

**APRIL 9, 2007**

**Public Hearing**

**6:30 PM**

PRESENT: Sup. F. Newlin; Councilmen A. Bax, S. Edwards, M. Johnson, & E. Palmer; Town Atty. J. Leone; Dep. Atty. D. Boniello; Eng. B. Lannon; Finance Office A. DiRamio; Dep. Sup. E. Elgin; 3 Press; 2 Residents; and Dep. Clerk C. Schroeder

The Supervisor opened the public hearing to order at 6:37 p.m. He read the legal notice into the record:

Notice is Hereby Given that a Public Hearing will be held before the Town Board of the Town of Lewiston on the 9<sup>th</sup> day of April, 2007, beginning at 6:30 p.m. at the Town Hall, 1375 Ridge Road to consider an amendment to Chapter 8D of the Town Code of the Town of Lewiston, entitled "Excavations", the purpose of which shall be to impose a moratorium on the issuance of certain excavation permits dealing with mining and shall apply to all properties located within the Town of Lewiston, New York exclusive of any incorporated Village. That during the period of nine (9) months following the effective date of this Local Law, no permits or excavation activities shall be issued unless and except such permit deals specifically with one of the listed exceptions in Section 8D-5 of the Excavations Law of the Town of Lewiston, New York or involves an application currently pending in the Twon of Lewiston, New York. A copy of the proposed text of the law is on file in the Town Clerk's office where it may be examined during normal business hours.

By Order of the Town Board  
March 16, 2007  
Carol J. Brandon  
Town Clerk

Attorney Leone gave a brief presentation as to the subject matter. The purpose of the amendment, he said, is to impose a moratorium on excavations permits -- primarily dealing with the issue of mining. The Town has been working on re-codification of its zoning ordinances. These zoning ordinances should be tied into the Master Plan which was adopted several years ago by the Town. That hasn't occurred. The proposed re-codification is something in excess of 100 – pages. It contains in there an overlay area for mining that would prohibit mining in just about all areas of the town except within that particular overlay area. It wouldn't make sense, while the town ponders whether to adopt that local law or not, to issue mining permits on areas that are going to be zoned out of mining. The purpose of the moratorium is to give the town a reasonable period of time within which to ponder whether or not to adopt the other local law dealing with the codification of the zoning ordinances.

Leone said tonight's hearing was properly published in the newspaper. At a prior meeting he indicated that it should be referred to the Niagara County Planning Board because it is a change in zoning – even though it is not the adoption of the zoning ordinance itself but it does affect zoning. He was not aware if this had occurred. If not, then at the close of the hearing there should not be a vote until it is reviewed by the County Planning Board. There would be no need to re-publish the legal notice. It's just an issue of making sure that the County Planning Board has had an opportunity to take a look at it.

Leone said the moratorium would take effect the date it is approved. The local law is subject to permissive referendum, he said.

The Supervisor asked if any member of the public wished to make comment.

Paulette Glasgow, 839 The Circle, said she has come before the Board as a member of the Niagara County Planning Board. She questioned why tonight's hearing is being held inasmuch as it should have first been reviewed by the County Planning Board for their comments.

Barbara Yandian, 2642 Ridge Road, asked where the notice was published as she had not seen it. She was told in the Niagara Gazette, the official town newspaper. Mrs. Yandian asked about the overlay area the attorney referred to. Leone said that is not part of this hearing. That is part of the local law that has not been submitted to the public yet.

1) **Power Agreement**: Newlin noted that the New York Power Authority Board of Trustees approved for public hearing the ratification of a contract for the sale of low-cost hydropower. The Town Board and previous boards have been consistent in its end user – the residents of the town. The fact that the Board of Trustees authorized this to go to public hearing means there is nothing in the agreement that would preclude it from going forward, Newlin said. He anticipated a public hearing sometime in May and ratification by the Board of Trustees. Hopefully, we can anticipate a signature from the Governor in which case the power deal will go forward. Newlin introduced Stanley Widger representing Nixon Peabody, the law firm retained by the Niagara Power Coalition, to give an overview of the power contract before the Board.

Widger said the contract is the second step in the process of the Town obtaining the power from the Niagara Project. The first step being the 2005 Host-Community settlement agreement that provided for allocations of power and the types of uses permitted. The Town's allocation is 3.5 mega-watts with the possibility of more being allocated down the road. The basic concept here is that the power to which the Town of Lewiston is entitled will be made available to essentially residential small customers who are currently served under the National Grid service classification -- FC1. Once this contract is ratified, there are other agreements that will go along with it; namely a means of delivery presumably thru National Grid. The Trustees will schedule a public hearing on these contracts and of those other members of the Niagara Power Coalition sometime in early May. As the Supervisor alluded to, the Governor ultimately has to sign off on these agreements. The actual execution of the agreements will be a few months down the road. Because the Power Authority Trustees are meeting on 3/27, it's important for them to know that the town is on board with this agreement.

The Agreement, Widger said, could be modified in minor respects as we go forward through the public hearing process. What you have before you is probably 99% of the way there but it could be tweaked in some minor ways prior to the Governor signing it. The nature of the additional language that might be added would probably have no real impact on the Town of Lewiston's approach to it. There are tweaks that have been raised that could be implemented and they might not be pursued.

The Supervisor asked for comments from the Board.

Councilman Bax said he wanted to make sure the agreement didn't disallow the Town from distributing low-cost power to just residential users. I wanted to make sure it included both the town itself and also any other potential taker we might have to bring some more business into the town.

Newlin said it would not be a major hurdle to increase the list of recipients down the road. We'll start with the residential usage and see how much the residents are going to be using. That's hard to predict right now because if rates go down we'd certainly face the possibility that electrical usage would go up. We'll have to try and plan for that as best we can. After some period of time we'll get a better handle on that once we have a few months under our belt.

Widger said Bax's concern is addressed in Appendix A: *Customer may add to or delete from the above list of Ultimate Users on thirty (30) days notice to the Authority.* The town has the ability to modify the list just so long as it is given to the Authority.

Palmer asked what a typical household would save in terms of energy costs with this plan. On a \$100 energy bill, what would the potential savings be? Newlin said they have run some calculations. On a \$100 bill, the calculations have been made somewhere along a savings of 15-20%.

Edwards said it is his understanding that the Town can determine at any time what the usage of the power would be for. In the past, it was his understanding that it either be given to private, public but not hospitals or municipalities. We can't mix apples and oranges. Are there any laws that FERC or anybody has that we can't use that power at any given time for those usages? Widger said the only requirements for those situations are meeting the Power Authority's conditions which are spelled out in the 2005 settlement agreement and in the Power Authority Act. There are some uses that you can get to which would raise questions as to whether it is an appropriate use of power from the project. What the Town has done is to latch on to the basic uses of it. That's not to say that down the road it couldn't be modified to bring something else in. I think you have to look at it on a type of use basis.

Since there were no other comments, **Newlin MOVED that the Board authorize the Supervisor to execute the agreement with the Power Authority, in principal, for the sale of power and energy, pending advice of counsel. Seconded by Johnson.**

Newlin said he has spent more time on this issue than anything else in his three-years as Supervisor. The number of meetings and hours he has put in on this has been considerable. He thanked the current Board for their time and efforts in this matter. In addition, he thanked the prior board for its support especially former councilmen Dan Kilmer and Jim Langlois who have put in considerable time and research into this. It's very gratifying to finally see an agreement, Newlin said.

As has been noted in the press, Newlin said FERC has approved the re-licensing of the Power Authority. We're finally going to see some local benefits besides the original commercial ones that were set up 40-years ago. We now have cheaper power for our residents. We're going to get \$1.3 million in funds coming into this town -- that is more than 10% of our annual budget. Now we can say with our eyes wide open that the Power Authority is contributing to the community that hosts it. It will lay one of the cornerstones for Lewiston's continued growth and preservation of one of the best places to live in New York State.

**Motion carried 5-0.**

2) **Niagara River Greenway Plan:** Newlin said there has been a lot of hard work put in by Sam Ferrara, advisor to the Power Coalition, to try and make sure the Coalition's interests are best preserved in this agreement. A draft resolution was submitted by the Greenway Commission. One of the concerns the Town Board has had, Newlin said, was to make sure that Lewiston had the flexibility to allocate greenway funds to other parts of the town to benefit from these monies. Newlin referenced a letter from Robert Kresse, Chairman of the Greenway Commission, as part of good faith negotiations that clarifies some of the points that were raised. *"The Commission understands that NPC members have an equal ability to pursue projects that apply re-licensing settlement agreement resources regardless of chronology or sequence. There is no contemplation that projects proposed outside the "focus area" will be evaluated for funding only after projects within the "focus area" have been considered. Ultimately it will be up to the fund committees to decide what projects are funded from re-licensing settlement agreement resources in any particular year."*

The Fund Committee, in Lewiston's case, will be the standing committee of the seven (7) Power Coalition entities and a representative of the Power Authority. That is the committee that will determine conformity to the Greenway Plan as adopted and approve projects. That concept – plus this letter from Mr. Kresse – gives the town the flexibility it will need in years hence.

Newlin said Mr. Kresse's letter is referenced within the pending resolution approving the Greenway Plan that is before the Town Board.

After some brief comments from Board members, Newlin submitted the following resolution into the record:

**WHEREAS**, on September 21, 2004, Chapter 460 was approved, enacting Article 39 of the New York Parks, Recreation and Historic Preservation Law ("PRHPL"), in relation to establishing the Niagara River Greenway Commission (the "Commission") and providing for the membership and powers and duties thereof; and

**WHEREAS**, the purpose of the Commission is to undertake all necessary actions to facilitate the creation of a Niagara River Greenway (the "Greenway"). The Commission was charged to develop a plan and generic environmental impact statement for the creation of the Greenway designed to enhance waterfront access, complement economic revitalization of the communities along the river and ensure the long-term protection and maintenance of the natural, cultural and historic resources of the Greenway; and

**WHEREAS**, the Commission has contracted with a team of consultants led by the firm of Wendel-Duchscherer to assist the Commission in the development of the plan following the provisions of Chapter 460, with the aid of the Local Government Advisory Committee and Citizens Advisory Committee to advise on matters of interest; and

**WHEREAS**, a Niagara River Greenway Plan (the "Plan") was professionally prepared with an extensive public participation process that involved more than 500 residents and civic leaders from throughout the Greenway area; and

**WHEREAS**, the Plan establishes a unified vision and a set of principles for the Greenway. It identifies the assets and resources that make up the Greenway. It sets priorities that suggest the types of activities to target in the near-term. It identifies potential funding sources, partnerships and linkages and addresses key transportation issues that affect the Greenway. The Plan also discusses several high priority "Implementation Concepts" which describe system-wide approaches and strategies for Greenway development; and

**WHEREAS**, Section 39.07 of the New York PRHPL states in part that "the local legislative body of each city, town, or village within the boundaries designated by the draft plan must approve the plan following the public hearing or hearings and before it is submitted to the Commissioner" of the New York State Office of Parks, Recreation and Historic Preservation for approval; and

**WHEREAS**, local approval of the Plan will not impact municipal or school district autonomy; and

**WHEREAS**, approval of the Plan will lead to a variety of benefits for the Greenway area, including but not limited to:

- Strengthening its cultural and historic identity; and
- Providing technical assistance and increased funding opportunities for projects within the Greenway area; and

**WHEREAS**, the Town of Lewiston is a municipality that falls within the boundaries of the Greenway; and

**WHEREAS**, the Town of Lewiston has reviewed the Plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Town of Lewiston supports the vision of the Plan that "The Niagara River Greenway is a world-class corridor of places, parks and landscapes that celebrates and interprets our unique natural, cultural, recreational, scenic and heritage resources and provides access to and connections between these important resources while giving rise to economic opportunities for the region"; and

**BE IT FURTHER RESOLVED** that the Town of Lewiston hereby approves the Plan, as clarified in the March 8, 2007 letter from Robert J. Kresse, Chairman of the Commission, and recommends that the Plan, as clarified, be approved by the Commissioner of NYS Office of Parks, Recreation and Historic Preservation; and

**BE IT FURTHER RESOLVED** that such resolution will be forwarded to the Commission Office at the following address:

Niagara River Greenway Commission  
c/o Beaver Island State Park  
2136 West Oakfield Road  
Grand Island, NY 14072

**Supervisor Newlin MOVED to approve the foregoing Resolution. Seconded by Councilman Johnson and carried 5-0.**

3) **Riverwalk Escrow Agreement**: Engineer Lannon gave a progress report with respect to the Escrow Agreement for the planting of trees in the Riverwalk Subdivision. Lannon said he has had conversations with the town attorney, the developer for Riverwalk, Joe Deck Jr., and Chad Rush of Ryan Homes. All parties have agreed to the planting of twenty (20) trees in the Riverwalk Subdivision. Such trees are to be at least eight (8) feet high and planted no later than May 15, 2007. Lannon said there is some

disagreement as to where the trees are to be planted. Upon a recommendation by town attorney Dave Boniello, it was agreed to have the escrow agreement finalized immediately and obtain the permission of the parties involved as to where the trees are intended to be planted.

**Bax MOVED to authorize the Supervisor to execute the Escrow Agreement for the trees that will be planted in the Riverwalk Subdivision. Seconded by Edwards and carried 5-0.**

In addition to the planting of trees, Lannon said there is a punch list of items remaining before the phase is complete. Some of these items are field related conditions (paving, grading, etc.) which are weather dependent. The other items are administrative such as record drawings, certification, etc.

Lannon said they have discussed the tree issue being complete by May 15, 2007. He also has had discussions with the developer and the contractor that the field items that remain be completed by this date also. Should the Board decide to accept dedication today or prior to May 15, Lannon said his concern was any items of work in the field that remain incomplete until that time will be covered by a shorter bond and shorter warranty period than otherwise would be the case. Lannon said he spoke with the contractor that morning. We have the bond currently in place and the dual obligee component of it currently in place. What we would do is, no later than 5/15 or a date short of that when all the field work is complete, we would give the bond back to the contractor to take it to his bonding company and give it a new start date. From that date forward, it would be the two-year bond.

**Edwards MOVED to accept dedication of Phase 2C of the Riverwalk Development subject to completion of the outstanding field work by 5/15 and the Engineer's satisfaction of the completion of the punch list. Seconded by Johnson and carried 5-0.**

In other matters, **Bax MOVED to schedule a public hearing at 6:30 p.m., Monday, April 9, 2007 on a proposed local law to amend Chapter 8D of the Town Code, "Excavations" to impose a moratorium on the issuance of mining permits. Seconded by Johnson and carried 5-0.**

4) **Personnel:** Newlin noted that town employee Barbara Joseph is out on extended sick leave having suffered a break or fracture of her femur bone. In her absence, additional duties will be taken on by the Town Clerk's office. The Supervisor's secretary, Barb Cich, is helping out where she can. The Town Clerk asked for the cooperation of the Town Board and Department Heads during Ms. Joseph's absence.

**Johnson MOVED to allow the Town Clerk at her discretion, to hire temporary help to answer the switchboard at town hall. Seconded by Bax and carried 5-0.**

5) **Snow & Ice Agreement:** Newlin asked for a motion to authorize the Supervisor to execute the agreement that allows the Town to plow state and county roads within the jurisdictional boundaries of the Town of Lewiston to which the town will be compensated by those respective entities. **Johnson MOVED for approval. Seconded by Bax and carried 5-0.**

**Palmer MOVED to adjourn the special meeting. Seconded by Edwards and carried 5-0.** Time: 2:10 p.m.

Transcribed and  
Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk