

PRESENT: Sup. S. Maslen; Councilmen J. Ceretto, M. Johnson, D. Kilmer, and J. Langlois; Dep. Sup. C. Stojak; Town Atty. E. Brydges; Dep. Town Atty. J. Leone; Eng. B. Lannon; Finance Officer E. Evert; WPCC Adm./Op. T. Lockhart; Highway Supt. S. Reiter (7:15 p.m.); 3 Press; 20 Residents; and Clerk C. Schroeder

The Supervisor called the worksession to order. Although it is an open meeting, there would be no time for public comment, she said. It is strictly a worksession for the Board.

1) RIVERWALK SUBDIVISION: This was in reference to a request from Joseph Deck Jr., Riverwalk, LLC for Riverwalk Subdivision preliminary plat approval to allow construction of single family homes and patio homes on individual lots on property located east of Lower River Road and north of Pletcher Road, SBL# 73.00-43 & 73.00-1-39.2.

Kilmer: I've been following this project since I've been on the Board and when I was deputy supervisor, I watched Mike (Johnson) actually start this project moving in a different direction -- other than condominiums... I've read of some argument and/or disagreement over the concept of patio homes from the Planning Board. **At this point, I'm going to move to approve the preliminary plat**, which in fact, does not commit the town to approve the project. If you read the section of the code, we are allowing the preliminary plat to be revised, to be reviewed by the Planning Board again and that changes be made. Approving the preliminary plat does not mean we are approving the project. I ask Joe Leone to comment on it, if in fact I'm reading the law correctly.

Leone: Prior to a final plat approval, you have to have a public hearing. This project has been in front of the Planning Bd., twice. It went in front of the Zoning Bd. of Appeals, once. It was originally approved by the Town Board. After an Article 78 proceeding against the town, subsequently, the developer withdrew the application and decided to submit it over again. It has been in front of the Planning Bd. and the Planning Bd. voted last week 4 - 2 to recommend not approving the plan. Without speaking for the Planning Bd., I know that attached to that, however, was a statement from the Environmental Commission as well as the County Planning Bd., both of whom, with various comments, recommended approval.

... The thrust of the question that was presented to the Planning Bd. deals with the issue of area variances. Our Subdivision Regulations require lot sizes of 75' frontage. Many of the lots are less than that size. So, in order to approve the project, it would be necessary for this Board to consider whether or not the variances that have been requested are appropriate or not. Our local law, under the Subdivision Regulations, Section 22A-8 says that *the Town Board shall have the power to vary or modify the application of any of the requirements herein relating to the use, layout and platting of land for subdivisions, so that the spirit of the regulations shall be observed, public safety and welfare secured and substantial justice done.* It also indicates, however, in Part B that *applications for modification and variances shall be submitted, in writing, by the subdivider at the time the preliminary plat or final plat is filed with the Town Board. The application shall state fully the grounds and all the facts relied upon by the applicant.*

... Ultimately, this Board is going to have to decide, and I will ultimately give you the statutory criteria, that you'll use in weighing the benefits to the applicant vs. any potential detriments to the community. There are various statutory factors that need to be applied in your meeting that test.

... I'm going thru all of this discussion obviously for a reason. The fact that we've been thru an Article 78 before and we would like to try to avoid that if that is possible. Whether it is or not, that remains to be seen. Ultimately, it is incumbent pursuant to our local law of the developer to submit in writing the grounds and the facts relied upon by the applicant why it seeks the variances and why the applicant feels that he or it believes that it has met

the statutory criteria. However, Section 22A-8(B) says that those things can be submitted in writing at a time the preliminary plat or final plat is filed with the Board.

... This Board, in making any decision with regard to the preliminary plat, is saying that the reasons in writing for the variances are not being requested at this time, rather their being requested at the time of the final plat and ultimately, a public hearing. What I'm saying is, it's okay to review the preliminary plat at this point and not give the developer any basis to go forward to build on the project...

... The bottom line is, the motion is appropriate. It can be ruled upon but then ultimately, you still have to go thru the written report of the applicant -- the determination of the statutory factors that are weighing of the consideration between applicant and community whether or not you feel that that is appropriate. I felt that it was important that you understand where you are headed with this thing and why you are headed there with this thing so that you had a complete understanding of what you are actually voting on...

Langlois: By voting preliminary plat approval now, the developer is going to spend considerable money getting ready for the final. In a way, we're really trying to decide if we think it is going to go. If we all thought it was a bad idea, it wouldn't make sense for us to vote a preliminary plat approval and let him spend a lot more money and come back and have us say -- sorry Joe.

Leone: If you're saying that the preliminary plat approval can't amount to a final plat approval, then perhaps you ought to weigh the statutory considerations and have the filing in writing of the applicant preliminarily as opposed to the final...

Maslen: In other words, before we proceed -- that particular preliminary request for variance is considered.

Leone: I don't necessarily concur that preliminary approval is equal to a final approval. I don't necessarily see it that way. But the Board is free certainly to view it that way and if you do, I'm telling you that you should get in writing the reasons that the applicant feels the variances are appropriate -- with specific reference to the statutory requirements and why they feel the balancing test should be favorable to them as opposed to unfavorable to them. If you're just feeling that the preliminary plat approval is just that and there needs to be more input as to how it may be changed or whether or not the final plat approval is going to stand on its own two feet at a later date, then you can wait before you request the written reasons for the variances.

Johnson: If we voted for the preliminary plat, we could turn down the final plat at the end... What is his (developer's) reasoning for doing the preliminary to get to the final?

Leone: The developer has to determine whether or not the Town Board is generally favorable to the concept and what changes, if any, the Town Board may require prior to submission of a final plat, public hearing and a determination is it's a go or not a go... In other words, the things that you are going to be looking at and doing are very similar in nature to what the Planning Bd. has done. As I've said, the Planning Bd., after a very lengthy discussion and numerous meetings, voted 4-2 against this project; but the Planning Bd. is a recommending body. They don't have any sort of final approval. This (Town) Board has the authority to accept or reject the submission by the Planning Bd., provided that your acceptance or rejection is done reasonably and not arbitrarily.

Johnson: Would the final plat then go back to the Planning Bd.?

Leone: No. The Planning Bd. has already made its recommendation...

Johnson asked if there could be any repercussions if the Town Board were to deny approval of the final plat after having the developer go thru this additional submission. Atty. Leone said that remains to be seen.

**Langlois Seconded the Motion for preliminary plat approval of the Riverwalk Subd. for further discussion.**

At this time, Atty. Leone informed the Board that the Developer, Joe Deck Jr., as well as his attorney, were present if the Board needed to direct any questions to them.

Langlois: I've given this a lot of thought over the last "x" period of time, especially in the last week or so. We were essentially given all this information for the Board meeting that included all the details and correspondence. We've also been asked to look at the Comprehensive Plan to see how this fits in and I've gone thru that again. I've written a few comments I would like to read to the Board:

The Comprehensive Plan is just that -- a plan for the future, not tablets of stone. The required zoning and code changes to implement the plan are still six months or so away. The Town Board will have continued input on the final draft of these changes. The subject area could be changed to *Suburban Residential* for the density of houses per acre for that classification, which would more closely meet what we are talking about. Now, that zoning is Rural Residential. There needs to be a recognition that there is a need for a development that has large common areas, has large common acreage, smaller lots and a homeowners' association for maintenance of these properties in the common areas. This is in keeping with 2.3.1 Residential Land Use -- the comprehensive policy, the first sentence, which reads: *Encourage a diversity of housing types to accommodate a variety of age and income levels among residents, particularly senior citizens and the frail elderly.* Many of the senior citizens desire to own homes in an association or a development where the yard maintenance is done for them. As we said before, Niagara County Planning has approved the development. The Town's Environmental Commission recommends a negative declaration, which means approval, with the suggestion that the development have sidewalks. I understand the hesitations of the Town Board towards approval because of the continuing present zoning and comprehensive plan differences. However, the Town Board has the responsibility for the ultimate decision of what is best for Lewiston. In my view, what we should consider when we do the comprehensive plan zoning is to change the zoning in this particular area to *Suburban Residential* -- 4 Acres per unit. This development has 2\_ units per acre, including the undeveloped acreage. I believe this development meets the needs of an aging population that desires the development of smaller lots, a homeowners' association that maintains the lawns and common areas, as well as pathways for walking and open space enjoyment. The development will have direct walking access to Joseph Davis Park and all of its nature advantages. This should make it very desirable for active retirees and those who don't need or want a large spacious home and property to take care of. This development is within walking distance to Pletcher Road Park and the Lewiston Senior Center. This provides a quality-of-life enhancement. This development will have homes in the \$150,000 range, which will add many millions to the tax base, without excessive burden to the school system. The development will not require significant infrastructure additions by the town because they are all nearby. By adding these houses, there will be greater use of existing water and sewer facilities resulting in average and lower average cost for all residents or at least reduce the need for any future increases.

Ceretto: I went to the last Planning Board meeting. What I saw was the Planning Board using logic. That is what you have to use here -- logic. The taxpayers will challenge this project. It could be a cost to the Town of Lewiston. It is vitally important that we do this job right. On the **plus** side, it would be a good project. The comprehensive plan suggests that once it is adopted in the zoning laws that we do allow for this type of project and these types of projects will become part of Lewiston as we go thru that process. On the **minus** side, I look at 408 signatures of residents who have signed a petition that do not want this project. I look at the Planning Board that votes 4-2 against these substantial changes. It's area variances vs. the zoning issue -- which is the issue of the lot size... Personally, I know it's going to be challenged. I know a judge is going to decide it... I feel the zoning issue -- 75' x 150' in the current zoning laws is a requirement that has to be met. If they were willing to make these lots sizes 75' x 150', I could accept the preliminary plat. I look at the questions on the area variances and in looking at the criteria -- is this a

substantial change? That is one of the questions and the criteria the Planning Board was asking. In their minds and also in mine, it is. I also look at the criteria -- how does this affect the neighborhoods? Will it impact them? Will it impact Lewiston? I also have a fear that if we accept a variance for less lots at this time when our zoning laws are 75' x 150', what other developers will come in front of us and also ask for those variances? ... I can't remember in the eight years that I've been here that we have not voted with the advice of the minor boards. We send them to school and in the process, they are supposed to work with the developers and come up with a plan. I personally think the preliminary plat should reflect what the minor boards are asking. It's listening to the public because we put these people in place to represent the public... We, as board members, have to follow our zoning laws and we have to listen to the public. Those are the two most important things we can do. Unfortunately, I would like to see a project like this but using that criteria I can't support it at this time.

Johnson: ... The Master Plan is set up as a guideline. You want to stay as close to it as you can but as time goes on, things change... The market does bear that there are people out there looking for this type of development... I personally think that we can control this and we can watch and make sure that it stays in place. By all means, these types of things in the Master Plan, and the fact that we don't have the zoning set up that we've been pressing for so long, leaves the door open for any project or anything that is being built... I do appreciate the concerns of the residents and I think the fact that this is a preliminary plat we need to go forward. We can't ask this developer to sit back and wait to we get our zoning in compliance.

Maslen: John, you're absolutely right. The committees are bound by the information we give them. They're bound by the codes. They're bound by procedures. They're bound by many other issues. The reason why the Town Board is the last deciding group on this matter is that we've been elected to look forward. We've been elected to look at what might be out there in 2030 and what this community might be like and what the age group of the residents might be. I will admit I had some reservations about this particular project. There are some beautiful homes going into that area that I want to be sure they maintain their value and that whatever is put in there is by all means a credit to this community. I do understand the concept of a retirement community or a 2-person professional home for those individuals with a way of life that does not allow them to have a large lawn and a lot of things that they have to care for. In trying to weigh the two of those, it's a very difficult thing. We really need to look beyond what we see today. We need to stretch ourselves a little bit... I did take the opportunity but was not able to call as many of the people on the list that I wanted because it did disturb me that some of the people that signed petitions are people that I know well... Before I could absolutely disapprove this project, I would like to invite these people in to look at the concept and look at where this is positioned in our town. Actually see and envision what we've tried to envision all along. I'm in favor of continuing to try and come to an agreement that everyone is comfortable with...

Kilmer: ... I went to Williamsville and I went thru the different model homes that they had. They were selling them faster than they could break ground on them in Williamsville. As exactly what the Master Plan stipulated, we have an aging population. We have a lot of baby boomers. That's exactly the type of people that are starting to purchase these properties. People that are leaving for the winters and needing to have their properties taken care of and with less maintenance. It's beautiful out in Williamsville. They have the same exact concept. They have large 24,000 - 30,000 sq. ft. houses that lead right into a patio home concept. It's not exactly verbatim but it is a subdivision that looks similar to this. A lot of people have not done their homework and drove out and looked at it, including some of the people on the Planning Bd. You have to see it. It doesn't look as bad in real life as it does on paper. They are actually very beautiful properties and they are very well maintained. I'm also in favor of approving the preliminary plat.

Ceretto: Since this has already been legally challenged, and it's going to be challenged again, is this an issue of an area variance or is it a zoning issue? If it is the area variance -- there's a criteria. Our zoning laws say 75' x 150'. If it's zoning, then we have to do 75' x 150'. If it is an area variance, then we can make smaller lots. That is the issue and that is what is

going to be challenged. Will it affect the neighborhood? Will those smaller lot sizes affect the cost of the hardship on the residents in that area? If it isn't, then we can drop the lot sizes. If it is, then we can't. Am I right?

Leone: Essentially, you are right. You listed some of the criteria. Early on, when we first started this, I said that our local law requires the developer, either preliminarily or upon the filing of the final plat, to give us in writing how they address those various statutory criteria and whether or not the variances are going to be allowed and why they feel they should be and to give you those reasons in writing... Let me try to put it in a different perspective. The written requirement can either be done at the time of the filing of the preliminary plat or the final plat. If you were going to go forward and vote on the preliminary plat tonight without that criteria, you have effectively told the developer to submit that with the final plat. If you were more comfortable, before determining whether or not you want to vote on the preliminary plat by having the developer submit those things in writing, then you have that option... Our statute gives you that choice.

Ceretto: I feel that right now I don't have enough information to vote on this issue.

Langlois: I got a call from one of the members of the Planning Board that voted against this. He had told me that it was because the way the comprehensive plan was set up for this particular area. It was rural rather than suburban and that if we worked with the Master Plan again, we could designate this area as suburban residential and he would then be in favor of it. He's not against the project; he's against this particular designation for this area that was put in the Master Plan.

The Supervisor called for the question.

Ceretto MOVED to table the motion to allow for more information on the preliminary plat. There was no second.

Langlois called for a vote on the question.

**The Motion to approve the preliminary plat for Riverwalk Subdivision was carried 4-1 (Ceretto).**

2) HIGHWAY BUDGET MATTERS: Johnson noted that at the last meeting, the Board discussed having a worksession to go over some budgetary concerns of the highway department. At the regular meeting, there was a motion on the floor to start an Article 78 proceeding against the Highway Supt., which was subsequently tabled, for additional information from the Highway Supt. with regard to his budget. Since that time, the Highway Supt. has laid off three employees with possibly more to come until the end of the year. The Highway Supt., as part of his proposal made on 7/23, claimed that there were monies due from the County, as part of the snow removal process. At that worksession, Reiter was directed to sit with the Supervisor and budget officer to "work out the numbers", so the Board could determine what direction it was going to take. "Since then, all hell broke loose because I didn't want to see anybody get laid off at this point. It's the same manpower that we had from the previous highway superintendents... I'm sure there is enough work out there to keep everybody going..."

At this time, **Johnson MOVED that the Highway Supt. be allowed to make the necessary fund transfers as presented in Reiter's proposal of 6/23, if it can be done legally. Otherwise, to authorize funds out of the infrastructure account to reconsider the lay-offs and try to address the numerous drainage concerns. Seconded by Ceretto, for discussion.**

Maslen: Last Thursday, Steve gave me a list of hours that were actually snow removal hours that he had paid for out of the general repair personnel fund... As I've said before, the Board cannot, by law, tell the Highway Supt. how many people he can have and how many people he can't have. You establish a budget and the budget is followed. When it

comes to snow removal, it is this Board's responsibility if they have not budgeted enough for snow removal, to provide those funds. It is a public safety issue. Where we got into trouble is -- that snow removal came out of the general payroll, rather than the snow removal payroll. I have not had a chance to go over the individual time sheets to see how that went. I've been given some numbers but I need to verify that. We have to take this from excess funds. We can't take this from anywhere else because there is no money left in the snow removal fund. This will have to come out of the fund balance. It would be transferred into the general repair personnel fund. Whether that would be enough is doubtful but it would be enough to continue with who we have at this particular point. The County has stated that they had a problem with some computer situations and therefore, were delayed a year or so in giving us the money for services that have already been rendered. In the beginning of this year, they gave us some upfront and then they gave us more. They still haven't figured out how much they owe us. We're not sure where we are at this point, which doesn't make anybody very comfortable. The third thing is, at this point, we're always under the impression that that money that we budget as revenue is there the first day and it isn't. It comes in on a monthly basis from the county for sales tax. At this particular point we have only received 67% of our revenue. With only 67% of the revenue, we can only spend 67% of the budget. We have to be very, very careful before we start transferring funds that we don't have. We need to have a fund balance going forward so that at the beginning of next year, we have monies to start the year with. That is where we are on that. I am working to try and figure out what is happening. I was not able to do that from Thursday until now. Mr. Reiter and I had several conversations -- when people work in a special area, the payroll sheet needs to reflect that that is where they have been working. That is where their hours are charged... I will be ready by the next board meeting. I will have all the facts and figures and have the verifications to make sure that that \$51,000 he states he did for snow removal needs to be reimbursed was taken out of that account.

Kilmer: ... I have no problem with shoring up Mr. Reiter's accounts to keep the 14 men that we had determined during budget time. To go back and let you change the game plan when we determined the work force -- and we do determine the work force by budget -- is inappropriate and wrong. I've no problem with keeping the 14 and shoring up his budget with the amount of money necessary to keep those 14 employees until the end of the year... The budget sessions said we budgeted for 14. He rolled the dice and he lost. The fact of the matter is, he overspent his personnel lines. We're holding him accountable for his budget lines as we told him we would.

Johnson: We also had a contract that came in after the fact. It's very difficult to make a budget in October and then a contract comes in afterwards.

After Johnson reiterated his motion, **Kilmer MOVED to table until the Supervisor has verified where the funds are supposed to be, Second by Langlois and carried with 3 Ayes (Kilmer/Langlois/Maslen) and 2 Nays (Ceretto/Johnson). Motion to table carried 3-2.**

Reiter asked to comment: I'm not here to argue with Mr. Kilmer but I have to remind him what you (Maslen) told me to do at the beginning of the year last year and that was to try and keep the guys and not lay anybody off... You (Maslen) told me to keep the gentlemen as long as I could -- the best that I could. That is why I thought we got to the situation a couple of weeks ago when I asked if you were going to transfer the funds and you said you couldn't do that. That is how I based my decision of laying people off.

Maslen: You are absolutely right. I did not want to lay three men off. What I wanted to do was work within that budget and to do that, you were going to need the cooperation of every single man in that department and Steve, you and I both know, that you did not get that cooperation... It takes all of us to work together to keep this thing going. It meant that people would not be working out of class. It meant that laborers would be doing laborer work. Everyone would be doing the work they were supposed to. There would be no excess overtime. There would be no make-up overtime. They would be flexible in order to work their schedules so that everyone would have an opportunity to keep their job. I asked that of you and I asked that of them during the negotiations.

Reiter: The only thing I would dispute and I understand your feelings, but you talked to the union members about that. You never were that specific with me as you are being right now... The only comments I've ever had from you on this situation is you told me to do whatever I had to do to keep the men. You never were that specific with me as you are being now.

Maslen: I'm very sorry if you didn't understand that because I will not transfer funds from work that has to be done and was set aside for equipment and materials for the actual jobs you are supposed to do to keep the men going.

Councilman Johnson left the meeting at this time: 8:05 p.m.

3) "NO PARKING" SIGNS -- PLETCHER ROAD PARK: Kilmer said this had been referred to the signage committee for review. Maslen said it was her understanding that they were in the process of changing the local law to allow these signs. She asked the Attorney to report on this.

Brydges said he met with Chief Winkley to confirm that under Section 1660 of the Vehicle & Traffic Law, towns have a right to have local ordinances with respect to parking. The town would need to create an ordinance amendment and hold a public hearing prior to its adoption. Brydges reported that "no parking" signs exist there now; however, there are not enough and they are not in the right area. Before we took the next step, the Chief and I thought it would be a good idea to ask the Town Clerk to do some research if that some time in the past there was some resolution to permit no parking on Pletcher Road. If that turns out to be the case, the Chief can go ahead and have as many no parking signs as he wants to there.

Langlois: But if this was done by town resolution, we can have a town resolution today to do it -- to supplement that one.

Brydges: If we already have a town resolution we don't have to do a thing. We can add more signs... Under the V&T Law, it simply says that communities are allowed to restrict traffic... The other thing they say is parking -- but it has to be done by amending the local law. We have a local law with respect to parking, Ch. 24 *Vehicle & Traffic*. They list areas of the Town of Lewiston where no parking zones exist and one of them is not Pletcher Road. I assumed that that meant we had to amend the town law to add Pletcher Road but, the fact that there are no parking signs up there now, makes we ponder what happened in the past that allowed those to go up there.

4) MILLER ROAD STOP SIGN -- Maslen said this had been referred to the Signage Comte. for inspection of the area. The Board has not received any correspondence to date.

Brydges noted that patrols have been put in that area for over a week. Chief Winkley will submit his results accordingly.

5) MEDICAL INSURANCE: Langlois noted that at the last board meeting, he talked about the subject of eliminating insurance coverage for part-time elected officials. Since then, he has given the board members a copy of the proposed changes to the employee manual with corresponding changes highlighted in bold.

Section 805 - Insurance Coverage (p.50)

Eligibility - **Full time** Elected officials and full-time employees are eligible to participate in the available insurance plans...

Section 806 - Medical Plan (p.51)

Coverage - The Town will make available major medical, hospital and surgical insurance to each eligible employee, including full-time Elected Officials...

Add new paragraph: ***Part-time elected officials taking office as of January 1, 2004 are not eligible for paid health coverage by the Town. However, part-time elected officials may participate in the Town insurance plan by paying the applicable premium.***

Premium Contributions - Except as noted in the paragraph below, the Town will pay the full premium for individual or family medical insurance coverage, as the case may be, for each eligible full-time Elected Official and full-time employee. ***(DELETE - A part-time Elected Official and) An*** eligible part-time employee...

Section 807 - Flex Care Plan (p.52)

Summary - All ***Full Time*** Elected Officials and full time employees will receive the Town's Flex Care Plan...

Eligibility - Each ***Full Time*** Elected Official and full-time employee is eligible to participate in this plan.

Section 808 - Medical Insurance Buy-out (p.53)

Eligibility - Full-time employees, including ***Full Time*** Elected Officials who are eligible for medical insurance coverage ... may receive a cash buy-out...

Part-time, Temporary and Seasonal Employees - Part-time (***including part-time elected officials***), ... are not eligible for this medical insurance buy-out.

Amount of Buy-out - A full-time employee and full-time elected official who is eligible for the medical insurance buy-out will receive an amount up to two hundred and fifty dollars (\$250) per quarter. ***DELETE - Part time elected officials eligible for the medical insurance buy-out will receive an amount up to one hundred and twenty five dollars (\$125) per quarter.***

Section 810 - Medical Insurance for Retired Employees (p.56)

As of January 1, 1999 current full time employees and full time elected official with at least 15 years of service at time of retirement will be grandfathered and the policy in effect immediately prior to January 1, 1999, will apply.

***DELETE - Part time elected officials 62 years of age or over who have served 12 consecutive years in office will be eligible for 50% of the cost of the plans offered full time employees, providing proof that no other coverage is available. Full time elected officials who are age 62 or over with twelve years of service will retain coverage at the Town's expense.***

***ADD - Retired part-time elected officials, excepting those receiving benefits as of January 1, 2004 are not eligible for Town-paid health insurance.***

Premium Payment (p.57)

Employees ***and elected officials*** who retire with at least five years of service may opt for coverage under the Town plan. This coverage would be at their own expense.

**Kilmer MOVED to approve the above-referenced changes to the policy manual. Seconded by Langlois.**

Langlois: Dan (Kilmer) and I have talked about this for some time. I talked about it when I first came on Board as you know because the benefits that we had years ago, you had to only be here for five years and you cost the town \$250,000 in future health insurance which is ridiculous. We're still paying some of those folks. We made a modest change back then.

Now, we're saying that part-time elected officials should have their insurance coverage from their regular jobs and that these should be modest paying jobs with no future benefits. Let their regular job handle the benefits. This is becoming the case all over New York State. These huge, huge costs are bankrupting communities. We're taking a positive step and maybe taking leadership.

**Motion carried 4-0.**

6) DIFFUSED AERATION SYSTEM: Leone said the awarding of Contract 103C -- Air Piping and Appurtenances -- was tabled at the board meeting. At that meeting, Contracts 103A -- Fine Bubble Diffuser Equipment and 103B -- Blowers and Appurtenances were approved. One bid was received for Contract 103C from John W. Danforth Co. in the amount of \$119,000. "Why it was questioned was that Danforth submitted the bid section of the proposal only. They didn't fill out the specs. If we had multiple bids, and they hadn't filled out the specs, then we would have no way of knowing whether or not they were going to actually agree on what the specs were or not. Under that set of circumstances, I would probably advise the Board to either throw out all the bids and re-bid it or to eliminate them as a bidder because they haven't complied with the specs."

Leone said he spoke with Tim Lockhart, and the bidder has subsequently completed the specs portion of the document so they will be held accountable for the specs, as drawn. This Board has the authority to waive the defect in bidder if it so chooses.

**Langlois MOVED to waive the defect in the compliance with completing the bid for Contract 103C as originally submitted. Seconded by Kilmer and 4-0.**

**Langlois MOVED to accept the bid for Contract 103C and award the contract to John W. Danforth Co. in the amount of \$119,000 and to authorize the contractor to provide complete compliance with the specifications, as written. Seconded by Kilmer and carried 4-0.**

7) PATHWAY PROJECT: Kilmer asked that this item be removed from the agenda.

8) EQUIPMENT RENTAL: Kilmer noted that, looking thru the abstract, that equipment is being rented prior to Town Board approval. Maslen said it is a matter of procedure so that everyone is made aware of what is going on. "We just want to know what the costs are going to be. We're not going to say no, it's just a point of interest for the town board to understand what is going on," Kilmer said.

9) PROCLAMATION -- JOAN GIPP: Maslen said a request was made from the Residents for Responsible Government (RRG) that a proclamation be issued by the Town of Lewiston proclaiming **August 1, 2003, JOAN GIPP DAY**. She read a proclamation honoring former town councilwoman Joan Gipp (1976-1988). Joan was instrumental in drawing attention to public health and environmental issues -- from pollution in the Niagara River -- to dangerous chemical and radioactive exposure on the Lake Ontario Ordnance Works ("LOOW") property -- to contamination of the community from nearby plants -- to the dangers of landfills in neighborhoods (such as those surrounding the Hyde Park landfill, which today is part of a Superfund site). Councilman Ceretto, as liaison to the Environmental Commission, was asked to present this proclamation at a presentation ceremony on August 1<sup>st</sup>.

10) Drainage Issues: Maslen said there have been several drainage matters brought before the town board in recent months; specifically on property located at 779 Scovell, 5840 Garlow Road, 468 Fuller Place, 4399 Autumn Lane & 5844 West Street. "We've had several situations with the drainage and it continues to rear its ugly head... Because we've done the drainage in Morgan Farms, it has prompted other locations to request the same consideration."

Kilmer referred to the complaint filed by Marcella Sharman, 5844 West Street. When the town did the reconstruction of the roads and drainage in Sanborn, the pipe the town put in front of her property takes the drainage from off the street and almost everything that drains

in it and runs it right down Ms. Sharman's side yard. "She has a huge ditch and she is dealing with all this standing water. She would like the pipe extended just past her property line and covered..."

Reiter: When they put those houses there, that drainage was there. It is a nasty situation but it would be very difficult to do anything because in order for us to clean that ditch or do a lot of work there, our machine would either rub up against one house... You're not going to get a truck in there. They allowed those houses to be built right next to that large ditch. It probably wasn't the most prudent thing to do. It's very similar to what is happening with the green spaces. There wasn't any way to get in there to do anything after they were all dedicated... It's the same thing with the Kohn's who live two lots to the north. They've called me several times too. I said I would put the pipe in but they do not want to pay for the pipe. I said they would have to talk with the Town Board. Same with these people (Sharman). It is all private property. We don't own those ditches.

Kilmer: If it is their property, what is to keep them from filling those ditches in?

Reiter: You have a drainage law...

Maslen: According to their agreement -- a drain, ditch or swale shall be provided between abutting properties of sufficient size to carry surface water in the direction of natural drainage.

Reiter: That has nothing to do with this particular property.

Kilmer: It's a big pipe carrying a lot of water from other directions.

Maslen: Where did this pipe come from to begin with?

Reiter: First of all, those two lots drain all of Sanborn. We did clean that ditch before the one house was moved there. It's been cleaned within the past ten years, which is not unusual for a ditch. Secondly, if you look at your town drainage law, you will not alter, divert, dam, change -- whatever, without town board approval...

Langlois: I am intrigued by your statement that this drains all of Sanborn. Sanborn is a very important community. It should be drained properly. If we have these things here that haven't been done correctly, let's use some infrastructure money to get them corrected.

As for the compliant on Scovell Drive, Reiter said this was one of his drainage projects he scheduled to do. "I haven't finished Scovell Drive yet. I do them as excess funds become available in my budget."

Reiter was asked to obtain cost estimates for correcting various drainage issues on the five above-referenced properties and to provide these estimates and report on these at the August board meeting.

11) LOOW SITE ASBESTOS: Leone said this is a litigation matter that needs to be discussed in executive session, perhaps at the next board meeting.

12) INDIAN HILL CLOSURE: Eng. Lannon noted that the trial period for closing Indian Hill Road has come and gone. "We contacted the DOT to see what their interest is, if any. They do not have any and they said it is up to the town to either return it to its original condition or make it permanent. If the town were going to consider making it a permanent closure that we might want to discuss with them some suggestions that they may have on improvements in the area, etc."

Ceretto recommended involving Chief Winkley as to the number of accidents that have occurred since its closing.

Langlois: ... I think turning lanes would make that flow much better and much safer. If we decide that we want to do it this way, we need to move ahead if we decide to do that and get the road widened and get turning lanes put in.

**Langlois MOVED that Indian Hill Road continue to be closed for an additional two months, during which time the town will work with the State DOT to determine how the intersections could be re-designed, Seconded by Ceretto.**

Maslen: My concern is that we haven't been thru a winter yet. I'm concerned about the traffic backing up on Indian Hill in the wintertime... That is something we have to look into. We might need a few more months to really look at it. We've haven't gone thru all the seasons yet.

**Motion carried 4-0.**

13) RESOLUTION re Sewer Improvements: Maslen noted that the following resolution needs approval as part of the application process for obtaining State Comptroller approval for sewer improvements. Atty. Brydges read the resolution, as follows:

**RESOLUTION AUTHORIZING AND APPROVING AN APPLICATION FOR PERMISSION OF THE STATE COMPTROLLER FOR INCREASE IN MAXIMUM AMOUNT FOR SEWER IMPROVEMENTS WITHIN THE AREA OF THE TOWN OF LEWISTON OUTSIDE OF ANY VILLAGES**

WHEREAS, the Town Board of the Town of Lewiston (the "Town") previously called and held a public hearing determining that it is in the public interest to construct certain sewer improvements, consisting of the construction of 7,300 linear feet of an 8-inch diameter sanitary sewer, including land or rights in land, original furnishings, equipment, sitework, machinery and apparatus required in connection therewith (collectively, the "Sewer Improvements") at a maximum cost not to exceed \$516,149. The Sewer Improvements are all within the area of the Town outside of any villages, which area has been determined to be the benefited area (the "Benefited Area") pursuant to Article 12-C of the New York State Town Law as more particularly described in the Report on file with the Town Clerk. On February 21, 2001 the Town adopted a bond resolution (the "Bond Resolution") authorizing the issuance of up to \$516,149 serial bonds for the Sewer Improvements. Certain conditions encountered during construction of said Sewer Improvements required the testing of sub-surface soils, the results of which testing have caused the Sewer Improvements to exceed the initial maximum estimated cost stated in the Bond Resolution, and based upon a further analysis and updating of the Report by the Town Engineers, the conditions encountered will cause the initial maximum estimated cost to increase by approximately \$600,000. The maximum amount now proposed to be expended for such Sewer Improvements is \$1,116,149, to be financed through the issuance of additional bonds by the Town in an amount not to exceed \$600,000 pursuant to the Local Finance Law.

WHEREAS, on April 28, 2003, the Town Board adopted an Order to conduct a public hearing on increasing the maximum amount expended for the Sewer Improvements. On May 12, 2003, the Town Board held the public hearing and adopted a resolution authorizing the Sewer Improvements and the filing of a copy of said resolution, in duplicate, in the office of the State Department of Audit and Control, at Albany, New York, together with an application, in duplicate, for the permission of the State Comptroller to increase the maximum amount authorized for said Sewer Improvements (the "Application").

WHEREAS, the Town Board now seeks to adopt this resolution as part of the information required pursuant to 2 NYCRR Part 85 in connection with said Application.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board that it be and hereby is determined as follows:

- (1) The Application was prepared at the direction of the Town Board.
- (2) The contents of the Application are accurate.
- (3) The Sewer Improvements for which permission of the State Comptroller is sought are in the public interest and will not constitute an undue burden on the property which will bear the cost thereof.
- (4) The cost of the Sewer Improvements is to be assessed in whole or in part against the Benefited Area, and all real property so assessed will be benefited by the proposed Sewer Improvements and no benefited property has been excluded.
- (5) All of the property benefited is included within the proposed Benefited Area,

BE IT FURTHER RESOLVED, that the Town Clerk be and she hereby is authorized and directed to file a certified copy of this resolution in duplicate, in the office of the State Department of Audit and Control, at Albany, New York, to be included as part of the Application for the approval of the State Comptroller to the providing of the aforesaid Sewer Improvements.

**Councilman Kilmer MOVED to approve the foregoing resolution, Seconded by Councilman Langlois and carried 4-0.**

14) RESOLUTION re Water Improvements: Maslen noted that the following resolution needs approval as part of the process for obtaining State Comptroller approval for water improvements with the Town of Lewiston Water Improvement Area. Atty. Leone read the resolution, as follows:

**RESOLUTION AUTHORIZING AND APPROVING AN APPLICATION FOR PERMISSION OF THE STATE COMPTROLLER FOR WATER IMPROVEMENTS WITHIN THE TOWN OF LEWISTON WATER IMPROVEMENT AREA**

WHEREAS, the Town Board of the Town of Lewiston (the "Town") proposes to construct certain water improvements, consisting of: the acquisition, construction, and installation of improvements to the Town's existing water supply and distribution system of the Town-wide district known as the Lewiston Water Improvement Area (the "LWIA") established under Article 12-C of the New York State Town Law as more particularly described in the Report on file with the Town Clerk, and the replacement of approximately nine (9) miles of existing waterlines with new 8-inch, 10-inch, and 12-inch waterlines in nine (9) areas within the LWIA, including new valves, hydrants, and other appurtenants thereto (the "Improvements").

WHEREAS, the maximum amount proposed to be expended for the Improvements is \$5,000,000. The proposed method of apportioning the costs of such Improvements shall consist of an assessment levied and collected on an ad valorem basis and the proposed method of financing the costs of such Improvements is through the issuance and sale of bonds in an amount not to exceed \$5,000,000 of said Town pursuant to the Local Finance Law. It is estimated that the expense of such Improvements shall exceed one-tenth of one percent of the estimated full valuation of the taxable real property in the area of the Town outside of villages.

WHEREAS, on April 28, 2003, the Town Board adopted an Order to conduct a public hearing on providing for the Improvements. On May 12, 2003, the Town Board held the public hearing and adopted a resolution authorizing the Improvements and the filing of a copy of said resolution, in duplicate, in the office of the State Department of Audit and Control, at Albany, New York, together with an application, in duplicate, for the permission of the State Comptroller to approve said Improvements (the "Application").

WHEREAS, the Town Board now seeks to adopt this resolution as part of the information required pursuant to 2 NYCRR Part 85 in connection with said Application.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board that it be and hereby is determined as follows:

- (1) The Application was prepared at the direction of the Town Board.
- (2) The contents of the Application are accurate.
- (3) The Improvements for which permission of the State Comptroller is sought are in the public interest and will not constitute an undue burden on the property which will bear the cost thereof.
- (4) The cost of the Improvements is to be assessed in whole or in part against the benefited area in the LWIA and all real property so assessed will be benefited by the proposed Improvements and no benefited property has been excluded.
- (5) All of the property benefited is included within the proposed benefited area in the LWIA.

BE IT FURTHER RESOLVED, that the Town Clerk be and she hereby is authorized and directed to file a certified copy of this resolution in duplicate, in the office of the State Department of Audit and Control, at Albany, New York to be included as part of the Application for the approval of the State Comptroller to the providing of the aforesaid Improvements.

**Councilman Langlois MOVED to approve the foregoing resolution, Seconded by Councilman Kilmer and carried 4-0.**

15) POST AUDIT: A request was made to include the following vouchers for post audit payment: Home Depot -- \$471.94; Office Max -- \$593.02; Office Max Credit Plan -- \$245.02; Radio Shack -- \$61.97; Sam's Club -- \$146.87. The above vendors are charge card purchases and, if paid late, substantial finance charges and late fees are applied.

**Kilmer MOVED for approval, Seconded by Langlois and carried 4-0.**

In other matters, Maslen referred to a written complaint filed by Dr. Judy Wesolowski, 472 Barton Drive. During the summer of 2000, Dr. Wesolowski noticed standing water by the side of her house and hired a plumber to install a new storm sewer from her home to the curb area. At this same time, the Gorgeview project of new streets and sewers was occurring. She was told by the town that her storm sewer would be connected to the town's infrastructure. This never occurred and she is concerned that the water is draining nowhere.

**Kilmer MOVED that the Highway Supt. be directed to fix the problem as addressed by Dr. Wesolowski, forthwith. Seconded by Ceretto and carried 4-0.**

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**Kilmer MOVED to adjourn, Seconded by Langlois and carried 4-0.** Time: 9:15 p.m.

Transcribed and  
Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk