

Present: Sup. Newlin; Council Members Bax, Edwards, Johnson & Pacioni; Tn. Atty. Leone; Deputy Tn. Atty. Boniello; Eng. Lannon; WPCC Adm./Op. Lockhart; Deputy Sup. Elgin; Budget Officer DiRamio; Bldg. Insp. Skurski, Police Chief Winkley & Town Clerk Brandon. 2 press reps and several residents.

The Supervisor opened the meeting at 7:10 p.m. The Supervisor read a proclamation honoring John Stoyell, a member of the Environmental Comm. who has decided to retire from the committee. He noted those residents who choose to serve voluntarily of their time to the Town like Mr. Stoyell. He introduced James Allen, Chairman of the commission.

J. Allen noted that Mr. Stoyell is not the typical committee member. He studies his packet, visits the site and he diligently does his job. He has done an outstanding job and he is really the father of the recycling program in Lewiston. He engaged the boy scouts in distributing flyers regarding the program when it first started. We will truly miss him.

John Stoyell: It has been a pleasure to serve the Town & Village of Lewiston. It is truly an honor and I would like to thank everybody for this. He noted that a large number of his family was present.

The Pledge of Allegiance was recited. The Supervisor commented on how proud he along with the Board was of the town employees and their families who came to the aid and assistance of the Quarantillo family. In addition, support has been given to the Dell and May families.

A moment of silence followed with remembrance of Dr. E. Gillick who died today.

RESIDENTS:

Paulette Glasgow of 836 The Circle asked that the Board members speak into microphones so everyone in the back of the room can hear and that employees who sit at the side table, if they would refrain from turning their backs to the public. Also, she noted that it was a tribute to Mr. Stoyell who served this Town and this Town has just lost the conscience of Lewiston. He was a treasure. I would hope that his replacement has the same environmental conscience for environmental justice.

David Brooks of 4370 Autumn Lane. We have a continuing problem in the subdivision with drainage. It is particularly bad in the winter with the melting snow. In our yards there is no way to get the water out and it sits there until mid June. We were promised a drainage ditch and attempts were made (going back 3 years) unsuccessfully. We took the initiative and brought in a contractor who put in drainage in our yard to be taken to the storm drain in the front of the house. There is an inadequate drainage in the storm drains on all these properties and so water cannot be removed in that way. I am faced with a \$10,000 drainage system that goes nowhere. We have had conversations with the engineer who has said that the Town has steps underway but cannot get the easements. I don't know what more can be done. We took the initiative and now the water will not leave our property.

Newlin said that the problem that the Town faces is that it is not Town property that is being involved here. We need the signing of an easement by the person who owns the property. We cannot do anything until the person allows Town equipment to go on the property. I will talk with the attorneys on this.

David Brooks: There is some disagreement as to whether that plan would work even if the easement is granted. I would be happy with any steps that can be taken.

Newlin: At the time when it was developed, drainage wasn't properly accounted for by the private developer.

AGENDA:

Johnson:

Request from St. Mary's regarding a sign issue from July.

Bax: WPCC has an emergency flow meter repair and a request for an executive session re: 552 Fairway Drive and Village of Lewiston annual flow.

Edwards MOVED to approve the Agenda with the amended items. Seconded by Bax and carried 5-0.

MINUTES:

Johnson MOVED for approval of the Minutes of 8-28-06 RTBM; 9-11-06 Jt. Town/Village Mtg.; 9-11-06 P.H. re: Riverwalk 2C Final Plat and 9-11-06 Work Session. Seconded by Bax and carried 5-0.

POST AUDITS:

Bax MOVED for approval of the Post Audits: Home Depot \$2,695.88; Office Max-(HSBC Business Solutions) \$368.69; Office Max Inc. \$97.81; Sam's Club \$709.88; Wal-Mart \$69.23 and Tops \$41.54. Seconded by Johnson and carried 5-0.

OLD BUSINESS:

Amendment to Animal Law:

Leone: The Public Hearing has to be postponed because the legal notice did not go into the paper. There is a provision in the law that the local law is supposed to be in final form on the desks of the Council within so many days in advance and it is supposed to be then published in the newspaper. This has been published several times. I made a change last time and there is a Comptroller's opinion that minor changes don't have to be republished. It is not for us to say what is minor and what is not. I suggested to the Clerk that it be republished again and the Clerk was of the opinion that the change was so minor that it didn't.

Johnson asked if comments had been received from the judges etc.

Leone said he has spoken with the judges, DCO & the Clerk and I will amend it if necessary again.

Johnson MOVED to hold a public hearing on October 12, 2006 @ 6:30 p.m. to consider amendments to the Animal Law (L.L. #2). Seconded by Pacioni. Carried 5-0.

CORRESPONDENCE:

1. From Sandra VanUden, Bldg. Dept. In January 2006, Mr. Anthony Terrameo applied for a one-lot subdivision and paid the Town a minor application fee of \$150, which is good for up to 4 lots. Due to some confusion, Mr. Terrameo came into apply for one more lot on the same property. I would suggest that the Town waive the \$150 fee and include it as part of his previous subdivision as a modification. The Niagara County Planning Bd. has agreed to waive its fee also.

Johnson MOVED to waive the fee as requested for Mr. Anthony Terrameo. Seconded by Pacioni and carried 5-0.

2. Request from John DiPofi for the installation of street lights between North 5th and North 8th Street. This area is extremely dark and there is a security and safety concerns to new residents.

Johnson MOVED to refer this request to the Lighting Committee. Seconded by Bax and carried 5-0.

3. Request from Kristen Gamble, Advanced Design Group, for a Public Hearing for the installation of three (3) new above ground fuel storage tanks to be located at Ken Wendt's Propane, 5910 Ward Road, Sanborn. A sketch of the propose site layout will be submitted under separate cover for your consideration in scheduling the Public Hearing.

Leone: The local law allows that it can come directly to this Board, but I believe in the past these things have gone to the Planning Bd. This is not the first time he has requested tanks and it was referred to the Planning Bd. about 3-4 years ago.

Kristen Gamble of Advanced Design Group stated that they are working with Fire Insp. Pat Martin regarding the safety issue and the State code. We wanted to do these two things simultaneously because of the time. In order not to waste your time, are you looking for us to resolve those issues prior to making application to the Board?

Newlin said it would be difficult for this Board to make any approval until we got specific recommendations from both the Fire Bureau and the Planning Bd.

Kristen Gamble: I understand that the Building Dept. would have to issue a building permit. We were hoping to get the Planning Bd. and Town Bd. approval conditional on meeting the requirements of the Building Dept. Fire and safety is a Building Dept. issue.

Leone: The Planning Bd. can require you to go in front of the Fire Inspector annually. I can't speak for the Planning Bd. to tell you for sure that they are going to want you go there in advance. If they were to give approval I am sure it would be conditional upon that. That is a very typical thing that they do. The fact that you have already spoke with Mr. Martin is a good thing.

Kristen Gamble: When it comes to referral from this Board or do I have to make that application?

Newlin: We can tonight direct it to go to the Planning Bd. The Clerk can give that board its' notice and at the next meeting in Oct. they will meet and may have Mr. Martin there.

Johnson: You should ask in your request that Mr. Martin be there.

Kristen Gamble: Beside the Planning Bd. & the Zoning Bd. is there any other board we should go to?

Newlin: We will notify the Environmental Comm.

Kristen Gamble: So, it is a full site plan process even thought the local law says it comes to the Town Board.

Newlin stated that we can rely upon any advisory group as we see fit for their opinion which helps our decision.

4. Request from the Receiver of Taxes for approval to place the unpaid water & sewer accounts on the 2007 Town & County taxes. The breakdown is as follows: Water \$80,308.64; Master Sewer \$56,502.83 & South Sewer \$8,527.08 for a total of \$145,338.55.

Johnson MOVED for approval to place the unpaid water & sewer accounts on the 2007 Town & County taxes. Seconded by Bax & carried 5-0.

NEWLIN:

Legal:

Leone: The Oak Run S.D. dedication deeds will be filed this week. With the Vista North S.D., I have had discussions with the developers' engineer and surveyor and we have agreed on a legal description. It will be completed when we get the documents prepared.

I will be requesting an executive session to discuss an existing pending litigation.

Boniello: Regarding the Power Coalition, I still have not received any other by-laws but, will keep you informed should I receive any new by-laws.

You have in front of you, a letter from Michael Fitzgerald dated 9-22-06 which concerns the Towns' position on CWM to continue to contribute the \$50,000 to attorneys fees for the matter that is currently pending relative to the re-licensing. In the last paragraph, "it is the county's understanding that the Town of Lewiston at their meeting on 9-25-06 will again agree to donate another \$50,000 for the year 2006 to be expended after the expenditure of \$50,000 for 2006 in the county's budget." If that is agreeable, I will ask for a resolution to that effect. I don't know how the Board wants me to address this issue...if you recall last year it was asked at this time to a retainer for Gary Abraham and we did not. Secondly, we did not sign an agreement. If the Board wants me to verify the Boards' position by confirming this letter, I will do that.

Newlin: I and Mr. Johnson who were here last year recalled early in 2005, interested people as well as the County asked the Town to give financial support for the retention of a special environmental counsel to help towards matters concerning the siting plan and other environmental issues with regards to where CWM is today. The Town at that time had monies that it could dedicate to that and we were happy to help with the County. The County would spend the first \$50,000 and the Town now has expended just about \$50,000 of it's' money and what I would ask for is consideration from this Board is a continuation of that agreement. The County spends the first \$50,000 and we spend the next \$50,000. The only point we can reconsider is whether or not we want to continue in the same vein as we did last year and that is we are not really retaining the attorney ourselves...we are assisting financially in the County's retention of that counsel. I think it is a cleaner process and the attorney is not checking everything out with the Town and the County. I don't think we have competing interest. We probably have complementary and mutual interest. I think that is probably the easiest way to do that. Are there any thoughts on that as to whether or not we actually have to retain them ourselves? We are not on the retention papers.

Boniello: I would prefer you continue this relationship. Don't sign the retainer or joint ??? responsible for the attorney of the balance of the fees. This Board has made an equal commitment with the County. The County pledges roughly \$200M and the Town is 10.

Newlin: I have discussed at length with various interest parties butthe other part that agitates me slightly is that the Town of Porter in which most of CWM resides is legally precluded from contributing to any legal funds for a matter like this. The Town of Lewiston is taking on a cost which regards to a health matter when a project that is partly in Lewiston and we are affected by it but I am going to ask that some of the people who have been behind this actively seek financial support from other entities like the Villages of Lewiston and Youngstown. It's a scale of economy here. We are contributing the same amount as an entity which has a budget of almost 300M....so it is a little bit of a financial crimp.

Boniello stated that he had called Mr. Abraham and he is making progress on what you wanted him to do. I tried to get a figure from him on the projected

expenditures for 2006 and 2007 and it was difficult. He expects to work within \$100,000.

Bax: We don't pay any of the retainer fees. Do we have any right to inject or ask for documentation? Are we a party to this action and how we contribute to them?

Newlin: No. The reasoning is that in case there are subpoenas issued by CWM as told to me by the attorneys that they maybe more accessible if the Town of Lewiston was in that retention agreement. This way we are kind of separated there.

Bax: From a strategic standpoint does it make sense for us to be actively involved?

Boniello: I don't think so.

Edwards: To date, he has only billed him and then paid \$4000 to Mr. Abraham?

Newlin: No, that is only after the initial \$100,000, so I think they are into their 2nd pool of \$50,000.

Boniello: Yes. This is actually lower than what Mr. Abraham told me.

Edwards: This \$50,000 that we are going to commit is for the balance of '06 & '07?

Edwards: We will not go through the County's \$50,000 by 12/31. It will take us into expenditures going into '07. It is unlikely that the Town will be dipping into its' \$50,000 until next year.

Johnson MOVED that the Town of Lewiston agrees to financially support Niagara County up to \$50,000 after which they have expended their \$50,000 for the last quarter of 2006. Seconded by Bax and carried 5-0.

Johnson: Mr. Boniello, can we get the letter for the owner of Curtis Ct. No. so we can proceed? (Yes)

Niagara Community Action Program Inc. Proclamation:

This program was started in 1963 nationwide and this is the 40th anniversary in Niagara County. As a member of the Board of NIACAP, I have a proclamation to read making October and every October henceforth **Community Action Month.**

PROCLAMATION

WHEREAS, 2006 marks the 42nd anniversary of the Economic Opportunity Act of 1964 which was designed to focus federal, state, and local resource on providing individuals with the opportunity to become self-sufficient, and

WHEREAS, The Economic Opportunity Act of 1964 established community action agencies throughout the United States, and

WHEREAS, Niagara Community Action Program Inc. has offered a variety of services to the economically disadvantaged and working poor families of the Town of Lewiston, NY for the past 40 years, including emergency services, grants for home repair, in home weatherization, child care referral, training, registration, meal reimbursements for children, health and safety start-up items, food stamp advocacy, on-the-job training, fair housing, crime prevention, rent/mortgage/utility payments, landlord/tenant resolution, and family development training,

**NOT, THEREFORE, the Town of Lewiston does hereby proclaim October 2006 as
"COMMUNITY ACTION MONTH"**

and be it further

RESOLVED, that the citizens of the Town of Lewiston, New York, make themselves aware of the efforts of Niagara Community Action Program, Inc. in assisting the economically disadvantaged and working poor families obtain self-sufficiency.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Town of Lewiston this 25th day September, 2006.

Fred M. Newlin II Supervisor

Newlin MOVED to approve the Proclamation as read. Seconded by Pacioni and carried 5-0.

Power Coalition Update:

Newlin: I have spoken on my concerns about the expenditure of legal money. Sup. Richards of the Town of Niagara, Kerin Dumphrey of N-W School District and I have been appointed to a Ad-Hoc Audit/Budget Cmte. that will look at the legal budget and come up with some ideas that will hopefully contain costs in the future. I think we have been expending a lot of money and not seeing a lot of results. I hope this committee will keep the focus on what needs to be done and that is maximizing the cheap power that is coming our way. We will be meeting later this week. I would like to thank Mr. Dax who is our counsel in Albany and Mr. Spitzer & Mr. Fluskey from Hodgson & Russ that have been dealing with these issues and have been at meetings with Niagara Mohawk and in contact with the NY Power Authority concerning how that deal will be specifically applied here in Lewiston.

EDWARDS:

Engineering: I have met with Mr. Lannon, Mr. Britton & Mr. Reiter and the Supervisor looking at finishing 2006 drainage & highway issues and looking into 2007. Lewistontowne drainage is going to addressed starting in Nov. with bonded work and should be complete mid-spring or early summer of 2007.

Environmental Commission: I have the resignation letter of Mr. John Stoyell effective 9-01-06.

Edwards MOVED to accept the resignation of John Stoyell with regret. Seconded by Johnson and carried 5-0.

A letter of regret to be sent by the Clerk's Office.

We have 3 applicants on file to file the vacancy. We will appoint at the work session.

Parking Lot Renovations:

They are reconstructing underground drainage at this time. They will be grubbing soon for the parking lot. The budget code will be H-55. The original cost was \$160,000.

Edwards MOVED that the Parking Lot Renovation total project cost is not to exceed \$100,000 with funds coming from H-55 Town Hall Renovation. Seconded by Johnson.

Johnson: While we are doing this, to start the first phase of the intersection to put in a turning lane from the parking lot to the street. We may have to move a street light pole on the corner going south on Model City Road turning right. Next year we can focus on the traffic coming down Indian Hill turning right on #104.

Lannon: We have not heard from DOT on this but I will inquire.

Edwards said we definitely need to address that corner. I would like to see it next year or appropriate the funds this year in permanent improvements to our roads.

On the Motion, carried 5-0.

Edwards stated that he had met with Sup. Reiter regarding the budget for the highway and drainage.

Newlin: Mr. Lannon, you have been familiar with Mr. Brooks' issue and I understand that there has been a hang-up with a private homeowner there who

has not granted easement rights. Until that is done the Town is incapable of addressing that problem.

Lannon: We had proposed 2 years ago that there be construction of an east-west ditch at the end of Autumn Lane to connect to the existing ditch on Creek Road. There are 3 easements on the end of Autumn Lane and one on Creek Road. We have a couple of them and the Highway Supt. has not been successful in obtaining the easements. We have a plan approved in 2005 not to exceed \$17,000 but without the easements we cannot move on this.

Newlin stated that several attempts have been made to no avail. Unfortunately, the Brooks have taken the problem in the other direction, which is probably the wrong direction instead of getting it to Creek Road they tried to get it to the front of the house which was not the right way to go.

Edwards: For counsel, if we connect and get the easements and to cross his properties....it sound like it is creating a safety concern with the standing water etc. is there eminent domain in place?

Leone: You can try to do that and condemn the property by virtue of eminent. There is a whole procedure under the eminent domain law to go through. That would be the last option.

Newlin: This shows what happens when developers don't treat drainage problems correctly and we are left with this. The developer has long since made his money and we are dealing with a problem that should have been addressed then. (Note: the original developer went bankrupt.)

Lannon says the owner who won't sign the easement believes he does not have a significant drainage problem and is less interested in participating.

BAX:

Sunoco Gas Station: This is a remediation issue with the gas station at 890 Center St. Mr. Lockhart needs a letter from the Supervisor and the Town Board.

Lockhart: Part of the procedure that DEC has set forth for acceptance of industrial waste is an endorsement issued from the chief fiscal officer. I am asking for approval for Supervisor Newlin to start the process so that we can send this into DEC. This includes the remediation of the Sunoco Station which is in the Village but because it is tributary to the treatment plant and the treatment plant is responsible for what comes in and what is discharged to the plant.

Bax asked what is contained in that discharge.

Lockhart: The discharge has to reviewed to make sure that it is not explosive or corrosive, posing health hazards, meets our water quality standards and won't affect any of the processes at the treatment plant. It is a lengthy process. We have been working on this since January with the company that is going to be doing the remediation and they will pre-treat on site using an air stripping process and regulated activative carbon and then it will be discharged into the sanitary sewer. The Village of Lewiston will have to issue a discharge permit into their system and I will issue a permit also for the acceptance to the treatment plant contingent upon the approval of DEC. This discharge from this is structured so that they would be sampling monthly and they also have a modular system so that if they need to add carbon ????? to it, it is fairly easy to do. The duration of this project is unknown and it maybe anywhere from 1 to 2 years. It depends on ground water flows to the test wells that are relatively slow and they are anticipating a flow of 1-2 gallons a minute.

Bax MOVED to allow the Supervisor to sign the draft letter for discharge to DEC as recommended by Adm./Op. Lockhart. Seconded by Johnson and carried 5-0.

SPEDES Permit:

Lockhart: DEC has stated that they have not received payment in the amount of \$7500 due by Oct. 13th and there is not enough time to process a voucher.

Bax MOVED to allow the Supervisor to issue a check in the amount of \$7500 for the annual discharge permit to DEC contingent upon clarification of the budget line. Seconded by Johnson and carried 5-0.

Emergency Flow Meter/Repair:

Lockhart: At the Creek Road Pump Station there are flow meters and transmitters that are approximately 30 years old. On July 13th we had all of the flow meters and pump stations calibrated in the Town and during the calibration some discrepancies were discovered. We investigated the placements and it has been determined to replace a transmitter and recorder at the Creek Rd. station along with repairs to the Lower River Rd. meter pit. The total repairs will be \$7500. The equipment line item has been expended for this year and we have other work going on and would need to incorporate this into that work. I am requesting to use fund balance from SS-2 to cover this. The emergency basis is that the Creek Rd. station is not recorded flows at this time and at Lo. River Rd. the paper recorder is located 20' below grade in a confined space.

Bax MOVED to allocate \$7500 from SS-2 fund balances to repair the flow meters at the Creek Rd. Pump Station and the Lo. River Rd. meter pit. Seconded by Johnson and carried 5-0.

523 Mt. View Drive Sewer Update: The resident there has scoped the line to the sewers and they claim a new problem has arisen. Mr. Lockhart and I will investigate this and report back to the Board.

Edwards asked if this line had been video taped. (Yes, twice)

For Executive Session, I have a sewer/water line damage at 552 Fairway Drive and Village of Lewiston annual flows.

JOHNSON:

Seniors: Dance this Friday at the center.

Fire Bureau: The fire inspectors have an issue regarding the golf course and would like to be included in any updates. The water pressure and lines should be addressed. They have some concerns regarding the Wendt's propane request and will work with the other committees.

Vacant house in Sanborn is also an issue which has been taken over by a bank.

Regarding the Lewiston Porter school expansion, we should let Mr. Rappold know that the fire inspectors would like to be a part of this for safety purposes.

Cell Phone Stipend: A number of our dept. heads are using Verizon phones and we can save money by giving them a stipend for their usage. The Fire Bureau suggested a monthly stipend for their bills at \$25.00. The Recreation Dept. has been getting a stipend for the seasonal time & use. Department heads can approach the Board regarding their use of their cell phones.

Edwards said that we should buy a phone for the building inspector who is often out in the field.

Johnson MOVED for a stipend of \$25.00 per month for Les Myers, Pat Martin and Don Cosentino of the Fire Bureau beginning immediately.

Funds to come from their contractual budget. Seconded by Pacioni and carried 5-0.

Johnson MOVED for a stipend of \$25.00 per month for Wm. Choboy, Temporary Bldg. Inspector effectively immediately until the end of the year. Funds to come from Bldg. Inspectors' contractual line. Seconded by Pacioni and carried 5-0.

Johnson MOVED for a stipend of \$35.00 per month for Richard Skurski, Bldg. Inspector from 9-1-06 thru 12-31-06. Funds to come from the Bldg. Inspector's contractual line. Seconded by Pacioni and carried 5-0.

Newlin: We should look at how many minutes as liaisons are now being used for town business on your own phones. We can discuss this at the work session.

Litigation Matter: A letter from an attorney for services regarding the Old Creek Golf Course should be discussed in executive session.

Ransomville Fire Co. Contract:

Our three year contract with them expires this year and it was a 5% per year increase.

Johnson MOVED to authorize the Supervisor, Town Attorneys and myself to prepare a contract for the next 3 years with a 5% increase yearly for the Ransomville Fire Co. Seconded by Pacioni and carried 5-0.

Mt. St. Mary's Hospital Sign:

Johnson MOVED to allow Mt. St. Mary's Hospital to erect a roof top sign as proposed and recommended by the Planning Bd. and the Signage Cmte. Seconded by Bax & carried 5-0.

PACIONI:

Parks/Recreation: Kiwanis Park Phase 1 is complete and in Colonial Village Park repairs to the fence are being made.

Again, the Senior Center will have their dance this Friday from 7 to 10 p.m.

Sanborn Library: I have received 2 bids on the carpeting and awaiting a third bid. I will table this to the work session.

Newlin: At the executive session we will be discussing 552 Fairway Dr. issue; legal advice on a contract (Old Creek Golf Course) and pending litigation on mining.

Motion by Johnson to enter into an Executive Session. Seconded by Edwards and carried 5-0.

Time: 8:40 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk

Executive Session: 8:48 p.m.

Present: Sup. Newlin; Council Members Bax, Edwards, Johnson & Pacioni; Attorneys Leone & Boniello*; Engineer Lannon; Deputy Sup. Elgin and Adm./Op. Lockhart.

Discussion:

1. Contract issues/Waste Water Contract.
2. Water Break Issue.
3. Breach of contract on work done.
4. Mining litigation.

**Johnson MOVED to come out of Executive Session and reconvene.
Seconded by Bax. Carried 5-0.**

Time 10:00 p.m.

**Motion by Johnson to increase hourly wage of William Choboy, Temp.
Bldg. Inspector to \$20.00 per hour. Seconded by Bax and carried 5-0.**

**Johnson MOVED to adjourn at 10:05 p.m. Seconded by Bax and carried
5-0.**

- Minutes Taken By Deputy Atty. Boniello
Transcribed by Town Clerk Carol J. Brandon