

Present: Supervisor F. Newlin; Councilmen A. Bax; S. Edwards, M. Johnson & E. Palmer; Dep. Sup. E. Elgin; Atty. J. Leone; Dep. Atty. D. Boniello; Eng. R. Lannon; Finance Officer A. DiRamio; Dep. Clerk C. Schroeder; 2 press; 1 Resident

The Supervisor called the meeting to order at 7:07 p.m. The first item on the agenda was a presentation regarding the municipal stormwater program.

Eng. Lannon introduced Tom Hersey, an engineer with the Erie County Department of Environmental Planning. Mr. Hersey has been involved with the Stormwater Coalition in Western New York since the project's inception. Lannon then introduced Cami McGraw, Engineer with CRA World, who has also been instrumental in shepherding a lot of the stormwater programs thru the various towns they represent in Western New York. Lannon then turned the program over to Mr. Hersey who provided a presentation specifically for the Lewiston Town Board as part of the State Mandated Program.

Hersey said the purpose of the presentation was to help the Board understand the stormwater requirements they as a municipality have to adopt thru a number of different departments and a number of town functions.

Hersey provided a 45-minute power-point presentation of the stormwater program and the general requirements of the program followed by a question and answer period.

Stormwater, he said, is the rain or melting snow that doesn't soak into the ground but runs off the land into ditches and storm sewers and eventually ends up in creeks, rivers, streams and lakes carrying with it pollutants such as pesticides, motor oil, bacteria, and fertilizers which affect water quality. The point where the storm sewer system empties into a waterway is the outfall.

The regulations in the permit are for municipalities that operate separate storm sewer systems, also known as MS4. This would be any municipality that is responsible for roadways, ditches, catch basins, curbs, etc.

In 1990, regulations came down thru the Federal Clean Water Act and were imposed on states. At first, governments hit on the direct polluters and dischargers -- companies that had pipes going directly to streets. That cleaned up waterways quite a bit. Now, the focus is on stormwater. If we want to make any more water quality improvements, stormwater is where the action is. When stormwater regulations came down to the State it basically looked at large municipalities with populations over 100,000 in size. Nobody outside of New York City had to comply with these regulations. Also, construction activities began with deregulations for any activity disturbing five acres of land or greater. Also, certain industrial stormwater permits were required depending on the type of industry activities and materials that were outside. Now, we are in Phase II which extends the regulations and requirements to "urbanized areas", as designed by certain density and population. Municipalities have been specifically identified by the State and those areas in which the municipality is required to have this program in place. Phase II also requires a Stormwater Construction Permit for any activity disturbing over an acre in size of land disturbance. The SPDES permit for stormwater construction is the responsibility of the developer. An MS4 permit is the responsibility of the municipality. The municipality thru the adoption of ordinances is going to take responsibility for those construction permits that the State had been regulating. Thru the passing of these ordinances, you're going to be looking at, inspecting, requiring plans, and enforcing the construction requirement of that permit for any disturbance in your town of an acre or greater. The requirements only apply within the regulated area. The Town is not required to have this program in place throughout the entire town only where the population density is high enough to define it as an urbanized area.

In 2003, the Town of Lewiston signed a Notice of Intent for the MS4 as part of the SPDES Permit. As part of the requirements of this permit, the Town must develop, implement and

enforce a Stormwater Management Program. It's a basic program that forces you to look at all aspects of stormwater management within your municipality based on six minimal control measures:

1) Public education and outreach. A majority of which is being done collectively thru the town's membership in the Coalition.

2) Public participation & involvement. This involves seeking public comment on the stormwater management plan and annual report which is given out thru the Coalition. The annual report is placed on the town board's agenda to meet this requirement as far as seeking the public's involvement;

3) Illicit discharge detection & elimination. This focuses on the outfalls and where the town's system empties into the water affecting surface water quality. There are approx. 30 municipal town-owned outfalls in Lewiston. An initial inspection was done thru the Coalition to determine the condition of the outfalls. Thru the next 5 years, the town will have to do visual inspections on six of those outfalls each year. If the town detects something coming out one of those outfalls during a dry weather situation when there shouldn't be, then the town is required to try and track that down to the source. Thru the ordinances that you're going to develop, it will give you the authority to make them eliminate the discharge and pay for whatever costs are incurred in tracking that down. There are two ordinances -- one with the construction activity and one for illicit discharge. Whoever manages your storm system will routinely inspect the outfall to make sure nothing is coming out of it. They have to inspect six outfalls a year for the next five years between now and 2013 to stay in compliance. Training will be provided thru the Coalition for highway personnel on procedures if something is found at the outfall.

4) Construction site runoff control. This is where the municipality is accepting responsibility for the construction permit that developers would normally deal with the State on. The responsibility is now transferred to the local level. Within the ordinance, once adopted, there is the authority to collect fees and impose fines so that municipalities can recover the cost of that program.

5) Post-construction site runoff control. This plays a role on larger site development by trying to improve the quality and decrease the quantity of run-off coming off any development site.

6) Pollution prevention & good housekeeping for municipal operations. This part of the program focuses on training and on the prevention or reduction of pollutant runoff from municipal operations. This must be done according to a Best Management Practice (BMP) to least impact stormwater.

As part of the implementation schedule, Hersey said municipalities filed a Notice of Intent in 2003 that said that during the next five years it would put a program in place that would meet the full requirement by January 8, 2008.

Another major part of the work of the Coalition has been the local law implementation. Through legal services hired in the County Attorney's office in Erie County, each municipality was provided with a draft and assistance in developing the local ordinances that each town must adopt.

Attorney Leone said the local ordinances that were prepared talk in terms of Article 10 of the Municipal Home Rule Law which gives local municipalities autonomy in certain matters. However, in reality, this isn't an autonomous situation as towns are being mandated by the States to do this. Can you cite what the underlying statutory authority mandating a local municipality to enact a local ordinance is? Is there specific State Legislation or a specific statute that requires us as a municipality to enact a local law that shifts all of the burden on us locally as opposed to the State where it has been. What I'm looking to do is to try and find what the underlying statute is that requires us to do what the proposed local law requires us to do. Hersey suggested that the Town Attorney contact

legal counsel at the State level. He would provide Mr. Leone with the appropriate contact person.

Newlin said he wanted to make sure that the Town does not inherit any liabilities that have been left either by developers or companies no longer in this area. We're especially sensitive to that here in Niagara County as we've got a long standing industrial legacy. A lot of those companies have gone now and they have left things in the ground. Some we know about and a lot we don't know about. Every time there is a stormwater event, some of that does infiltrate into the great lakes system. We do want to make sure the Town and its taxpayers are protected against those liabilities. I also see this as an opportunity to protect the Town's financial interest down the road in that we make sure that we do the best job we can in getting stormwater to run off so that it does not add to our infiltration and inflow problems that we're having at the Sewer Treatment Plant. Getting stormwater moving and away from the plant is money well spent. It keeps the Town from having to expand the Sewer Plant that would cost millions of dollars.

Councilman Edwards asked if the Coalition jointly would be training the highway/drainage department. Hersey said they have been and would continue to do so. Secondly, Edwards asked if they determined what it would cost each municipality a year to do inspections and maintenance on the outfalls. Hersey said that would depend on the amount of development in the Town as far as the construction sites. The Coalition has been trying to make whatever joint efforts in obtaining grants to do these things and to work collectively. The Coalition has done an excellent job in minimizing the cost to everybody. It's been a worthwhile venture for everybody that's been involved. Hopefully thru those fees whatever those specific costs are related to the construction and illicit discharge program you'll be able to make the program pay for itself.

As part of the overall program, Eng. Lannon advised the Town Board to adopt a Stormwater Management Plan which is a culmination of the stormwater program and identifies the responsibilities of the Stormwater Management Officer. He provided copies of the Plan to the Board for review and approval at the next meeting.

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Following this presentation, the Supervisor took this opportunity to announce the hiring of Timothy Masters as Building Inspector. He then proceeded with the next item on the agenda.

Approval of Abstract:

**Bax MOVED to approve the Regular Abstract of Claims, Numbered 3848 to 4164 and recommended payment in the amount of \$852,694.62, plus a post-audit of \$72,626.15. Seconded by Johnson and carried 5-0.**

Creek Road Speed Limit Change:

Newlin said he hopes to meet within the next five days with the school board and the Town of Porter regarding the speed limit on Creek Road. Newlin said he also got a specific request from the Zoning Board of Appeals Chairman, Robert Linn that the State DOT conduct a speed study on Creek Road with regard to the new development taking place on Creek Road especially the golf course which will have traffic impacts.

County Ambulance:

Johnson said the County is researching, on their behalf, the possibility of a county-wide ambulance service. As far as he is concerned, Johnson said that Lewiston is very well taken care of among Upper Mountain, Lewiston #1 and Lewiston #2 fire companies. I'm sure there are places in the County that are in need of this service but I don't think our taxpayers should be paying for it twice. Johnson asked that this issue be discussed further at the next meeting (12/27) when representatives of the town's fire companies are in attendance.

LeBlond Easement/Grinder System Maintenance:

Atty. Leone said he has a rough draft of the easement. He needs further information from Tim Lockhart. He also is in need of a copy of Mr. Leblond's deed to put in the correct information. The actual drawing of what the town is supposed to do is done. Leone said he did not think any additional action of the Board was needed.

Environmental Commission Compensation:

Edwards referred to a request from the Commission that each member be paid for meetings attended during the year 2007. If all members attend the December meeting, the year-end total shall be \$2,685.00. Funds are allocated in budget line A-8090.0400. **Edwards MOVED for approval. Seconded by Johnson and carried 5-0.**

Northridge Development Construction Certification:

Due to potential litigation, Leone asked to address this matter in executive session. Leone said he would provide private opinion of counsel at this session.

Bicentennial Banner:

The clerk referred to correspondence from the Niagara County Bicentennial Commission with regard to a street banner program. Businesses, organizations and individuals can sponsor a 30"x60" banner announcing the County's 200<sup>th</sup> anniversary celebration. The banners can be displayed on main streets or easily viewed areas throughout the community. Cost of the sponsorship of a street banner is \$200 (hardware included).

**Edwards MOVED to purchase two (2) banners, one to be placed at the town hall and one at the Sanborn Farm Museum. Seconded by Bax and carried 5-0. Funds to come from Town Board contractual (A-1010.0400).**

Budget Transfer / Tax Dept:

Johnson referred to a request from the Receiver of Taxes to transfer \$210.00 from A-1330.0400 to A-1330.0200 for the emergency purchase of a new computer.

**Johnson MOVED for approval. Seconded by Edwards and carried 5-0.**

Shared Services Grant for Vacuum Truck:

Newlin referred to a resolution in support of the 2007-2008 Shared Services Grant for VAC-Con Model V390CH Vacuum Truck. This equipment would be used for the storm & sanitary maintenance in cleaning catch basins in streets, pump stations, wet wells and sanitary manholes.

Newlin introduced the following resolution:

WHEREAS, the State of New York, Department of State is soliciting applications from local governments under Shared Municipal Services Incentive Grant Program for collaboration between communities of the Town of Porter, Town of Lewiston, Village of Youngstown and the Village of Lewiston to promote Shared Services for these municipalities.

RESOLVED that the Supervisor of the Town of Lewiston is hereby authorized and directed to file a joint application with the Town of Porter and the Villages of Youngstown & Lewiston to request funding under the New York State, Department of State Shared Municipal Services Incentive Grant Program for **VAC-CON Model V390CH Vacuum Truck.**

**Newlin MOVED the Resolution, Seconded by Johnson and carried 5-0.**

Sanborn Fire Company / Sanborn Sidewalks:

On request of the Sanborn Fire Company, Edwards asked that this matter be tabled until further notice.

Budget Transfer / Haz-Mat Dept:

Palmer referred to a request from the Haz-Mat Control Commission to transfer the remaining funds (\$1,714.72) from Haz-Mat Contractual (A-8080.0400) to Haz-Mat Equipment (A-8080.0200) to cover remaining expenditures for 2007.

**Palmer MOVED for approval. Seconded by Johnson and carried 5-0.**

Association of Towns Annual Meeting:

**Johnson MOVED to allow Elected Officials and Town Department Heads to attend the Association of Towns School and Annual Meeting, February 17-20, 2008 in New York City, provided funds are available in their respective budgets. Seconded by Bax and carried 5-0.**

Johnson asked that registration forms be provided to town officials. Completed forms are to be returned to the Town Clerk immediately.

Executive Session:

Newlin asked for a motion to enter into executive session to address personnel; private advice of counsel re pending litigation; and private advice of counsel re a contractual matter with the County.

**Bax MOVED to enter into executive session. Seconded by Palmer and carried 5-0.** Time: 8:15 p.m.

Transcribed and  
Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk

Executive Session:

Present: Newlin, Bax, Edwards, Johnson, Palmer, Elgin, Leone, Boniello, Lannon

Also Present: Margie Toohey, Lewiston Insurance Agency

Issues discussed:

1. Current & Pending Litigation
2. Possible Increase in Town Insurance - Claims - Related Premiums
3. Possible Litigation exposure on pending matter
4. Personnel Issue / Highway Department

No action taken.

**Palmer MOVED to adjourn. Seconded by Edwards and carried 5-0.**

Minutes taken by:

David Boniello, Town Attorney