. Ozols said he discussed the holding area with Judge Simon. He said the area is somewhat of a question mark. It is big enough to house several prisoners. It is not large enough to handle up to four prisoners, which is the maximum the Court has had at one time. He said someone has to tell him what the optimum size should be. The room shown on the plan is about 6 feet by 7 feet. Mr. Daigle asked if it would have furniture if it is to be a meeting room. Mr. Ozols said it is too small for furniture—he said it is more like a “confessional cell.” In a meeting earlier this evening Judge Simon told Mr. Ozols she would like to have a private office/meeting area. He felt a multi-purpose meeting area would not be a bad idea to have on the first floor. The present footprint is not big enough to accommodate that. Mr. Daigle asked Mr. Nordgren if the cell was the meeting room he was referring to. Mr. Nordgren said yes, but he did not realize it wasn't big enough. He asked if it could be made bigger. Mr. Ozols said he could take some space from the court clerk or make the addition wider or longer--that is a question for the Town Board to decide. Mr. Daigle said there would be no need to modify the second floor if there was an accessible meeting room on the ground floor. Mr. Daigle said it is a public building so you have reasons to have accessibility to the public. He noted this plan does not accommodate handicapped employees. Mr. Ozols said that is correct.

Mr. Nordgren asked if someone applied for a job or if an existing employee developed a disability is it possible to have that person work in a different office if their space is inaccessible, or is it possible to offer that person a different job? Mr. Daigle asked if the question was that the Town can't deny a person employment due to their disability. Mr. Ozols said that is correct. Mr. Ozols said in addition to a first-floor space the office would have to meet other requirements such as the height of desks, depth of shelving, etc. Ms. Bacal said it might depend on what the disability is—

it might not be a physical disability. The Town Attorney said he didn't feel the Town could plan in advance for such a situation. Mr. Nordgren asked what the dimensions would be for a small private meeting room. Mr. Ozols said 8 feet by 8 feet would be the minimum and would only accommodate two people. Mr. Nordgren asked Mr. Ozols to describe the "vestibule" area shown on his drawing. Mr. Ozols said it is just an area to allow people to hang up their coats and disburse as they enter the building. Mr. Nordgren asked if it could be made smaller to gain space. Mr. Ozols said he didn't want to make it much smaller. Mr. Nordgren asked how that entry is handled now. Mr. Ozols said there is a small entry and it is too small to handle the traffic. He noted that during court the back door is locked and people enter through the front door. Ms. Bacal noted the door is unlocked during meetings and it is disruptive to have people entering during the meeting. She said the important concern is creating a space where a public official can meet with a member of the public when they cannot climb to the second floor.

Mr. Maron asked if the bathroom could be made smaller. Mr. Ozols said it couldn't be reduced a meaningful amount. Mr. Nordgren noted that the existing court office has wasted space because there is a small bathroom in one corner which isn't often used. He also said the back stairwell is not used. By eliminating those wasted spaces a lot of additional space is created which keeps the addition to only 10 feet. Mr. Ozols said removing the interior staircase is the most important part of the renovation. After the addition the court clerk's office becomes a space that is about 14 feet by 18 feet. There is space for three desks. Staff would like to have at least six file cabinets and would like to keep the public out of their office as they are concerned about security. Mr. Nordgren said that is most important, noting that in the North Salem court office they put up a partition. Mr. Ozols said Judge Simon has tacitly concurred that it would be acceptable not to have a private office for herself downstairs and leave it at desk space. Mr. Ozols said the room could accommodate three desks, file cabinets, and shelving and will be a very much more comfortable space. He said he could borrow a foot or two from that space and make holding area bigger.

Mrs. Whalen questioned the alterations to the Town House interior, noting that the Board members did not receive a door schedule. She asked the architect if he had looked into how some of those doors are built and how they could be widened. Mr. Ozols said all the plans we need are here--structurally there is nothing important. He said they don't have to disturb the structure at all. Regarding the front door, Mr. Ozols said it does meet fire regulations but does not meet ADA standards, and it doesn't have to because the handicapped come in the rear door. Mrs. Whalen said it is embarrassing for people to come in the front of the room while a meeting is going on. Mr. Nordgren noted that he has heard that a back entrance for the disabled is permissible. According to Mr. Minner's report all the Town's buildings are eligible for inclusion on the National Register of Historic Places. Being eligible allows the building to meet alternative standards. One alternative standard is the use of a rear entrance for the disabled. He said the Town doesn't necessarily need ADA bathrooms on second floor if there is one on the first floor. Alternative standards are allowed if meeting regular standards would significantly alter the appearance of an historic building.

Mr. Daigle asked Mr. Ozols about the exterior fire stairs shown on the back of the Town House, over the rear entrance. Mr. Ozols said they are not very attractive but they are ideally situated because there is a hallway on the first and second floors. Otherwise corridors would have to be

created to provide access to the stairs. Mr. Daigle noted there is a support post close to the rear entrance and suggested more space be made to maneuver into the building. Mr. Maron asked why the staircase wasn't placed on the new addition. Mr. Ozols said there were fewer windows in the way at that location.

Mrs. Whalen questioned the door width to the Town Clerk's office from the front hall. Mr. Ozols said there is just barely enough room to widen the door, and the door trim will have to be narrower. Mrs. Whalen noted that people in wheelchairs have to be able to maneuver into the courtroom, Tax Receiver's office and the Town Clerk's office. Mr. Nordgren apologized for not providing the Board members with the information regarding the doors to be changed.

Mr. Hershkowitz said he has spent time reviewing the applicable law regarding handicapped access. He said there are a "lot of different ways to skin this cat." He said he did not feel qualified to fine tune the details. He expressed his sense that what Mr. Ozols has offered a direction in which the Town should move on the issue of ADA compliance. He said whatever the Town is out of compliance on should be on the forefront of the Board's agenda. He said the alternative is to get embroiled in the debate about whether or not, and to what extent, Town offices need to be consolidated and the costs associated with that. He said that path will cause more delay and deliberation. Mr. Nordgren said you can do both eventually if people have that will. This should not preclude larger offices or moving the highway garage. He said he felt the Board needed to address the law expeditiously and respectfully. He said nothing Mr. Ozols is offering precludes future expansions and adjustments. He said the focus should be on getting something respectfully and effectively done, and avoid debate on whether offices should be moved or consolidated.

Mr. Nordgren apologized to the members of the Architecture and Community Appearance Review Council because they have not seen the plans in advance. He asked them if they had any questions or comments.

Re Hagele, ACARC Chairman said they haven't seen the plans before this evening, and asked for a set of plans. He said he had a few general observations as the committee has not had a chance to review or discuss the plans amongst themselves. Conceptually this building is clearly an asset to the Town and that begs the question "does the notion of a free standing metal fire stair jibe with the concept or designation of an historic building," and that should be thought about before going ahead. He said definitely fire safety and ADA accessibility are of paramount importance. He said the committee hasn't seen any elevations and he has some concerns because the planned addition becomes very long and narrow and is not in scale with the building. ACARC would look and comment on that when reviewing the plans. Mr. Hagele said he thought door #6 needs 12 inches to the right of the latch side of the door. He also cautioned the architect to look at the holding cell. With two or three people in it, it would be very hard to open doors. He noted that an ADA corridor has to be 60 inches wide so not much can be taken from that area.

ACARC member Gail Ascher noted that the holding area is too small and suggested reworking doors to make it a little more functional. She also questioned the functionality of the outside stairs. She said she would like to see elevations, and asked if ACARC would have a chance to review the drawings.

Mr. Nordgren said yes, it is required by law that the ACARC review it. Ms. Ascher also asked that the interior and exterior of the Town House be photographed.

Mr. Clark said he would reserve judgment or comments until he could see all the drawings.

Mr. Maron asked if ACARC required photographs and elevations. It was noted that ACARC will waive photos of existing conditions.

Mr. Hershkowitz asked Joel Smith if he could photograph the exterior and interior of the Town House. Mr. Hershkowitz said he remembered being given a tour by a preservationist and how impressed he was by the details of the Town buildings. Mr. Hagele said he had a set of photographs of the exterior that were taken when the new roof was put on.

Former Supervisor Tom Herzog said the space designated as a downstairs meeting room is inadequate. He said when he was Supervisor he usually met with two or more people and felt that the room should be sized to accommodate at least six people.

Town Historian Maureen Koehl noted that she was given funding to have a fresco restored. It came from the Town House and is now sitting in her office awaiting a display space. She said it was painted in the 1840's or 1860's and is a picture of the house that was torn down to make way for the Town House. The fresco is 43 x 26 inches. When it was cut out of the Town House, the lath and supporting beams were included so it is 53 x 36 inches. She suggested that a place be found to display it. Mr. Nordgren said he would love to see more historical documents and artifacts displayed. Mrs. Koehl noted that there is no space for display cabinets.

Mr. Hershkowitz asked what the next step would be. Mr. Nordgren said additional plans would be drawn and the Board would discuss them next Monday. Mr. Herzog said one of the visions for Onatru if the offices were ever moved was that the second floor would be a museum. He thought that would be a better place for display. Mrs. Koehl noted that Mrs. Poor gave the farm to the Town for historical purposes, and that purpose has been diminished to an 8 x 10 foot space. Mr. Nordgren said he would like to display the items now stored in the Historian's office. Mr. Hershkowitz said he was very moved by the artifacts that Mrs. Koehl has in her office and urged her to open her office during the library fair.

Town Clerk Kathleen Cory reviewed the plans, noting that the rear of the Town House has three separate doors, and even though one is clearly marked "entrance" people are still confused as to which way to enter. She suggested that the rear entrance should be made more inviting and should have a porch to keep the rain off the disabled as they enter and exit. Mrs. Cory also noted that the plans as presented would eliminate the interior access to the basement. She said the second floor bathroom which contains an unused shower area appears to be left untouched, and would be in the middle of the enlarged space and the tile would probably be damaged during construction. She proposed building a smaller new bathroom and moving it to an area directly over the bathroom below, and installing a small kitchen sink and lunchroom area for employee use. She also proposed alternate locations for the exterior fire escape rather than directly over the rear entrance as proposed. Mrs. Cory advised that the heating systems for the first and second

floors of the annex should be separated as heat and air conditioning are competing with each other in the upstairs room.

Deputy Town Clerk Florence Furdyna addressed the Board stressing the need for access to the basement. She also noted that the curving staircase in the front of the building is difficult to negotiate.

Dean Travalino of South Salem, a member of the Advisory Committee for the Disabled noted a report from the Center for Modern Justice which is a watchdog agency created by the state. In that report regarding adequacy of courts they discuss Justice Courts. Mr. Travalino emphasized the importance of creating a dignified environment which fosters respect for the law. He said if the back door to the Town House is unlocked during court it creates a condition where people can enter the courtroom behind the Judge, which is a very dangerous situation. Mr. Travalino noted that the prisoners are segregated in the court office, but not segregated in the courtroom. He said he was in court last year when a person involved in a two-day manhunt was brought into court. He said the man was on some kind of medication. He was guarded by four large policemen, yet he sat in the middle of the courtroom where citizens sit. When he left he was commingled with the population of the courtroom on leaving which was very dangerous. Mr. Travalino said those are issues that have to be brought up.

Mr. Travalino said Mr. Nordgren was correct when he spoke about making an accommodation to meet with the public in a room on the first floor for private meetings. However, the conference room on the second floor is the Town's jury room; there is no other jury room in the building. Also it is a conference room for litigants, and a meeting room. He said a few years ago a jury had to meet on the front lawn because there was a meeting going on in the conference room upstairs. Mr. Travalino also noted there is no jury area in the courtroom.

Mr. Travalino noted that in his original report from 1997-98, he envisioned that the courtroom would become a conference room and the courtroom would be moved somewhere else in town. He said doing that would really respect the Town House and the courtroom could become a conference room.

Mr. Travalino also suggested revising the planned addition to create a central hallway. One advantage to that plan is that it would provide for a counter between the public and the court clerk. The center aisle also gives the ability for the Town Clerk to have a counter for the general public. Mr. Travalino said the words "program accessibility" do not appear in ADA law. He said it is a legal term, it is not an architectural term. He said the Town can make the Town House building program accessible but that does not mean that the Town has achieved program accessibility, which it should have achieved years ago. Mr. Travalino also noted that the Minner report has something this Ozols plan doesn't have—furniture. Mr. Travalino explained the difficulties encountered by the disabled during Town meetings. In order to enter the meeting room tables and chairs have to be moved to allow wheelchair access. In order to use the planned bathroom, a meeting or trial would have to be interrupted and furniture moved to allow the disabled ingress and egress. He said functionality of the meeting room needs to be examined.

Mr. Travalino noted that the rear handicapped entrance to the Putnam County courthouse enters into a whole building, not just an entrance into a meeting room. Each meeting room had a separate entrance. He explained how difficult it is for him to participate in meetings when he can't congregate in the same areas that others use. He stressed that accessibility means accessible pathways. He asked the Board to think about a jury trial, and think about Mr. Travalino trying to litigate a jury trial—it is an impossibility. There are no accessible pathways around the meeting room. He also noted that the Town is not obligated to provide for a disabled employee unless the employee becomes disabled. He stressed that for the public, and for an attorney who is practicing, the Town needs a functioning courtroom in his opinion. He pointed out that program accessibility is not in the ADA law, and making the building accessible is not the same as program accessibility. He said ADA compliance was required 10 years ago. He also noted that the Board has talked about compliance at Onatru but has not addressed it in any way. He asked when the Town would start the scanning of all the Town's documents so they can be accessible from a terminal on the first floor.

TOWN PROPERTY – Onatru Farm Park – Parking Situation

Peter Clark of the Lewisboro Soccer Club asked the Board for permission to use the front field at Onatru for parking on September 3 when a soccer tournament is held at Onatru. Mr. Clark said Joanne Marchesani, the Parks and Recreation Superintendent was told by the Supervisor that no parking would be allowed on that field. He noted that parking was allowed for the July 4th fireworks celebration and will be allowed for the Library Fair on September 17. He also said he was opposed to a plan to put Town land at Onatru under control of the Westchester Land Trust. Mr. Nordgren said “don't worry, we'll never do that.” Mr. Daigle said putting a conservation easement on that land has been mentioned. Mr. Hershkowitz said the Parks and Recreation Department is talking to the Conservation Advisory Council, not the Town Supervisor, on the field maintenance. Mr. Nordgren said parking in that field was fine with him. He noted that the CAC and the Recreation Department were coming up with a field management plan for Onatru which would be in place by next Labor Day.

Mr. Clark asked for permission in writing, and Mr. Nordgren said his initials would be enough.

TOWN OFFICIALS AND EMPLOYEES – Vehicle Use Policy

Ms. Bacal mentioned that the vehicle use policy adopted recently requires that employees who have Town cars may not use them for commuting back and forth to work. She said the Highway Superintendent Peter Ripperger and his deputy Paul Olson, and Facilities Maintenance Manager Joel Smith should be authorized to take their cars home so they are not doing so in contravention of the Town's insurance policy.

Mr. Nordgren said he offered a resolution that Peter Ripperger, Joel Smith, Paul Olson and Joanne Marchesani be authorized to use their Town car for commuting to and from their home to work.

Ms. Bacal said in accordance with instructions as received from the Director of Finance, the Board adopted the vehicle use policy. Since then Ms. Bacal said she understands that one

department head has approval to take the car home. She also understands that the department head has no other vehicle, and transports her family in the Town vehicle. Mr. Hershkowitz said that when she was hired, the Supervisor offered her the right to take the car home. Former Supervisor Herzog said she could be authorized to take the car home. Ms. Bacal said she thought the Superintendent was only told she would have “the use of the vehicle.” Mr. Herzog said when she was hired, the current Superintendent was told she would have the same rights to the vehicle as her predecessor. After discussion, Mr. Hershkowitz said he didn’t think the Board intended to extend the use of the car to include personal use. Ms. Bacal said the use is to be strictly for business use and not for the transport of family members.

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

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

RESOLUTION

RESOLVED, that Peter Ripperger, Joel Smith, Paul Olson and Joanne Marchesani be authorized to use their Town car to commute to and from home and work.

EXECUTIVE SESSION – Employment History

On motion by Mr. Nordgren, seconded by Mr. Hershkowitz, the Board voted 3-2 (Ms. Bacal and Mrs. Whalen voting no) to go into executive session for the purpose of discussing the employment history of a particular person.

Before the Board began their discussion, Dean Travalino asked the Board if they would come out of executive session at this time to discuss his appeal of a Freedom of Information denial. He cited his medical condition and the fact that he cannot sit in his wheelchair for long periods of time.

After a short debate Mr. Nordgren made a motion to adjourn the meeting. There was no second to the motion. After further debate Mr. Nordgren again made a motion to adjourn, and again there was no second to the motion.

Mr. Nordgren asked the Town Attorney to clarify Board procedures for adding items to the agenda. Mr. Maron advised that the Town Board’s Rules of Order adopted in March of 1998 indicate if a majority of the Board consents additional matters which do not appear on the final agenda may be addressed after all items in a specific agenda category are addressed.

On motion by Mr. Nordgren, seconded by Mrs. Whalen the Board voted 5-0 to come out of executive session.

FREEDOM OF INFORMATION – Appeal of Denial

Mr. Maron advised that there was a Freedom of Information request from Mr. Travalino for a copy of the bid received for the swimming pool repair. The request was denied because only one bid was received and that bid was incomplete, and disclosure would impair present or future contract awards. Mr. Travalino filed an appeal and asked the Town to explain how disclosure would impair the contract award. It appears that the only reasonable inference is that knowledge of the contract would serve to encourage future bidders to bid lower. At the last meeting the Town was going to discuss the appeal. At that time Mr. Nordgren said everyone would have access to the bids on that Friday when new bids were to be opened.

On Friday there were no bids received and the project was rebid again. At that point Mr. Travalino asked that his appeal be considered by the Board. Mr. Maron said it was the Supervisor’s prerogative to put an item on the agenda, and he did not place the appeal on the agenda. The majority of the Board now wishes to consider the appeal.

Mr. Daigle said there was one bidder and his bid was not complete. A decision was made to rebid, and hopefully keep the one bidder and make sure he would bid again. Other bidders said they would bid if they had more time which was the reason for the second bid. Mr. Hershkowitz said it makes sense to wait and not disclose the bid.

Mrs. Whalen asked if releasing the information would only serve to encourage other bidders to bid lower. Mr. Daigle said that would discourage the original bidder. Mr. Maron said it could also show that the first bid was artificially high because the vendor didn’t really want the work.

Ms. Bacal said any denial of a Freedom of Information request must be in accordance with state law. She said she is not sure the Town has followed the law. Mr. Travalino said the burden is on the Town to prove that disclosure would impair, not might impair the bidding process. Ms. Bacal noted the Town would be found by a court to have acted improperly, and said the Town is putting itself more at risk by denying the request than by disclosing the bid. Mr. Maron advised that premature disclosure of the bid would fall within the category of impairing present or imminent contract awards.

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

THE VOTE:	Yes	- Nordgren, Daigle, Hershkowitz	(3)
	No	- Bacal, Whalen	(2)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board denies the August 4, 2005 appeal of Dean Travalino of the denial of access to the one bid received for repair of the Town pool. As Town is rebidding the work, the first bid should be withheld in accordance with Public Officers Law Section 87 (2) c as disclosure would impair a present or imminent contract award.

EXECUTION SESSION – Employment History

On motion by Mr. Nordgren, seconded by Mr. Daigle, the Board went into executive session for the purpose of discussing the possible hiring of an employee for the Parks and Recreation Department.

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

ADJOURNMENT

On motion by Mr. Nordgren, seconded by Mr. Daigle, the Board voted to adjourn at 10:35 p.m.

Kathleen G. Cory
Town Clerk