

August 14, 2006

Worksession

7:00 p.m.

Present: Supervisor Newlin; Councilmen Edwards, Johnson & Pacioni; Dep. Sup. E. Elgin; Atty. J. Leone; Dep. Atty. D. Boniello; Eng. R. Lannon; Finance Officer A. DiRamio; Dep. Clerk C. Schroeder; 2 press; 2 residents

Excused: Councilman Bax

The Supervisor called the meeting to order at 7:15 p.m.

Johnson asked that the following items be added to the agenda: 1) Assessor's Certification/Training; and 2) Letter of Support for a training course for ATVs.

**Johnson MOVED to adopt the agenda, as revised. Seconded by Pacioni and carried 4-0.**

Amendment to Animals Law (Dogs): As stated at the public hearing, Newlin said no action would be taken on the proposed local law on the amendments to the Animals Law (Dogs). He was approached by Justice Sheeran who indicated that he, and Justice Gee, had concerns with the amendments as written and would offer some suggestions to the Board. Newlin said he would be meeting with Justice Sheeran on Wednesday.

Approval of Abstract: **Pacioni MOVED to approve the Abstract of Claims, Nos. 2168 to 2628 and recommended payment in the amount of \$442,785.65; plus a post-audit of \$306,535.35; plus a post-audit of \$64.80 to HSBC Bank. Seconded by Johnson and carried 4-0.**

Patrick Development: Eng. Lannon said Patrick Development plans on retaining a landscaping firm – NDT Landscaping. A schedule was not readily available. The developer would be reaching out to that landscaping firm and would call him back with an expected time schedule. Lannon said he would send the developer a confirming letter of his understanding saying that that would be addressed within this fall's planting season. Newlin said he would contact Mr. Beseth and Mr. DiFrancesco informing them of such action.

Lighting Update:

Saddlewood Subdivision: Lannon said he met with Kim Johnson, National Grid. The subdivision is still under development. There are lights on two or three of the four corners. Lannon said he is asking for a single light on the fourth. I don't know if the Homeowners' Association wants additional lights but beyond that based on my understanding of town policy it warrants the consideration of one additional light at this point in time. Lannon said Ms. Johnson will be forwarding an estimate to him in the near future for the Board's consideration.

670 Upper Mountain Road: Lannon said this property is two houses in from the intersection of Annover and Upper Mountain Road where there is a street light currently. In his estimation, Lannon said the property at 670 Upper Mtn. is too close in proximity to that intersection to warrant its own street light. There are other avenues the homeowner has available to them – such as working directly with National Grid but in his estimation it is not a town problem.

Johnson said he and Eng. Lannon would contact the resident at 670 Upper Mountain.

Pond Site, 1804 Langdon Road: Lannon referred to a request from Gary Woods to have a 40'x80' pond dug on his property. All the material removed will be used for landscaping on his property. Mr. Woods requests to be exempt from excavation permit fees.

Based on a review completed 7/13, Mr. Britton recommends approval with the condition that a silt fence is installed to protect the Town-owned ditch on

Langdon Road from the transport of sediment (during construction) off-site. The Town Board would be considering this an application for a permit under the excavation law. Mr. Woods is requesting waiver of the town fees as required by the excavation law and a waiver of the property set-back on the east property line.

Newlin asked to discuss this matter further in executive session as it may have an impact on the pending litigation regarding mining.

Also, Johnson questioned whether this needed review of either the planning or zoning board. We need to check that out.

Mining Update: Newlin said the Town of Lewiston imposed a stop work order on the Helmich Mining Site located on Ridge Road. The Town of Lewiston was issued with a Temporary Restraining Order issued by Supreme Court Justice Kloch allowing mining activities to continue. The Town cannot appeal this action, he said. A court date is scheduled for Thursday (8/17) to try and work thru some of these issues. Newlin said they would be seeking private advice of counsel regarding this case in executive session.

Drainage:

760 Mary Lane: Lannon referred to a memorandum from Eng. Britton in response to a request by the homeowner (Scott Weinfurter) to help correct a drainage problem along the rear property line. Based on a site inspection conducted on 8/3, it is Britton's recommendation that the Town Board consider granting the homeowner's request to allow the Highway Supt. to work with the property owner at 760 Mary Lane, and adjoining property owners, to improve the drainage conditions for the impacted residents that abut the easement. Although the residents in the area created the situation (over time) the owner at 760 Mary Lane is limited to working on his property, while the town has the ability to work across several lots within the existing easement.

The Board requested that ditch cards be signed by property owners if entering private property.

Corner of Mayflower/Divide Road: Lannon referred to a memorandum from Eng. Britton in response to a request by the homeowner located at 5996 Mayflower Road (Anthony Testa) to clean and regrade the existing roadside drainage ditch along Divide Road. A site inspection was conducted on 8/3. The existing ditch is overgrown with weeds. The ditch is located within the Town R.O.W. and therefore does not require Town Board review, approval or recommendation. Mr. Testa was advised to contact the Highway Department to schedule the work.

5873 Walmore Road: Edwards referred to a memo from Paul Haseley. He has a creek which drains water thru his property and has caused erosion on the bridge that goes over it. The Engineer was asked to conduct a site inspection and report back with a recommendation.

560 Fairway Drive: Edwards said he was just made aware of this request from the homeowner. There is a ditch in the rear of the property that collects run-off drainage from yards adjacent to his property. The ditch fills with stagnate water and attracts mosquitoes. The Engineer was asked to conduct a site inspection and report back with a recommendation.

Councilman Edwards said he would meet with Eng. Lannon and Supt. Reiter to determine a procedure for addressing drainage issues. He would report back at the regular meeting.

NPC Update and By-Laws: Newlin said the Power Coalition met on 8/11 to discuss the issue of "load factors". There is some on-going discussion between some of the attorneys and the Power Authority. We'll get the results of those discussions when the Power Coalition meets on Friday.

With respect to the by-laws, Boniello said they are essentially complete. There was one modification. He would forward a revised copy to the Town Board for their approval at the next meeting.

Parks/Transfer of Funds: Pacioni referred to a request from the Recreation Director to transfer \$299.00 from Parks Contractual (7110.400.B) to Parks Equipment (7110.200.B) to cover the cost of Equipment purchased from the Parks Contractual. The Equipment line has been recommended by the Town's auditor for record keeping purposes.

**Pacioni MOVED for approval. Seconded by Johnson and carried 4-0.**

Water/Transfer of Funds: Johnson indicated that the Water Dept. had to purchase new water meters to re-stock its supply. **Johnson MOVED to transfer \$4,692.48 out of H82 to Water Contractual to cover the purchase of the meters. Seconded by Edwards and carried 4-0.**

Oak Run Estates: Lannon referred to a request from Developer Glenn Andrews for two model home building permits in Phase I of the subdivision.

**Johnson MOVED for approval pending approval of the PIP's and with the understanding that no Certificate of Occupancy be issued until Phase I construction is complete and accepted by the Town of Lewiston. Seconded by Edwards and carried 4-0.**

Culvert Pipe Refund: Edwards referred to a memo from Supt. Reiter: As a result of repairing Tuscarora Road, it has been necessary to install pipe on the east side of the highway to prevent erosion of the road shoulder. Mr. Ligammari, 5965 Tuscarora Road, had previously paid to have pipe installed in front of his home. Since the rest of the neighborhood, including Mr. Ligammari, needed the pipe, he should be given a refund.

**Edwards MOVED to reimburse Mr. Joseph Ligammari in the amount of \$435.24 for sale of the pipe, Seconded by Johnson and carried 4-0.**

Vacant Homes in Lewiston: Johnson said there are some major concerns with abandoned and vacant properties throughout the Town. Mr. Kenney, Ordinance Enforcement Officer has inspected these areas. Most of these homes have been vacant for some time and are in need of repair or demolition. Johnson said the Town has to look at what options it has. There are major safety concerns.

Boniello said he would work with the Ordinance Enforcement Officer and identify the properties in question. A letter will be sent by Mr. Kenney to the property owner indicating why they are in violation of town code giving them a reasonable opportunity to correct it. If nothing is done to correct the situation, Boniello said he would send them a second notice giving them "x" amount of time to make the necessary repairs. Thereafter, if the Board is so inclined, the Town would take them to court. Boniello was asked to provide an update at the next meeting.

Tervo Subdivision: The Pl. Bd., on July 20 reviewed a request from Erik & Sharon Tervo for one lot, 180'x400' on the north side of Lower Mountain Road, SBL# 90.00-3-46.11, and recommends approval, as presented. The Niagara County Planning Board recommended approval. The Environmental Commission recommends a Neg. Dec.

**Johnson MOVED to issue a Neg. Dec. for the subject property, SBL# 90.00-3-46.11. Seconded by Pacioni and carried 4-0.**

**Johnson MOVED for approval of the Tervo Subdivision, as presented. Seconded by Pacioni and carried 4-0.**

Peach Festival Parade: Newlin referred to correspondence from the Chairman of the Peach Festival Parade. Registration is due by month end. This was deferred to the Board Meeting to determine any cost involved.

Burbas Subdivision: The Pl. Bd., on July 20 reviewed a request from Kathleen Burbas for one lot on Ridge Road, SBL# 101.12-2-27 and recommends approval, as presented with a variance to the required 75' front yard frontage to 41.66' and a variance to the required 150' lot to 146'. The N.C. Planning Board recommended approval. The Environmental Commission recommends a Neg. Dec.

**Johnson MOVED to issue a Neg. Dec. for the subject property, SBL# 101.12-2-27. Seconded by Pacioni and carried 4-0.**

**Johnson MOVED for approval of the Burbas Subdivision, as presented. Seconded by Edwards and carried 4-0.**

Riverwalk/Phase 2C: A request was submitted by the Developer Joe Deck for the Board to schedule a public hearing at its RTBM (8/28) on the final plat approval of Phase 2C. Required fees for the Engineer's review and all application recreation fees have been paid.

When asked, Leone said he has only seen the letter of request, so far. I don't know what conditions have been satisfied and which have not, he said.

Lannon said engineering drawings are 90% complete. We're pretty clear to go on it with respect to the engineering component of it.

Inasmuch the final plat drawings are not essentially complete, **Johnson MOVED to set the Public Hearing for the Final Plat approval of Phase 2C, Riverwalk on Monday, Sept. 11<sup>th</sup> at 6:30 p.m. Seconded by Edwards and carried 4-0.**

Sanborn Fire Co./Roster: Johnson referred to a request to add the following names to the active roster of said fire company: Eryn Hill; Danelle Jackman; Glen Walck; Mark Franklin Williams, Jr.; and Samantha Jo Cretacci  
**Johnson MOVED for approval. Seconded by Edwards and carried 4-0.**

Justice Court Training School: Newlin referred to a request from the Town Justices for attendance at the 2006 Advance Training School and Annual Meeting at Nevele Grande-Ellenville, October 8 – 11. Funding is available in the 2006 Budget for this training session.  
**Johnson MOVED for approval. Seconded by Pacioni and carried 4-0.**

WNY Stormwater Coalition: Leone stated that the State has mandated that all municipalities enter into a local law dealing with the collection of stormwater. As a member of the WNY Stormwater Coalition, the Town of Lewiston is entitled to the resources available through grant funding. The Coalition sent out a letter requesting all members make a decision regarding attorney services for the local implementation grant. Three options have been identified for utilizing the funds: 1) Hire one attorney; 2) Allow Coalition municipalities to access the grant funds to use their own municipal attorneys to implement the local laws and establish funding mechanisms and 3) Opt out of the local law implementation grant funded assistance altogether, although the adoption of the local laws is required by NYSDEC's Phase II Storm Water Regulations.

Leone asked that this matter be deferred until he, and Atty. Boniello, can discuss this with Eng. Britton.

Recreation & Parks Update:

Colonial Village Park: Dashineau said they have taken a look at the request from Lewiston Fire Co. #2 for repairs to the park. They have started and completed

some of the general maintenance; i.e. removal of brush, weeds. They will begin concrete at the shelter this week.

Dashineau said there were some capital projects that were requested specifically to the baseball diamond and fencing around the tennis/basketball court. Estimated cost to replace backstop came in at \$8,500 and over \$9,000 for the fencing.

Parks Update: Dashineau noted that in May, the contractor pulled out of the mowing contract. He was not pursued to reimburse the town. We were in dire straights, Dashineau said. They were under a legal obligation to re-bid the project, which could have taken up to a month-and-a half which was a bad situation. It was decided to tackle the grass cutting within the parks department staff. Inasmuch as he could not supervise that many people effectively, the Highway Supt. volunteered his services to manage and oversee the mowing portion of the parks department and has been doing so since Memorial Day. During that time, he has gotten no reimbursement whatsoever. During last year's budget session, they talked about and approved a supervisory role within the parks to help with my staff, Dashineau said. With Supt. Reiter filling that part of the parks department job, Dashineau suggested that he be reimbursed for this work. At the rate of the supervisory role, which was put in a \$12.00/hr., we worked it out at this point and continuing forth to reimburse Mr. Reiter \$4,400. At this time, I want to ask the Board to approve that payment to Mr. Reiter for his services he did render during the mowing season.

Newlin recommended that this matter be tabled until the next meeting as this is the first some of them have heard of this request and to allow the attorneys to determine if there are any implications to this regard.

Assessor's Education/Training: Johnson referred to a request from Gene Virtuoso to attend the Annual Assessor Seminar and Training School at Saranac Lake, September 18-20. Funds are contained in the 2006 Assessor Budget. Attendance will enable him to obtain the necessary twelve (12) continuing education credits to keep his certification current for the next fiscal year beginning October 1, 2006. **Johnson MOVED to approve, Seconded by Edwards and carried 4-0.**

ATV Training: Johnson referred to correspondence from Gary Stephens, Ransomville with regard to possible state funding for training and safety courses for All Terrain Vehicles. The sheriff's department has an excellent team of ATV and Snowmobile personnel who could possibly train those who wish to own and operate an ATV. This must be a "team" effort with support from the State Police, Sheriff's Department, Town Police, Local Fire Stations, Local Politicians and the community.

**Johnson MOVED to send a letter of support to the Sheriff's Department encompassing a program requiring mandatory training for individuals to want to own and operate ATVs. Seconded by Pacioni and carried 4-0.** Johnson said he and Sup. Newlin will work with the attorneys in drafting such letter.

Newlin asked for an executive session to discuss 1) pending litigation with regard to mining issues; 2) personnel (highway / building inspector); and 3) possible litigation (negligence).

**Edwards MOVED to enter into executive session. Seconded by Pacioni and carried 4-0.** Time: 8:20 p.m.

Transcribed and  
Respectfully Submitted by:

Carole N. Schroeder  
Deputy Town Clerk

Executive Session:

Present: Newlin, Edwards, Johnson, Pacioni, J. Leone, D. Boniello, R. Lannon

Excused: Al Bax

Discussed Pending Litigation; Possible Litigation and Personnel Issues

**Motion by Johnson, Seconded by Edwards to exit executive session and reconvene worksession. Carried 4-0.**

The following action took place in executive session:

1. Authorized payment to Dan Spitzer, special counsel, out of legal contingency for Pending Litigation regarding the stop work order on the Mawhiney Trucking/Helmich Mining Site. **Johnson MOVED for approval. Seconded by Pacioni and carried 4-0.**
2. Authorized reimbursement to Ms. Joan Radel for out of pocket expenses in the amount not to exceed \$600.00 for injuries sustained on 5/24/05, subject to signature of a general release. **Edwards MOVED for approval. Seconded by Newlin and carried 4-0.**

**Johnson MOVED to adjourn, Seconded by Pacioni and carried 4-0.** Time: 9:20 PM.

Minutes Transcribed by:

Dave Boniello  
Deputy Town Attorney

Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk