

PRESENT: Sup. F. Newlin; Councilmen A. Bax, S. Edwards, M. Johnson, & E. Palmer; Town Atty. J. Leone; Dep. Atty. D. Boniello; Eng. B. Lannon; Dep. Sup. E. Elgin; Finance Officer A. DiRamio; WPCC Adm./Op. T. Lockhart; 3 Press; 60 Residents; and Clerk C. Brandon

The Supervisor opened the public hearing at 6:10 p.m. He offered the following comments with respect to the hearing and Modern Landfill's request to increase its acceptance of solid waste and to the proposed amendment to the Town Code with respect to such increase. He asked that comments made during the public comment period be given with respect and courtesy and without any personal attacks or anger. Although he has heard from some individuals that this proposal is a done deal, he assured those in attendance that it is anything but a done deal. Newlin said he is personally not in support of this amendment at this time, and other board members are grappling with it very seriously.

Modern is in the business that a lot of people don't like but it certainly is a business that everybody uses. Modern has had a very strong and important role in Lewiston's success. They have given a lot of money to the Town thru its Host Community Agreement (HCA). They have given the town hundreds of thousands of dollars to its recreation program that benefits hundreds of families in Lewiston. The money they do give the town offers benefits for everyone here. We don't have a refuse tax. In other communities, people pay from \$100 to \$400 annually for garbage disposal. The money Modern brings into town coffers allows us to spend money on other frills of local government. We give more money to local libraries than any other town in Niagara County... It allows us to fund programs we don't have to have but we need, i.e., a police department. Although there are some down-sides to having a business like Modern here there have been some substantial upsides and Modern should be recognized for those contributions.

The Clerk was asked to read the legal notice into the record:

**LEGAL NOTICE IS HEREBY GIVEN** that pursuant to Section 130 of the Town Law of the State of New York, and pursuant to a resolution of the Town Board of the Town of Lewiston, adopted June 11, 2007, the said Town Board will hold a public hearing at the Town Hall, 1375 Ridge Road, Town of Lewiston, on the 25<sup>th</sup> day of June, 2007 at 6:00 p.m. to hear all interested parties and citizens for or against the adoption of a proposed amendment of Chapter 24C-15C(6)(b), of the Town of Lewiston Code to read as follows:

Notwithstanding the provisions of Subsection C(6)(a), no landfill operator already operating within the Town under permit from the New York State Department of Environmental Conservation as of the effective date of this law, as amended in 1995, shall accept, dispose of or allow disposal in a sanitary landfill of waste per year or per calendar quarter greater than the volume established in the permit issued by the Department of Environmental Conservation or in an agreement between the Town and the landfill operator, whichever is less. No other landfill operator shall accept, dispose of or allow disposal of more than 100,000 tons of solid waster per calendar quarter.

If adopted, this will become Local Law #2-2007.

Gary Smith, Chief Operating Officer of the Modern Corporation, made a presentation on behalf of Modern's request for the increase in the amount of solid waste accepted at the landfill annually. Effective 1/1/2007, the HCA allows Modern to charge the community back for a portion of the garbage fees, he said. This includes the Village of Lewiston and the Lewiston-Porter School District also. In the town's situation, it is \$35.00/ton or \$175,000/annually. The Village -- \$20,000 and \$3,000 for the school district. Smith said he made a proposal to the town and asked for a modification to the town code to allow Modern to take an additional 250,000 tons into the facility annually. In turn, Modern would agree to amend the HCA that would essentially push back the date the town, village and school district would be charged for refuse services by five years (2007-2011). That was what was discussed and that is what we asked of the town.

I understand traffic is the issue. I appreciate the people that live on the truck route and their concerns. We need to address this as much as we can. We've requested to lower the speed limit on Model City Road to 40 mph. We run our own radar actually violating haulers and threatening to expel them from our facility. We're looking at different ways at altering the truck route. I'm not here to diminish the impact. In anticipation of some of the traffic questions we had Parsons Brinckerhoff conduct a traffic study. That was conducted in

February 2007. We did field counts at four major intersections where trucks travel in the town coming into the facility. Based on those studies, we are at acceptable levels during AM and PM peak hours. Based on the current demographics, they went out and scoped 20-years and analyzed what those conditions would be and they were also shown to be acceptable levels.

There are rumors that we're increasing our traffic by 32%. Based on our analysis, it's about 25%. Allegations that the town in the future would be the decision makers in review of DEC permits are blatantly false. There was also a statement that all this volume that Canada has now that they are going to be by agreement stop those ??? by 2010. Ontario agreed to increase their capacity in their local landfill by 47,000,000 metric tons. You're going to see less Canadian trash coming to the U.S. because they have made arrangements to handle their own trash so it doesn't come to the U.S.

In closing, Smith said Modern employs 500 people, providing a livable wage, health insurance, retirement etc. There is not that much opportunity in Niagara County and certainly no opportunity for younger folks. We would like fair consideration. We understand what the issues are but we are willing to work with the town to lessen the impact.

The Supervisor then proceeded with the public comment portion of the hearing.

The first speaker was Dan Kilmer, 5109 Dana Dr., former town councilman. Any other business in Niagara Co. would not have to come to a government agency to increase its traffic... If they wanted to increase the number of loads a day and it took two or three more trucks a day to do it, they wouldn't need government approval... We have to look at Modern as growing. Their costs are increasing – medical, fuel, etc. We have to allow them to grow and increase their income. They have to compete in a tight market. Waste management is isn't a pretty business but it has to be done. We all use it. Modern funds the town's recreation programs \$105,000 a year; and an equal amount to Artpark. They are a good corporate citizen. I think the tonnage increase is a necessity.

Keith Fox, 1114 Ridge Rd., is a current member of the Environmental Commission and has served on that board with Mr. Smith for a number of years. I have a high-regard for him. I feel we have a big truck problem and he has agreed with that. I have put forth on a number of occasions the use of the jakebrakes on the trucks. That may not be an actual issue of this particular consideration but it brings us into the arena of the trucks. I am in favor of Modern having as large of the pie as possible if it could get done in a better way. Why don't we open up the Robert Moses Parkway? I would like to see it be the northbound route to Pletcher Road and straight into the landfill from there. I would like to see Modern and CWM work together to develop a right-of-way from Pletcher Road into CWM. It would take the trucks off Creek Road in front of the school. Again, the big thing as far as I am concerned is truck traffic. We have to work out a situation for trucks.

Amy Witryol, 4726 Lower River Rd., responded to Mr. Smith's remarks. First, my editorial in the *Sentinel* about delving decisions from the town to the DEC was not correct. A corrected letter was published in the *Gazette*. Secondly, Ontario's capacity is not equal in the amount of landfill capacity that you referred to... There will continue to be very significant pressure coming from Canada. With respect to traffic, I see no statistics whatsoever on truck traffic, the type of the trucks being used because they are double in size of the previous trucks perhaps may account for the difference between the 32% increase in volume that is being proposed and the 25% truck traffic increase that Mr. Smith suggested there is. I would like to see it in writing. I'd like to see the daily log of the trucks for the past five years by size of trucks so we can look at what we have been living with and what the nature of his projections are and then make sure the Host Agreement holds him to those projections.

Mrs. Witryol continued with her prepared remarks: I ask that the Board vote down the proposed amendment to Town Law for the following reasons.

1. The amended law would eliminate the Town requirement for public input on increases in annual tonnage and trucks to Modern in the future. That's bad policy and bad government on an issue of this magnitude. There is simply no credible excuse for this feature of the proposed law. It's embarrassing that it is even the subject of a hearing tonight.

2. The new law would make it more difficult for the Town to enforce the annual tonnage limits. If passed, instead of enforcing a law, the Town would be suing to enforce a contract.

3. Four years ago, the prior Town Board approved a 33% increase in annual tonnage to Modern, and left you with a very weak Host Agreement. Now Modern proposes to increase tonnage by another 32% for a whopping 1,065,000 tons per year.

4. The Town law should be addressed after, not before proper due diligence is completed. The information provided you for this decision is sorely lacking.

- There are glaring holes in the issues addressed in the last Environmental Impact Statement Modern provided to the DEC. I don't have time to list them, but they are significant to health and safety, and include recommendations by the National Academy of Science for the federal radioactive storage site next door to Modern which have not been addressed.
- After the last 33% increase granted, we had a truck related fatality on Lewiston Hill. That is one too many. Tinkering with the traffic routes and special tax districts to address legitimate concerns is called for, but in some ways, it's akin to rearranging the deck chairs on the Titanic. Moreover, the Modern report on traffic has glaring holes as well.
- We don't know the terms and conditions of the Host agreements for the other 26 landfills in NYS.

Like the Hickory Stick golf course, all documents related to this proposal should be on the Town's website, including the current Host Agreement, because this proposal is far more significant to health and safety, not to mention the budget.

When Gary told you that little of Modern waste comes from Canada, I guess he meant 40% is little. I've prepared a chart showing how big the Modern landfill already is, and who it serves [distributed to all attendees at Hearing.]

It seems ridiculous to pretend that filling up the landfill in 23 years, instead of 32 years, is somehow good for the Town. How many visitors to Artpark come over the hill and say, "my god, what is that?" Every sunset we've ever had with Modern has been extended. So I hope no one will stand here tonight and try and say that accelerating the closure to 23 years is a good thing for Lewiston, in advance of appropriate risk assessments. We don't want to post a sign that says, "thank you for coming, come back in 23 years." You will here speeches tonight from the organizations that benefit the most from Modern money. We look to you to decide what's best for the people of Lewiston.

Saying no won't hurt Modern employees, won't hurt Artpark, won't hurt our Recreation program, and won't hurt our revenues. Artpark and Recreation program dollars from Modern are required under the Host Agreement. As for the sunset of free garbage collections services, the impact is small over the next 5 years – and there are other solutions to that issue which the board has not yet considered, and should.

So please approach this issue in a logical fashion, not with the adoption of new law first, let alone a bad one, but with better due diligence to arm you with the information you need to make a good decision for all of us.

Janet DiFiore, 5150 Country Club Trail, had her daughter draw a picture depicting what Lewiston would look like in the future. She said her house is currently for sale. When interviewing for realtors, she heard from more than one that Buffalo realtors will not show or bring people to Lewiston. We have a beautiful home. We have a pristine town. We have gorgeous views. We have an extraordinary golf course. We're a hop, skip and a jump from Toronto and Buffalo. There's no reason people should not want to move here but they're being told by realtors that they don't want to move here because Lewiston has a landfill and the garbage dump. That should not be the legacy that everyone here today is going to leave the future of Lewiston. I feel very strongly in securing and preserving our future. Everybody should take care of their garbage in their own backyard. There is absolutely no doubt that Modern has been a good corporate citizen... There's nothing to doubt about that. The issue is what legacy is going to be 10-15 years down the road as we consistently see amendments and addendums and increases in bringing garbage from every place else but our own backyard. That is not necessary and I don't think that is what we want to see.

Joan Gipp, 1468 Ridge Rd., said her house is covered with diesel fuel from the trucks that go by her house. I can't open the windows. I can't hang out the wash. I remember when Lewiston was a rural, suburban community, and beautiful. Now, we have a mountain that is soon going to be as high as the Escarpment. I served on the town board when Modern first came to town. The original landfill was in back of town hall. It's now labeled a hazardous waste dump. I was also here when the owner was indicted for attempting to bribe town officials. I sent you a letter (dated 6/18/07) of the history of Modern (on file in Clerk's

office). I want you to remember that you don't need the money. Our unexpended fund balance is larger than it's ever been; but you did take an oath to protect the health and welfare of the people that you represent.

Harry Bouchard, resides at 676 Ridge Road directly opposite the Robert Moses Parkway. He was under the impression that the Robert Moses Parkway was closed to commercial traffic. He asked for clarification on this. (Newlin said he would try and get back to him on this.) Every single truck that goes to Modern comes to a stop at the Parkway and proceeds on to Ridge Road. Naturally, you know how much noise we get with 5 different gears going on the truck. I can't figure out why that truck route can't be changed somewhat so we don't have to encounter every truck going to the landfill.

Earl Winker, 1039 Ridge Rd., said he has lived at this address for 28 years. He has put up with the traffic but now it's to the point that one can't hear over the truck traffic. One has to shut one's doors and windows. It's really shameful. I've had my house up for sale for six months and never got an offer. You guys want more trucks on the road. Let's take some of the trucks off the road. We pay good taxes here. I have a nice home. I want to leave but I can't because nobody wants to buy it. Let's do something, please.

Alexis Stopa-Weis, 708 Ridge Rd., purchased her home in 1989. Being conscience home shoppers, they researched different areas in Western NY. The Modern Corp. was one of her concerns. She went on one of their yearly tours and was very impressed. Her concern of the collection of hazardous waste was laid to rest. She finds Modern to be a very community-friendly company, providing Lewiston with large cash subsidies and donating time and energy to the village and town. She has never put any garbage in front of her house that they have not picked up. Having children, she's always had concerns about the traffic on Rt. 104. She has more problems with *Tuesdays in the Park* than Modern's trucks. I would never waiver an objection to anything that brings money and employment to our community. Perhaps the day will come when we will all be "green" folks and we will collect less and discard less. You can bet the day will come when our children will be paying a tidy sum to have their garbage collected and hauled off to some far point.

Eric Purchase, 4399 Autumn Lane, said he hears the Modern trucks go by. It is quite noticeable even though they live 300-ft from Creek Road and have large trees for screening. We definitely don't want another 81 trucks coming by on a daily basis. It would detract from the quality of life. It seems to me that you should honor our agreement. We already have an agreement in place that determines the amount of truck traffic and how much waste can be hauled. The Town and Modern negotiated that in good faith. Both sides should honor that.

Michael Torrie, 330 N. 5<sup>th</sup> St., spoke as chief of the Lewiston #1 Fire Co. which covers portions of the Town of Lewiston. To correct a statement made earlier, during his tenure as fire chief, there has not been any accidents in his coverage area with regards to a Modern vehicles. They have been safe and they have not had to deal with any of those issues.

Fred Caso, 5243 Hewitt Pkwy., spoke in favor of the Modern application. He does not live on the truck route so he cannot address the specific concerns of the individuals that are affected. Modern is a very regulated company. They live within the rules. They are solid corporate citizens. There isn't an event in Lewiston or around the community that they don't support. I have the utmost respect for their management and their employees who are working in this community.

Nanette Luczak, 658 Mt. View Dr., said there is a traffic problem within the town. If the proposal is approved, traffic will get worse. There is only one exit from her street. It is very difficult to exit on to Lewiston Road. If we add more trucks I can't even tell you what is going to start happening. I don't know what Modern is paying in taxes. I don't know what they are assessed at. I know there is a host agreement but it's not on the town's website. We're getting free garbage pickup ... I doubt I have a ton of garbage a year but if I do, I'll pay the \$35.00/ton. With CWM and Modern, there is so much garbage coming into this town it is disgusting. I know there are conflicts between what Amy (Witryol) and what Mr. Smith said. There are questions out there. What is Modern assessed at? What taxes do they pay? You need to think this thru and if it goes thru you'd better make Modern and CWM come up with a truck route so that I, and my friends and neighbors can get out of out street safely.

Cheryl Oliver, 4994 Creek Rd. Ext., just purchased her grandmother's house. She did warn me about how many trucks were there but I didn't quite believe her. I love my new home and I love my new neighbors but living on Creek Road is just disastrous with all those trucks. I'm against the proposal.

James Allen, 625 Cayuga St., said his comments are drawn from his experiences of living in the town for 37 years and on Ridge Road for 31 of those years. His comments are not as chairperson of the Environmental Commission and his views may vary from other members.

Truck traffic in Lewiston has reached the point of critical mass! Truck traffic has increased on Ridge Road, Creek Road and the extension steadily over the past 20 years. Each time Modern or CWM has expanded, traffic has increased as well...

There is so much diesel soot that each spring I have had to have my home (782 Ridge Rd) power washed to remove the black soot. I recently sold that house which took me 18-months to sell. The issue that constantly came up was the truck traffic.

I have faithfully read the *Sentinel* every week for years and have never seen a Lewiston police stop of a truck reported. I have seen plenty of cars stopped but never the large commercial trucks, even ones lacking a tarp or having a loose tarp spreading their cargo along the road. It is obvious that there is no local enforcement of this truck traffic. This is especially troublesome as there seems to be more and more operators bringing their cargoes of hazardous waste or garbage into our town. Speeding on Lewiston Road and on Creek Road Extension is also a problem.

I am asking the Town Board to deny any request or application that would increase truck traffic until such time a dedicated non-local route into Modern and CWM can be constructed... The environmental damage and the chance of a motor vehicle accident involving a school bus or a resident is too high to permit any increase in the number of trucks coming to Lewiston.

Another concern is that Lewiston residents are subsidizing the Modern operation by paying them to take the solids from the waste water treatment facility. At the very least, this service should be provided without cost to the town and thereby keep sewer operational costs down. This type of arrangement in the past has eliminated local taxpayer's costs for trash removal.

I would also like the town to research the assessment of all of Modern's operations. Are they paying their fair share? Since we do not have a town tax, their assessment does not impact town taxes but they would impact special districts, county and school taxes. If they are not paying their fair share then we the taxpayers are paying more.

Lewiston is a wonderful town to live in and raise a family. The Town Board must take every step and do the research to be sure that we do nothing to damage our community any further.

Patricia Schultz, 1308 Ridge Rd., commented on a statement earlier by Gary Smith who had mentioned that only 2 trucks per hour would be added to the increase in truck traffic. That is not taking into consideration that trucks travel in two directions, she said. They come into the facility and leave the facility. He also mentioned that Modern's operations are open for 10-hrs. This is not true. Trucks start at 4:00 a.m., waking us every morning. They usually travel until 5:30-6:00 at night. This makes a 14 ½ - 15 hour day. They also operate half day on Saturdays. I can't understand how there is no regulations of the noise. Surely there must be a noise level that they cannot go beyond. Someone mentioned the jakebrakes. I didn't know what jakebrakes were but I sure know what they sound like. We met with Mr. Smith personally in January. He gave me a letter that he sent to Chief Winkley to see if there is any signage or regulations that would prohibit the use of jakebrakes, minimizing the sound that they cause within the confines of Lewiston. No response was ever given.

This, again, is an apparent showing of disregard to people's concerns. An attempt was made to get an answer. Police do not seem to mind that trucks speed down the road. There should be a speed limit posted along Ridge Road. She recommended lowering the speed to 45 mph along the truck route on Ridge Road. There are a number of trucks, 10-15, that go by in a very short period of time... This is absolutely ridiculous. It's gotten to a point where it is intolerable. I hope to goodness that you can understand our frustration.

Walter Schultz, 1308 Ridge Rd., The fire chief made a statement that there were no accidents with Modern trucks. About 25 years ago, on Ridge Road, two women were killed in a head-on accident with a Modern truck. Needless to say, I'm against any increase in truck volume. Throughout the years, I have been active trying to keep Modern down. It never has happened. Whatever they wanted they've always gotten. It is my thought that they will probably get what they want now. Modern paid a million dollars to shore up Model City

Road so their trucks can go on. People will object to my saying this, but we should spread the traffic of these trucks to other roads. Modern is going to make millions with this increase. It is my feeling that they can spend some to shore up Swann Road & Pletcher Road.

David Saph, 722 Ridge Rd., has lived here for 30-years. There are trucks on that road all day long. There are more trucks today than at any time. I don't believe some of these things that I hear are true. I have to wash my house once a year but I don't think there is anywhere in Western NY where you don't have to wash your house once a year. Modern is a good thing for this community. They've done plenty for Lewiston.

Tom Lytle, 4209 Lower River Rd. How do you address the impassioned responses to residents? There is no major answer. If there were, it would have been taken care of long ago. I'm in support of the Modern application (amendment). We all feel the pain for the people who are upset, but even the Board Members have to address the community as a whole. If there is anything that can be done to mitigate some of those problems by all means try to do so. But as a community as a whole, for probably the best corporate citizen in the area, I think we need to support them.

Ed Schieffelin, 736 David Lane, said he is in favor of the Modern application. They are good corporate neighbors. They supply a lot of money to this town and provide a lot of jobs.

William Gabrielle, 420 N. 4<sup>th</sup> St., said in the 15-years since he lived here, everything in the town and village has grown. He is in support of the proposal.

Gary Townsend, 5682 Townline Rd., Sanborn. I liked the way our hamlet looked 50 years ago. It was very nice and quiet. But through the years there came changes with the creation of NCCC, BOCES, & Smokin' Joes. These businesses resulted in an increase in traffic but also created jobs in the area. Smokin' Joes doesn't pay the Town of Lewiston anything and the Town doesn't have any control over the College or Smokin' Joes. What you have here with Modern is a real big plus in the community. They have to come back to the Town Board and answer to the Board and try and resolve some of the problems for the people on these truck routes. I sympathize with the people. We know what it is like in the Sanborn area. We have as much traffic there as you do down here. We have to live with it also and we don't have any control over it. I would like to go on record in support of Modern.

Mario Pugliese, 1437 Ridge Rd. There are not only Modern trucks that travel this route. We have trucks from everywhere out here. A few people have raised the issue of the noise level. I have been here for several years. I really don't hear the noise that everybody is talking about. I agree with this application. They are a good corporate company. We certainly wouldn't want them to move and go someplace else like a lot of other companies have.

Chuck Longo, 5085 Woodland Dr., said as a real-estate broker, defending Lewiston is getting very difficult. The number one question I do get from out-of-towners is how far is the dump? You have to make it easier for these people on Ridge Road and Creek Road Ext. A compromise has to be made in order for the quality of life in Lewiston can improve.

Maureen Kellick spoke as representative of Artpark. In 1997, New York State was going to close Artpark. Thanks to the generous support of the community, and in particular the Modern Corp., Artpark has been able to continue with its programs. She asked the Board to consider its support of the application.

The Supervisor asked if there was any other member of the public who wished to speak. None did.

Gary Smith thanked everyone for their comments and their concerns and their passion. I do appreciate giving back, he said.

The Clerk said she is in receipt of two letters from town residents. The first was from Mrs. Gipp and is on file in the Clerk's office. The second was from Mrs. Helen Bouchard, 676 Ridge Road, who asked that it be read.

I am very upset about the possibility of ANY increase in Modern truck traffic. A 32% increase or 1/3 increase in traffic is ridiculous. I live directly across the street from the Robert Moses Pkwy. The trucks come off and turn left. I live on the corner of Ridge Road & Cayuga Drive. We see, hear and

smell those noisy, dirty trucks at any time of the day. The noise starts around 5:00 a.m. Help. Mrs. Helen Bouchard

The Supervisor said they would bring the public hearing to a close and go into recess for 10-minutes before entering into regular session where they would address the matter further.

**Edwards MOVED to close the public hearing. Seconded by Bax and carried 5-0.** Time: 7:27 p.m.

Transcribed by:

Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk

Carol J. Brandon  
Town Clerk