

A meeting of the Town Board of the Town of Lewisboro, Westchester County, New York, was held on May 9, 2006 at 7:30 p.m. at the Cyrus Russell Community House, 779 Route 35, Cross River, New York.

PRESENT: Supervisor - Edward P. Mahoney
Councilmen - Peter DeLucia, Al Perruzza, Suzanne Whalen
Town Clerk - Kathleen G. Cory
Town Attorney - Jessica Bacal

Also attending were Deputy Supervisor Joann Vasi and Facilities Maintenance Manager Joel Smith.

TOWN OFFICIALS AND EMPLOYEES - Resignation of Allen Hershkowitz

Supervisor Mahoney announced the resignation of Councilman Allen Hershkowitz, effective May 8, 2006. He said the Board wishes him well in future endeavors.

The Town Attorney advised that Public Officers Law governs the replacement of an elected official. When a vacancy occurs prior to September 20 the Board has the option to appoint someone to fill the position. That person would serve until the end of the year. An election must be held in November. Whoever wins that election would take the seat for the remainder of the unexpired term, which in this case expires at the end of 2007.

STATE POLICE – Headquarters Plan for Route 22

Mr. Mahoney said he has received some positive feedback about the plan for a State Police headquarters on Route 22 in Goldens Bridge, south of the A & P shopping center.

PARKS AND RECREATION – County Funding for Ballfields

The Supervisor announced that he has been meeting with the County to ensure that the Legacy funding for ballfields is still available to the Town.

FINANCE – Auditor’s Report

Finance Director Michael Melillo reviewed the Town auditor’s report covering the year 2004. Mr. Melillo said he wanted to bring to light some inconsistencies he found in past financial statements and statements made by a prior administration about the Town’s finances.

Referring to a synopsis from the auditor regarding the 2004 financial statements, Mr. Melillo pointed out the information regarding the Town’s fund balance—total fund balance and unappropriated fund balance. The total fund balance is the reserve that the Town has for land preservation, town buildings, and the parks and pool reserve fund. Any excess funds not reserved are referred to as “undesignated fund balance.”

The Town’s unappropriated fund balance as of 12/31/04 was \$2.6 million.

Mr. Melillo said on page 3 of the report there are a few things the auditor was concerned about and found during the audit process. Most will be rectified this year. With the new Finance Director there were a few problems. Mr. Mellillo said the major issue is #5, the Capital Asset Report. The Town is a class 3 town and subject to regulations known as GASBY 34 which makes every Town responsible for evaluating its infrastructure. Mr. Melillo said an outside company came in and did the Capital Asset Report and unfortunately they made mistakes. The report was pushed to the side for a few months and the auditor didn't receive the final report until November 30, 2005, 11 months late. Mr. Melillo said the report should have been ready in four months at the most. The firm preparing the report left out the Houlihan property, and Mr. Melillo has sent them a letter expressing his displeasure.

Mr. Melillo reviewed the former Supervisor's budget message that came with the 2005 budget. Mr. Mellillo said he recalled that the former Supervisor often said that in the past the fund balance had been "squandered." Mr. Melillo noted that the 2003 unappropriated fund balance was \$3.1 million and the 2004 fund balance was \$2.6 million, half a million dollars less.

Mr. Melillo said when the former Supervisor made his budget statement in November of 2004, he had to know that what he was saying was inaccurate.

Mr. Perruzza summarized, noting that the former Supervisor said the fund balance was being rebuilt when in fact it was going down. Mr. Mahoney said at the end of 2003 the fund balance was \$3.1 million. Mr. Melillo continued reviewing the report. He noted that by adding \$950,000 designated for 2005 to the \$2.6 million, and then taking \$792,000 for 2005, adding revenues and subtracting expenses, the result is the Town's fund balance as of 12/31/05, which is \$2.85 million.

However, Mr. Melillo said that in November of 2005 the Board voted to transfer \$1.5 million for the pool, so the final number is \$1.3 million in the fund balance as of 12/31/05.

Mr. DeLucia said he and Mr. Perruzza and Mr. Mahoney made that point during budget discussions last year. Mr. Perruzza said the analogy was that even though the checkbooks said there was a balance of \$2.85 million at a given point, the next day the Town had to write a check for \$1.5 million.

Mr. Melillo reviewed the capital projects budget for the Leon Levy Preserve, adding that it is of great concern now.

Mr. DeLucia asked where the estimate of revenue from the sale of the houses came from. Mrs. Whalen said there was a detailed market analysis done by Richard Ferrarone who is a professional appraiser. The analysis covered all four buildings. Mr. DeLucia noted the 2006 budget shows revenue from the sale of all four houses. Mr. Perruzza said the assumption was that all the houses would sell in 2006.

Ms. Bacal said it was specifically stated by Mr. Nordgren and Mr. Hershkowitz and others that in order to effectuate this purchase these houses would have to be sold unless other money was raised in another way. Mrs. Whalen said that is when the issue of keeping the carriage house

came up. The question was, could the Town get grants, etc. in order to keep that building. At this point it is not financially feasible. At the point the Town entered into the agreement the Town had an obligation to come up with funds that had to come from the sale of these houses. Whether that was financially wise to take on that burden is another question.

Mr. Perruzza said there was a comment made that the Parks and Recreation Advisory Council voted unanimously to keep the carriage house. However, being the PRAC liaison, Mr. Perruzza said he sat down with them after taking office and their feeling was that it didn't make any sense to keep it if there would be a financial burden on the Town.

Mr. DeLucia said he talked with Mr. Gally of the Land Trust regarding the access point to the property, and Mr. Gally said the Route 123 access was always intended to be the true access point.

Mr. Mahoney said there is an assumption of \$2.1 million in revenue in the 2006 budget. The closing on the property was in October of 2005, and now it is May and the houses can't be sold. He said the subdivision is pending but there is no final subdivision so the Town is not going to get the DEP money soon which combined is close to \$3.5 million (sale of homes and DEP money). Mr. Mahoney said if these things don't come together we as a Town will have to bond to cover the expenses. Mr. Perruzza added that the cost factor is greater than originally thought. He said that the Board has recently learned there is no survey of the whole property. It is not only the loss of revenue, but increased expenses, interest payments and the timetable for the subdivision.

Mr. DeLucia said they are moving forward with the subdivision but it takes a while. Mr. Mahoney asked why the subdivision and other legalities weren't squared away before the closing? Ms. Bacal, asked, why wasn't the subdivision even discussed? Mr. Mahoney asked about receipt of the DEP money. Ms. Bacal said that may occur at the end of the year.

Mr. Perruzza said the Board has to figure out how to close the gap in the Town budget. Mrs. Whalen asked about the grant to pay the interest on the bond. She was advised that the money is a reimbursement and the Town will get it after making the payment, but will still have to pay about \$40,000 more. Mr. Melillo pointed out that the budget for the property indicates a donation of \$300,000, which is incorrect. That money is being paid over a three-year period, and only \$100,000 should have been included in this budget. Mrs. Whalen also asked about a budgeted line for "interest income" in the amount of \$40,000. Mr. Melillo explained that the Town had taken a bond anticipation note due in August. The previous administration had expected to sell the houses and get the DEP funding of \$1,000,000 by June. They apparently calculated that if the properties were sold for \$3.1 million dollars by June the interest earned would be \$40,000.

Ms. Bacal reported that she has been able to negotiate with the DEP over an encroachment on the conservation easement land. The DEP has decided there is no value change due to the impact on the frontage and they will allow a slightly changed conservation easement at a "slightly" reduced purchase price. She said it is very important because the DEP works on a time schedule and the Town must have certain things done in order to move to the next step and get the money by the end of the year.

Mr. Melillo said sometime this year the Board will have to make budget modifications to reflect the reality of the situation with the Leon Levy Preserve. Mr. Perruzza said the Board needs to know how much money is required to cover expenses such as the subdivision, interest payments, etc. Mr. Melillo said most likely the Board will have to renew the bond anticipation note. He said he doubted the houses would be sold quickly.

Mr. Mahoney commented that people have gotten up at meetings and asked “why haven’t you sold the homes?” “Why haven’t you got the \$1,000,000?” He said the Board has no control over certain events.

Mr. Perruzza said the Town does not have enough money to cover the shortfall and suggested the Board hold a work session on the budget. He cited other projects facing the Town such as the library, and money is being lost on the pool and on the Preserve. Mr. Perruzza said the revenue side of the budget is “evaporating.” Mr. DeLucia added that the Town is losing money because the pool will open late.

Mr. Melillo continued to review the previous administration’s budget statements. He said the former Supervisor said the Town had a triple A rating. He called that “misleading” stating that the Town has no formal rating. The “triple A” rating is an informal rating with the bank. The Town has no formal rating with Dunn and Bradstreet. However the Town is in the process of getting a rating because of the bond for the pool.

Mr. Melillo said he is having trouble closing the year-end books due to software problems with the program installed by the previous administration. He said the \$1.3 million in the surplus is not sufficient to meet obligations, and the Town will have to bond for the pool costs. In talking to bond counsel he has learned that the Town can recoup the amount of \$2.3 million which was the original amount stated for the construction of the pool because as of the date of that resolution nothing had yet been spent. That will provide a cushion for the Town, and the money will arrive in about two months. The bond will be for a 15-year period. Mr. Melillo said it is inconceivable to fund a capital project out of the fund balance.

The Board reviewed proposed wording for the bonding resolution noting that the vote must be unanimous and it is subject to permissive referendum.

Mrs. Whalen said she and Ms. Bacal suggested bonding last year and not much discussion was allowed on the subject. Ms. Bacal said Mrs. Whalen wanted a new pool to begin with and advocated for a bond for that and when the decision was made to go with a repair, she again thought it made more sense to bond.

Mr. DeLucia asked how the dollar amount for the project was reached. Ms. Bacal said the Board was originally told it was a \$750,000 repair job and no bond was needed for that. Mrs. Whalen said the alternative was to be a new pool for \$2.1 million for a new pool and she was outvoted. Somewhere along the way the project became pouring a brand-new pool.

Mr. DeLucia said the former Director of Finance didn’t want to bond, stating that there was “tons of money in the fund balance.” Mr. Mahoney asked what the fund balance was being used for

previously. Mr. Melillo said the primary purpose of the fund balance is to be a cushion. Mr. DeLucia said at the same time the Town wasn't appropriating any real money to fix Onatru or make ADA improvements to the Town House.

Mr. Perruzza said at some point the Board needs to advise the public of what the Town's financial status is. Former Supervisor Tom Herzog reminded the Board that about \$1,500,000 is needed each year to carry the Town from January to April, when Town taxes are paid. Otherwise the Town has to borrow on a tax anticipation note. Ms. Bacal said the Town has always prided itself on having a fund balance. Mrs. Whalen asked about requirements that the Town hold a reserve for retirees benefits. Mr. Melillo said that regulation is GASBY 45 which takes effect in 2009; the Town will have to plan for that.

FINANCE – Encumbrance Resolution Amended

Mr. Melillo requested a corrected resolution regarding encumbrances to include all funds of the Town.

On motion by Mr. DeLucia, seconded by Mr. Perruzza, the Board voted as follows:

THE VOTE:	Yes	- Mahoney, DeLucia, Perruzza, Whalen	(4)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board does hereby authorize all fund encumbrances, re-encumbrance of prior year fund encumbrances, and be it further

RESOLVED, that the Town Board does hereby authorize prior year fund encumbrances to be transferred back to the fund balance.

PARKS AND RECREATION – Town Pool – Amended Contract

Mr. DeLucia reviewed a proposed amendment to the Scott Pools contract for work on the Town pools. Since the contractor did not post a bond the Board wants to be sure all aspects of the added work are covered by the agreement. Due to the fact that one wall had to be taken down and rebuilt the Town is giving the contractor additional time to finish his work on the main pool, now scheduled for June 1. There will be a \$1,000 per day penalty if the pool is not finished by then. He said the contractor is going to absorb the price difference between what the Town would have paid for the latex finish originally planned, and the epoxy paint required because of the crack repairs. Mr. DeLucia said the wading pool and main pool are being finished in tandem. The finish for the wading pool is going on tomorrow. The diving pool isn't scheduled to be finished until August. There was never a finish date on the wading pool because there was no approval from the Health Department at the time the contract was signed.

Mr. DeLucia said the fact that the Town is involved with a non-bonded contractor has put the Town in a situation where daily conferences are needed. Ms. Bacal said a tremendous amount of time and energy is being expended.

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

THE VOTE:	Yes	- Mahoney, DeLucia, Perruzza, Whalen	(4)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board does hereby accept a contract as prepared by Town Attorney Jessica Bacal regarding the Town Pool, and be it further

RESOLVED, that the Supervisor be and hereby is authorized to sign the contract and forward it to Scott Pools for their signature.

PARKS AND RECREATION – Town Pool – Authorize Purchase of Starting Blocks

Mr. DeLucia advised that the Town’s starting blocks will not work with the new pool and it will be necessary to purchase new ones. The Parks Department has researched new starting blocks and can purchase some locally and save shipping costs. Mrs. Whalen asked why the Town didn’t know beforehand that the starting blocks wouldn’t work. She also asked if the diving board would have to be replaced. Mr. DeLucia said he and Ms. Mayclim will review the contract and he will get an answer regarding the diving boards. Ms. Bacal reminded the Board that the Town will have to purchase water to fill the pool. Mr. DeLucia said the more he reviews the pool project the more he finds it to be rushed and sloppy. Ms. Bacal noted that both she and Mrs. Whalen were accused last year of delaying the pool project with their concerns.

Mr. DeLucia noted a letter from the New York State Department of Environmental Conservation which asks for additional information. He said the Town has to amend its application for permits. Mr. DeLucia also reported that the new wall in the main pool will be complete by the end of the week or early next week, decks are being poured and coping is being installed.

Mr. Perruzza asked if there might be a cracking issue in the new wall. Mr. DeLucia said it was determined that the cracking was a climate issue and that should not occur with the new wall. Mr. Mahoney asked about the structural life of the pool. Mr. DeLucia said with the history of the problems he couldn’t give an answer.

On motion by Mr. DeLucia, seconded by Mr. Perruzza, the Board voted as follows:

THE VOTE:	Yes	- Mahoney, DeLucia, Perruzza, Whalen	(4)
	No	- None	(0)
	Absent	- None	(0)

RESOLUTION

RESOLVED, that the Town Board does hereby authorize the purchase of six starting blocks for the Town Pool at a cost of \$7,122.

SAL'S SERVICE STATION – Inquiry re Construction

Mr. Mahoney said he received an inquiry from a resident as to whether proper permits were secured for the work that is taking place on the gas pumps at Sal's Service Station in Cross River. Mr. DeLucia said he will check with the County Health Department.

WETLANDS – Discussion re Complaint of Pond Siltation

The Board discussed a complaint from Dr. Martin on Elmwood Road regarding siltation of his pond, allegedly from construction work at Onatru. Mrs. Whalen and Ms. Bacal said the Board authorized the Wetland Inspector to inspect the area and it was the feeling of the Board that it was not the Town's responsibility, and the burden was on the landowner to prove otherwise.

HOUSING – Affordable Housing Preference

Mr. DeLucia noted that in the order of preference for affordable housing units specified in the Town's Zoning Ordinance there is no preference for fire department and ambulance corps volunteers. He suggested the Board might amend the ordinance at some point to correct that oversight.

GRANTS – Reports

Mr. Perruzza reported on a \$25,000 grant for the Town's lakes and outlined some additional steps to be taken. He said the Town should have a committee to handle this matter.

EXECUTIVE SESSION – Employment History

On motion by Mr. Mahoney, seconded by Mr. Perruzza, the Board voted 4-0 to go into executive session for the purpose of discussing the employment history of a particular person.

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

ADJOURNMENT

On motion by Mr. Mahoney, seconded by Mrs. Whalen, the Board voted to adjourn at 9:30 p.m.

Kathleen G. Cory
Town Clerk

