

PRESENT: Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Pacioni; Deputy Supervisor Elgin; Budget Officer DiRamio; Town Attorney Leone; Deputy Attorney Boniello; 3 Press; 20 residents and clerk Donna Garfinkel

Supervisor opened Public Hearing – 6:40 p.m. Clerk read Notice into the record.

LEGAL NOTICE IS HEREBY GIVEN that the Town Board of the Town Lewiston, will hold a public hearing at the Town Hall, 1375 Ridge Road, Town of Lewiston, on the 24th day of July, 2006, at 6:30 p.m. to hear all interested parties and citizens for or against the adoption of Local Law #2 - 2006, a proposed local law amending Local Law No. 3 of the year 1983, such Local Law being the Animals Law of the Town of Lewiston, New York and in particular Article 1, Dogs, § 2-4, DEFINITIONS, and § 2-5 PROHIBITED ACTS.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF LEWISTON, NEW YORK AS FOLLOWS:

Article 1, DOGS, §2-4, DEFINITIONS, is hereby amended by adding the following:

AGRICULTURE AND MARKETS LAW – The AGRICULTURE AND MARKETS LAW of the State of New York in effect as may be amended by this Article and/or the State of New York.

CONFINED – (a) To be securely restrained and kept on the premises of the owner either within a building, kennel, or other suitable enclosure or (b) to be securely fastened on a chain, wire, or other effective tether of such length and so arranged, such that the dog cannot reach, endanger, or harass any person whether on the owner's premises or otherwise, or any adjacent premises, or on any public street, way, or place, or, (c) if the dog is being transported, that such dog is confined in a crate, cage, or other container, or otherwise so restrained that it cannot escape therefrom or endanger, reach, or harass any person.

DOG – Male or female, licensed or unlicensed, members of the species of canines.

RUN AT LARGE – To be in a public place or private property without being confined.

HARBOR – To harbor is to knowingly provide food or shelter to any dog.

Article 1, DOGS, §2-5, PROHIBITED ACTS, is hereby amended as follows:

D. Chase, jump upon, at or towards, or otherwise harass any person in such a manner as to cause such person reasonable fear or intimidation, or to put such person in reasonable apprehension of bodily harm or injury to such person or another.

Article 1, DOGS §2-5 shall be amended by adding a new subdivision H, which shall read: The establishment of the fact or facts that a dog has committed any of the prohibited acts of §2-5 or any subdivision thereof shall be presumptive evidence against the owner or harbinger of such dog that such owner or harbinger has failed to properly confine said dog.

If any of the provisions of this Local Law are inconsistent with the provisions of any other Local Law or Act of the Town of Lewiston, New York, the provisions of this Local Law shall be controlling.

All other terms and provisions of the existing Local Law No. 3 of the year 1983, ANIMALS, Article 1, DOGS, as the same may have been heretofore amended, will remain in full force and effect except as specifically amended hereby.

This Local Law shall take effect immediately after enactment by the Town Board of the Town of Lewiston, New York after public hearing and filing as otherwise required by statute.

Leone said there have been various complaints from residents being harassed by dogs. The two areas of concern is the definition of “Confined” and “Run at Large”.

Recommendations to the proposed law have been submitted by Tod Davidson - Dog Control Officer and Clerk Brandon – Town Clerk.

The Supervisor asked if anyone wished to speak on the subject matter.

Daniel Polin – 575 Pletcher Road – To have to “crate” your dogs while in a car is ridiculous, it will not work. A dog confined in a car is more confined than in a house. If a dog is fenced in, in the backyard, that should be considered confined. There are residents making unfounded complaints. Residents have complained about his dogs with no merit to the complaint.

Michael Bergey – 4616 Porter Center Road – Agrees with unfounded complaints. Residents have complained about his dog with no merit either.

Barbara Lymburner – 214 Tuscarora Street – As a Village resident, the lots are smaller. She agreed with the unfounded complaints – this has happened to her. A dog only knows what the owner trains it to know. Not everyone is a good dog owner. The recent hot weather can cause a dog to be mean. Dogs need to be kept under control of the owner at all times. There are dogs at large all the time. There should be a leash law.

Tod Davidson – Dog Control Officer, addressed the Board. Davidson recommended the bold text be added to the proposed law.

CONFINED – (a) To be securely restrained and kept on the premises of the owner (**as determined by the Dog Control Officer or the Judge of the Court**) either within a building, kennel, or other suitable enclosure (**sufficient to contain the size of the dog**) or (b) to be securely fastened on a chain, wire, or other effective tether of such length and so arranged, such that the dog cannot reach, endanger, or harass any (**permissible**) person whether on the owner’s premises or otherwise, or any adjacent premises, or on any public street, way, or place, or, (c) if the dog is being transported, that such dog is confined (in a crate, cage, or other container, **Eliminate**) or otherwise so restrained that it cannot escape therefrom or endanger, reach, or harass any person.

RUN AT LARGE – To be in a public place (or private property **Eliminate**) without being confined.

D. Chase, jump upon, at or towards, or otherwise harass any person in such a manner as to cause such person reasonable fear or intimidation, or to put such person in reasonable apprehension of bodily harm or injury to such person or another. (**As determined by the Dog Control Officer or the Judge of the Court**)

Bergey questioned if the new law prohibits residents from having a dog in the yard without a leash.

Leone said it will require dogs to be securely restrained and kept on the premises of the owner either within a building, kennel, or other suitable enclosure. As to what is a suitable enclosure remains to be seen. A dog running loose on the owner’s land would not be confined within the definition of this law.

In regards to an invisible fence Leone said it then becomes whether or not that invisible fence is suitable to confine the particular dog that it was constructed for. If a fence is one foot tall or ten feet tall, it has to be suitable to confine the particular dog.

Mary Lavender – 1395 Swan Road – There are dogs loose all the time. She questioned what a resident is to do if a dog chases them. She carries a stick when she walks.

Newlin said all the comments will be taken into consideration in constructing the law.

Johnson MOVED to close the Public Hearing, Seconded by Pacioni and Carried 5 – 1.

PRESENT: Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Pacioni; Deputy Supervisor Elgin; Budget Officer DiRamio; Town Attorney Leone; Deputy Attorney Boniello; Recreation Director Dashineau; WWTP Chief Oper. Timothy Lockhart; Police Chief Winkley; 3 Press; 7 residents and Clerk Donna Garfinkel

The Supervisor opened the meeting at 7:30 p.m. followed by the Pledge of Allegiance and a moment of silent reflection.

TWO-MINUTE STATEMENTS BY RESIDENTS:

The Supervisor asked if anyone wished to address the Board.

Scott Weinfurter – 760 Mary Lane – About three summers ago he addressed the Board regarding a grading issue and standing water. Reiter has been to the property twice. Weinfurter was told to get permission from the Board to allow Reiter to correct this.

Michael Bergey – 4616 Porter Center Road – There is concern for the mining taking place at the Helmich Site on Ridge Road. Bergey has been told by Leone there is a couple days left on their permit. If there are plans to make this an aqua-culture, with them excavating to the lot line, it would be difficult to get it insured. Helmich has applied for his permit under false pretences. It was to be a 6.9-acre irrigation pond and it is now over 20- acres with no Town approval. He has never irrigated one tree; in fact he has removed them. Bergey said Helmich applied for another expansion, clearly for no other purpose but to extract as much as he can to the very edge of the property line. The Town has never collected any fees. He has never applied to the Town for an excavation permit. There was a stop-work-order on the project last week, but it has since been lifted. Bergey is not against mining. It provides jobs and can provide aqua-culture but it should be done under the proper channels and by following the law.

Daniel Kilmer – 5109 Dana Drive – Mining at the Helmich site borders his mother's property. Helmich needs to follow the laws. Kilmer suggests Board members go to the site. It is a large operation. There is no irrigation going on, they are strictly strip mining for clay. The Board should put a moratorium on mining. The Town could be collecting \$1.00/yard revenue.

Mark Schmidt – 2666 Ridge Road – Supports mining, but would like to see more aqua-culture mining. Schmidt also agrees they are not abiding by the rules. The minimum set backs are not being followed. This could end up being a white elephant for Lewiston. It is basically a strip mine.

Paulette Glasgow – 836 The Circle – This project has been brought before the Niagara County Planning Board. The DEC has given this project a Negative Declaration and the Town knew nothing about it. This is a 52-acre pond. Helmich has put in no permits to the Town, and is basically playing with the truth with the DEC. This is a major, major, major mining operation that has been going on well too long. No bond or money has been received by the Town for this project. Numerous neighbors have complained.

Sebastian Passanese III – 4876 Eddy Drive West – He is here on behalf of the Lewiston Baseball Boosters to present the Town with a check in the amount of \$3,000. This summer the Boosters worked in conjunction with the Board to enhance the Town parks for the children. The Boosters encourage the relationship between the Board and the Boosters to continue.

AGENDA APPROVAL:

Bax MOVED to approve the Agenda, Seconded by Pacioni and Carried 5 – 0.

APPROVAL OF MINUTES: 6/12/2006 Worksession; 6/26/2006 RTBM; 7/10/2006 Police Consolidation meeting' 7/10/2006 Worksession

Pacioni MOVED for approval of payment to Chilberg Construction for repair work to Kiwanis Park, with funds coming from H-61 (Parks Capital Projects), Seconded by Johnson and Carried 5 – 0. (This took place at the Executive Session on June 12, 2006)

APPROVAL OF POST-AUDIT:

Johnson MOVED to approve Post Audit payments to: Home Depot - \$1,181.23; Office Max - \$808.79; Office Max Credit Plan - \$93.46 and Sam's Club - \$386.82, Seconded by Pacioni and Carried 5 – 0

Johnson MOVED to approve the payment to Tops Markets in the amount of \$378.80, Seconded by Pacioni and Carried 5 – 0.

Johnson MOVED to approve payments to Carol Brandon/ Petty Cash - \$71.18; Donna Garfinkel - \$170.00; Carole Schroeder - \$170.00 and Microspec - \$15.00, Seconded by Pacioni and Carried 5 – 0. (These dollars are grant funds)

OLD BUSINESS:

1 - *Proposed LL #2 – 2006.* Leone will take all comments made at the Public Hearing, make some minor adjustments to the proposed law and present them to the Board.

Newlin MOVED to schedule a Public Hearing to amend the Animals Law on August 14, 2006 at 6:30 p.m., Seconded by Pacioni and Carried 5 – 0.

2 - *Update on Patrick Development Road.* Lannon spoke to Jim Roll – Corporate Council for Patrick Homes, approximately two weeks ago. The resident's letter has been faxed to him. Lannon has received no response as of today. Lannon suggested giving him a couple of days, if no response received, a letter will be sent.

3 - *Niagara Mohawk Easement.* Leone said there are two issues. One at the Swan Road Pump Station, which is needed for the Water Pollution Control Center. Second is the railroad property on Pletcher Road. Leone would like to discuss the second with Lockhart. Leone asks the Board to give authorization to the Supervisor to sign the contract.

Johnson MOVED to authorize the Supervisor permission to enter into an agreement with National Grid pending consent from Leone and Lockhart, Seconded by Pacioni and Carried 5 – 0.

4 - *Town Hall Entrance Doors – ADA compliance.* Lannon has spoken to Frizlin Architects. It is o.k. to phase the implementation of ADA compliance. To come into full compliance would depend on the dollar amount of the renovation that is performed. If the dollar amount exceeds 50% of the replacement value of the building, in today's dollars, then the Town would have to come into full compliance as part of that renovation.

5 - *Saddlewood Subdivision – Lighting request.* Lannon said there is an existing light on one of the curves, but residents are requesting an additional light. Lannon will meet with National Grid to have them review and supply an estimate.

Lannon will also address a lighting issue on Upper Mountain Road near Annover Road.

NEW BUSINESS:

Item No. 1 – Woods, Gary – 1804 Langdon Road – requesting to dig a pond on his property and is asking for exemption from the excavation permit fees. Engineer David Britton, by letter, recommends approval. This item to be discussed at the Worksession of August 14, 2006.

Item No. 2 – Support of the creation of a S.T.O.P.P.E.D (Sheriff's Telling Our Parents & Promoting Educated Drivers) program.

Johnson MOVED, Seconded by Bax,

Resolution of Support for Creation of S.T.O.P.P.E.D.

Whereas the Town Board of the Town of Lewiston, Niagara County recognizes that the parents of our young drivers in Niagara County would like to extend their watchful eye to raise awareness of drivers under the age of twenty-one, and
Whereas statistics show over 3,000 drivers between the ages of sixteen and twenty-one years old die in the United States as a result of car crashes, and
Whereas the Town Board of the Town of Lewiston would encourage and support a program where the Niagara County Sheriff's would notify the parents of any young driver under the age of twenty-one that have registered any vehicle that will be operated by a driver under the age of twenty-one, and
Whereas the Town Board of the Town of Lewiston authorizes and directs the Town Clerk to forward a copy of said resolution to Niagara County's Sheriff Thomas Beilein, Niagara County Legislators Ceretto and Burmaster and Acting Superintendent Donald Rappold of Lewiston Porter School and Superintendent Judith Howard of Niagara-Wheatfield School,
Therefore be it resolved that the Town of Lewiston fully supports the implementation of the STOPPED program in Niagara County and with respect to the drivers and residents of the Town of Lewiston.

Lewiston Town Board

Adopted July 24, 2006

Carried 5 – 0

Winkley recommends the program. Bax volunteered to be the Town Board Liaison.

SUPERVISOR NEWLIN

1 – Legal. Leone requested an Executive Session at the end of the meeting to discuss Personnel.

2 – Amend Date – Police retirement contract

Johnson MOVED to amend the previously approved date on the Police Retirement Contract, to read from July 10, 2006 to July 9, 2007, Seconded by Bax and Carried 5 – 0.

3 - Department Heads request meeting with Board – discussion on Town Hall renovations. Clerk Brandon submitted a letter requesting to meet with the Board regarding renovation. Johnson suggested the Department Heads attend the meeting that Edwards and Lannon are having with Frizlen.

4 – Letter of support for Village projects. Mayor Soluri requests the Boards support for two projects. 1) relocation of the historic “Little Blue House” at 870 Center Street and 2) extension of the existing Streetscape along Center Street.

Newlin MOVED to support the Village of Lewiston on their application to the above stated projects, Seconded by Johnson and Carried 5 – 0.

5 – Police car bids. On July 20, 2006 bids were received and opened for three surplus police vehicles. 1 – 2000 Ford Crown Victorian – 2FAFP71W5YX178751; 2 – 2002 Ford Crown Victorian – 2FAFP71W82X128773; 3 – 2000 Ford Crown Victorian – 2FAFP71W6YX114637.

Leone said titles need to be obtained before cars can be released.

Bax MOVED to accept the highest bidder, pending proper transfer of title, Seconded by Pacioni and Carried 5 – 0.

Johnson MOVED the following bid dollars be excepted as follows: 1 2000 Ford Crown Victorian – 2FAFP71W5YX178751 to Prevy's Motor Cars in the amount of \$376.50; 2 – 2002 Ford Crown Victorian – 2FAFP71W82X12877 to Prevy's Motor Car in the amount of \$1,159.20; 3 – 2000 Ford Crown Victorian – 2FAFP71W6YX114637 to Prevy's Motor Car in the amount of \$376.50, Seconded by Pacioni and Carried 5 -0.

6 – NPC update. Newlin said the Power Niagara Inc.; the County entity has had second thought regarding excess power, and as such is in a holding pattern. The excess funds will be returned to

each entity – including the Town of Lewiston. Power Niagara Inc. has transferred its negotiation power, in terms of electricity, back to the Niagara Power Coalition.

The Town is still working on creating its own entity to transfer cheap electricity to its residents.

The revised By-Laws have not been approved. Two drafts are being circulated.

7 – *Mining issues.* Newlin is not terribly favorable to mining. There are some severe legacy issues that need to be addressed. Lewiston is blessed with a beautiful natural environment. There generally is not a problem with irrigation. Lewiston has good soil for growing. Viable agriculture is probably the smartest use of land when it comes to cost.

In 1996 Helmich applied for a DEC excavating permit for irrigation purposes. About three years ago they obtained a 14-acre expansion of the same purpose.

A relatively short time after that, under SEQRA, they asked for an additional expansion. During the SEQRA process the DEC declared itself Lead Agency. There was a request for comments. Leone submitted comments in September of 2005, basically objecting to the expansion. One objection was that Helmich needed to apply for a town permit under the Town Excavation law.

Earlier this year DEC issued Helmich a permit for another expansion.

Mawhiney Trucking is the contractor working the Helmich site. The issue has been brought-up as to whether or not the contractor was in compliance with the provisions of the first and second permit. In other words 1) - Had they expanded beyond the 20- acres and/or 2) had they gone deeper than the depth permitted for.

Interim Town Building Inspector, William Choboy went to the site and visually determined that indeed they had exceeded the 20-acre allowance. At that time, July 10th, Leone recommended Choboy issue a cease and desist stop-order.

Subsequent to this contractor Mark Flynn provided an engineering report indicating they have not exceeded the original area. There was a calculation as to what Flynn feels is still there. The Town questions this calculation. This has been discussed between Leone, members of the Town Board, Town Engineer and Flynn and the issue has not been resolved.

The DEC has inspected the mine and it is their opinion they are still operating in accordance with the structures and regulations outlined in the first application.

At this time the Town has no technical evidence to the contrary. Therefore, on Friday July 21, 2006, Leone recommended the Building Inspectors office vacate the cease and desist order, unless/until the Town is able to obtain the evidence. The vacating of the order deals only with the existing permit, which expires on July 31st, not with the expansion permit.

Leone believes the cease and desist stop work-order, as to the new permit, is still in effect. The DEC permit issued has a special condition. Special condition #12 in the permit refers to the September letter from Leone, putting the contractor on notice that they need to apply for a Town permit. This has not been done at this time.

Newlin said the DEC has the ability to say how mining takes place and the Town has the ability to say where. Each has its own responsibility. It has been made murky because back in 1996, Mr. Helmich can point to a letter were the Town essentially waived its right to apply its current mining laws.

It needs to be determined if they are within their permit or not. Newlin would like, in the interest of the Town, to direct the Engineer to go to the mine and measure to see if they are within their permit. The Board concurred.

The Board thanked Leone for the exemplary time and effort on this project.

COUNCILMAN EDWARDS:

2 – *Weed / Ditch cleaning.* Mr. Testa of 5996 Mayflower Road gives permission to the Highway Dept. to cut down the weeds and clean the ditch that runs on the Divide Road side of his property.

Edwards MOVED to forward this request to the Engineer for review, Seconded by Pacioni and Carried 5 – 0.

3 – *Grading concern.* Mr. Weinfurtner of 760 Mary Lane has standing water in his back yard believed to be caused by the abutting neighbor. Weinfurtner is requesting someone make a recommendation as to what can be done.

Edwards MOVED to forward this request to the Engineer for review, Seconded by Johnson and Carried 5 – 0.

Edwards MOVED to forward the pond request for Gary Woods – 1804 Swann Road, Seconded by Pacioni and Carried 5 – 0.

Edwards would like to discuss a procedure for addressing drainage issues at the Worksession of August 14th.

4 – *Employee identification system.* The company the Town has used in the past for identification card is no longer doing them.

Newlin asked Winkley if the digital camera equipment in the Police Dept. could be utilized to issue ID's for employees and contractors working in the Town. Winkley will report back to the Board.

COUNCILMAN BAX:

1 - *Liaison report.*

Bax requested Andrew Ellis be appointed to the Tower Committee.

Bax MOVED to add Andrew Ellis to the Tower Committee, Seconded by Edward and Carried 5 – 0.

COUNCILMAN JOHNSON:

2 – *Sanborn Fire Company – Addition to roster*

Johnson MOVED to add Clint Farnham – 2075 Mt. Hope Road, Sanborn to the Sanborn Fire Company roster, Seconded by Bax and Carried 5 – 0.

3 – *Purchase – Keys to the Town of Lewiston.*

Johnson MOVED to purchase 50 keys, not exceeding \$1,050 with funds coming from A1620.0400, Seconded by Pacioni and Carried 5 – 0.

4 – *Riverwalk issues.* Johnson requests to address this in Executive Session.

5 – *Scovell Drive – Water main break.* Johnson requests to address this in Executive Session

6 – *Lighting request – Upper Mountain Road.* Addressed earlier in the meeting.

COUNCILMAN PACIONI:

1 - *Liaison Report.* The 40th Annual Outdoor Art Festival will be August 12th – 13th. The Marble Orchard Cemetery tours are on Sundays at 2:00 p.m.

2 – *Colonial Village Park – Fire Co. #2 requesting repairs.* Pacioni received the request and will report back at the August 14th Worksession. The lease agreement for Colonial Village needs to be reviewed to see what obligations the Town has for these repairs.

3 - *Lewiston Library Board of Trustees appointment.* Linus L. Ormsby Jr. has been appointed to serve the vacated term of Michael Shaw on the Board of Trustees.

Bax MOVED to enter into Executive Session for the purpose of discussion on personnel and pending litigation, Seconded by Johnson and Carried 5 – 0. (9:00 p.m.)

PRESENT: Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Pacioni; Deputy Supervisor Elgin; Town Attorney Leone; Deputy Attorney Boniello; Recreation Director Dashineau and Town Engineer Lannon.

Discussion on multiple personnel issues and possible litigation.

No action taken.

Johnson MOVED to exit Executive Session, Seconded by Bax and Carried 5 – 0.
(10:05 P.M.)

Johnson MOVED to adjourn the meeting, Seconded by Bax and Carried 5 – 0.

Transcribed and Respectfully submitted by

Donna Garfinkel
Deputy Town Clerk