

TOWN BOARD MEETING June 25, 2007 7:00 p.m.

PRESENT: Supervisor Newlin; Council Members Bax, Edwards, Johnson & Palmer; Tn. Atty. Leone; Deputy Tn. Atty. Boniello; Eng. Lannon; Adm./Op. Lockhart; Finance Office DiRamio; Deputy Sup. Elgin; Police Chief Winkley; Rec. Dir. Dashineau & Town Clerk Brandon. 28 residents & 3 press reps.

Supervisor Newlin opened the meeting at 7:52 p.m. following a public hearing. The Pledge of Allegiance and a moment of silent reflection followed.

RESIDENTS:

Sally Frasca of 5848 Buffalo Street stated that she has been charged for sewers since the Board had decided to put them in. She has spent \$10,000 for a septic system which has been approved by the N.C.H.D. She is asking that these charges be taken off of her taxes. The historic building was built in 1857 and the cost is \$2000 a month to maintain it and she only takes in about \$1200 per month.

Newlin: We will see if it is a historic site and report back.

Patricia Schultz of 1308 Ridge Road. One of the comments made earlier about the Modern trucks not being the only trucks on the road and this is a state road and I realize that there are lots of trucks that use this road but it is predominately during the day are Modern trucks. I mentioned to Chief Winkley about the speed limit which goes to 50 mph from 40 mph. A speed study was done many years ago before the traffic light was put in. How can we go about reducing the speed or extending the 40 mph to slow down the traffic? There have been some communities who prohibit the "J" brakes with signage and perhaps the Town Board could get some direction on this.

Keith Fox of 1114 Ridge Road. Regarding the "J" brake issue, the Town of Lockport does have signs that state it is a "J" brake free community. You may want to look into that. We have talked about this in the past and we have disagreed on it because of a safety issue but it can be done.

AGENDA:

Newlin asked for an executive session for a personnel matter.

Palmer MOVED to adopt the amended agenda as presented. Seconded by Bax and carried 5-0.

MINUTES:

Bax MOVED for approval of the minutes of 5/24/07 RTBM; 6/4/07 P.H. (Wendt's Propane); 6/4/07 Special Mtg.; 6/11/07 P.H. (LL#1-07 Excavation Law); 6/11/07 Worksession. Seconded by Johnson and carried 5-0.

POST AUDITS:

Johnson MOVED for approval of the following Post Audits: Home Depot \$279.00; Office Max-(HSBC Bus. Solutions) \$480.07; Sam's Club \$528.30; Tractor Supply Co. \$539.54; John Deere Credit \$22,552.93; Shawn M. Carr \$499.50; David Lepsch (K-9 Handler) \$7,000 and Chamber of Commerce \$27,500. Seconded by Palmer and carried 5-0.

Johnson MOVED to pay \$35,000 from Account TE2-3120.400 and \$4,000 from Account B3120.400 (Total \$39,000) for the K-9 DSJS Grant Award. Seconded by Bax and carried 5-0.

OLD BUSINESS:

Newlin: With regards to the proposal L.L. #2-07 amendment to the Landfill, Atty. Leone has some comments.

Leone: I was in contact with DEC twice last week regarding the Town Board's request to be lead agency. DEC wanted to know why and what made Lewiston different from any other community that has a landfill. I explained that we do have a local law that limits the amount of waste the landfill can take and we have a Host Community Agreement. Initially they were in favor of that. Later, I got a call that DEC felt they would not grant the Town of Lewiston lead agency status which I do not have in writing. Also, that they would allow 2 SEQRA review in one simultaneously, DEC doing theirs and Lewiston doing ours. I am letting the Board know this so you can decide if this is what you want to do. Next, regarding the proposed amendment to the local law and the host agreement, I am going to reiterate what I had advised the Board at the end of the last meeting that being I don't really think that you should be voting on a local law until we make sure that whatever contractual amendments to the contract are satisfactory to us. There is no need to amend the local law if you are not going to amend the host agreement. If we are going to amend the host agreement it would seem to me that amending the local law would be rather almost a ministerial act. Negotiate before....we know what Modern is looking for by way of an amended host community agreement, but that is something that should be discussed in executive session before you vote on the local law.

Bax asked that if we modify the host agreement would another public comment period be necessary.

Leone: A public comment period will not be necessary to amend the HCA but if the language of the local law changes then it will. If it is a significant change to the language of the local law then you would need another public hearing. If not, there is nothing that requires the Board to vote on the local law tonight. There is no requirement that the public hearing is a vote on the local law occur on the same evening. Some of the language of the proposed local law in front of you, what you should realize is that that local law (proposed amendment) talks in terms of accepting waste per year/calendar quarter greater than volume established in the permit issued by DEC or an agreement between the Town and the landfill operator whichever it was. It is opened ended. The current local law as amended 4 years ago has an actual defined tonnage (there is a number in there) that the landfill is able to accept. One of the proposed amendments to the HCA talks in terms of making the waste available to Lewiston household residents by not charging them \$35.00 fee starting this year. It also talks about residents of the Village and the L-P campus without charge. The Village and L-P are not parties to the agreement but are third party beneficiaries to the agreement. You may want to consider what their Boards has to say....whether or not they are in favor of it or not because it impacts them. They are not signatories' to the agreement but because they are mentioned in it and what they have to say isn't going to make or break this agreement. You may want to consider them.

Johnson: If this was voted down or we didn't vote on it then what would happen to the Village or L-P that already put their budgets in place?

Leone: They would as Lewiston residents starting Jan. 1, 2007 would be paying \$35.00 a household. They would all be paying and as I am pointing out to you that you may want to consider the impact it has on those other boards and their representatives of their constituents as to what they have to say.

Palmer: Is the amendment to the Town of Lewiston code and the third amendment to the HCA...can you approve one without the other? Because of the wording of the new law, couldn't the law be changed without the amended HCA?

Leone: The way that the documents are drafted, no you couldn't do that. Is it very possible to amend the local law without amending the contract that goes along with it...it is but I certainly wouldn't recommend doing it that way.

Palmer: In the local law in referring back to the HCA that is currently in place right...

Leone: The proposed amendment to the local law that is in front of you tonight has that in there.

Palmer: Consider the third amendment HCA that is something that is in the process of negotiation....if we were to pass this Town law it would have no impact or it would just refer back to the current HCA.

Leone: I suppose that the issue would then be we would have a contract that says you could change something in the local law that says you can. Would I want to be in that position....I really wouldn't? If the Board is going to negotiate the agreement that is fine, we negotiate....what is front of you is all there is to negotiate that is fine. Then you decide whether that offer is enough or not enough but it seems to me that passing the local law before you know that is potentially ????

Newlin: To clarify, the bill is roughly \$175,000 which is how much it would cost to pay the \$35.00 per household fee for garbage collection this year (2007). The Town has kept a good fund balance in the old refuse district account. In previous budgets they could have taken money out of that account to fund other programs but we have left that money in that account with anticipation that this day may or may not come. We have about \$178,000 to \$180,000 in that account, so this year the Town with that money can cover the \$35.00 per household charge. At this point with the new amendment as proposed, I am opposed to it. There have been some questions tonight about this. Lewiston is one the few communities in WNY that has really got a good growth problem. Economic growth that is being offered to us by Modern has its' pluses or minus. Economic growth is coming to us by way of increased tourism opportunities and things must be going in the right direction in Lewiston. The issue that we are going to have to be facing is in which direction do we want to grow. It is a good problem to have in the area that is being plagued right with not a lot of bad choices to make with economic downsizing. My position is in the record and is there any motion by the Board regarding this local law?

Bax: No motion at this point. This obligation became due Jan. 1st. correct?

Newlin said it is not specified in the contract as to what payment and it starts this year but no date as to when it comes due.

Leone: It doesn't say when the payment is due but it says that the prior grace period of the HCA (prior free pickup) ends at Dec. 31st.

Bax: We have heard so much about Modern being a good corporate neighbor etc. their receipt of payment for six months thus far and does it make sense to pay our bill at this point. We have the funds available, pay the bill to Modern so that wipes that incentive off of the table.

Newlin: It depends if there is a majority and some members of this Board who might be considering negotiation.

Bax said I would assume that if we reached an agreement later that that would be part of a refund of the fees. To ask them to forego \$175,000 for 6 months, I am not sure that would be a fair thing to ask them to hold off on while we get more ??? on it.

Edwards: I don't see in here where it is the Town's responsibility. It is the resident's responsibility and the other municipality's responsibility.

Leone stated that the contract does not define whether the Town is paying on behalf of the residents or the residents themselves are going to have to pay.

Bax: I want as few complicating issues on the table. I think a lot of the public for a good reason the history that exists with previous Town Boards etc. has reason to suspect everybody up here and should do so with good cause. My concern is that I

want to respect a good corporate neighbor and citizen and make sure that our bills are paid on time. One of the things that has been raised is that this money.....we can only defer billing for so long. I suggest that we pay it and when we are done negotiating and if we have an agreement then so be it. If we don't have an agreement then at least Modern has gotten the money that is due. As far as who is going to do the billing and how it is going to be paid would be a complicating fact.

Newlin said we should have some dialogue with Modern in the next two weeks between now and the next meeting to see when they would like to be paid. The money is there in a separate account.

Johnson: Can we clear some of this up if we are going to be doing an agreement with them? So it can be spelled out clearly on that? If we are guessing what should be done and who should be paying and billed, it should be cleaned up. Things that were written way back maybe there was a different interpretation.

Leone: The agreement was written in 1999.

DiRamio: We have no billing in place at this time to make any payment.

Palmer asked how do we know how much we owe. Is it per residential unit?

Gary Smith: Yes. Apartments are separate. We have the count and we can confirm with the Town. The Village have a set price and they will get charged approximately \$20,000. You are \$35.00 times the residential units. The school district's bill is \$3000.

Bax said we should not make a motion on this until we have the figures and not move today. I think this is an issue that clouds the public's perspective of what we are doing and I would like to get it cleared up.

Sanborn Sidewalks Repair:

Lannon: We solicited quotes from 4 contractors and received two from Armand Cerrone Inc. and Masters Edge. The low bid from Armand Cerrone was for \$3492.00 which includes the insurance and obtaining a work permit from DOT.

Edwards requested that it not interfere with the planned streetscape project in 2 years, the setbacks and the infrastructure there. I will check with Urban Engineers regarding the setbacks.

Edwards MOVED for approval of \$3492.00 to Armand Cerrone Inc. for 60' of sidewalk with funds to come from the Infrastructure Account and permit the Supervisor to sign the contract. Seconded by Palmer and carried 5-0.

CORRESPONDENCE:

Item #1:

Request from the NYS Office of Parks, Recreation and Historic Preservation to acquire approximately 0.15 of an acre of land in the Town of Lewiston. The property is adjacent to Artpark State Park.

Newlin stated that this is a small section of property owned by the Town adjacent to Artpark and we should get it assessed and see what the value is. I don't believe they have any specific plans for it at this time. This was referred to the Assessor for review.

Item #2:

Request from the Bd. of Managers of the Coach Houses at Ridgeview that a street light be installed at the bottom of the hill located on the east side of Northridge Drive emanating from Rt. 104 and that a streetlight be located on each of the 2 curves on the east side in front of 720 & 724 Northridge Dr. Also, a request is made for a stop sign at the bottom of the hill on Northridge Dr. emanating from Rt.

104. This request was referred to the Lighting and Signage Cmte. Also, that the Town Engineer review it.

Boniello referred to a plan that was submitted by the Corp. to develop the other side of the property several years ago with changes to modify the entrances etc. Also there had been a dispute between the 2 owners. The Board chose not to do it. What had been originally approved by the Town included no lighting on the whole street. Discussions that if it was developed at that time we were going to request that they put lighting in if they wanted to modify the plan but no action took place. There is still the issue of the 75' which had been required under the original plan and has not been resolved.

NEWLIN:

Legal:

Leone: With regards to the mining issue, I would like to discuss this in executive session regarding pending litigation.

Kilmer Property:

We have a letter from Mary Ann Kilmer asking if the Board would consider waiving the subdivision and building fees for a lot that she is donating to the injured Buffalo policewoman who is currently receiving rehab. The handicapped accessible home needs to be completed soon before she is released.

Boniello: If the Board approves this request I would make it subject to the attorneys review.

Edwards MOVED to approve the waiving of all fees for the property owned by Mary Ann Kilmer subject to the Attorneys review. Seconded by Palmer and carried 5-0.

Boniello: You have a memo from Pat Martin regarding the property at 2827 Niagara St., Sanborn. I would like permission to start a Supreme Court action for demolition. There will be expenses involved as I will need to have a search on the property. Also, I need to know where the money will come from for these costs. I need to prove ownership. I would also ask that you authorize Mr. Reiter go there before July 21st and clean the property as the Slipko's who live next door are having a graduation party on that date and that be included in the fees. The owners are in nursing homes and they have filed bankruptcy and the son has power of authority. Mr. Martin has identified 1221 Swann Road, Upper Mt. Rd/Grove Street and 2827 Niagara Street as unsafe buildings. I would like to take the same action on these properties also.

Newlin asked what amount the expenses would be.

Boniello stated not to exceed \$1500 out of legal contingencies.

Bax MOVED to authorize Atty. Boniello to pursue litigation against the properties listed and fees/expenses not to exceed \$1500 with funds from legal contingency. Seconded by Johnson.

Johnson: Any expenses incurred should be put on the taxes (lien).

Motion carried 5-0.

Bax MOVED to authorize Supt. Reiter of the Highway Dept. to clean up the property at 2827 Niagara Street by July 15, 2007 and all expenses incurred be placed on the lien with reimbursement to the Highway Dept.

Edwards noted that there is a public safety with respect to that home and the house should be properly enclosed.

Leone: There is the possibility that there is asbestos and a permit is required before demolition is done.

Newlin said that the Highway Dept. will only be cleaning up the surrounding area (yard).

Bax MOVED to amend the Motion that Supt. Reiter to clean up the brush and the surrounding lawn at 2827 Niagara Street by July 15, 2007 with all expenses to be placed on the lien with reimbursement to said expenses to the Highway Department with specific instruction that Mr. Reiter is not to do any demolition of the property. Seconded by Johnson and carried 5-0.

Edwards said we should make the house safe by an enclosure of blocking those doors and windows so children cannot get in. Where would that money come from?

Boniello: We have met with the State Building Inspector and I wanted an emergency demolition but he was uncomfortable about it because these properties have been in the current condition for so long he did not feel it was an emergency. That is why I am going through this route. In addition, we have had 3 different building inspectors since we started this. I believe that an emergency situation exists.

Palmer asked at what point do we become legally responsible.

Boniello: Now...three years ago. The one on Niagara Street is wide open and children have entered it.

Palmer: I think it is clear that we have to make sure that those properties are enclosed so that kids cannot fall into the basement.

Boniello said he had already spoken to the Highway Supt. & Mr. Kenny about this.

Newlin MOVED that pending advice of Counsel we will authorize Mr. Reiter to take whatever measures necessary to secure the house from outside intruders. Seconded by Bax and carried 5-0.

Newlin asked that Mr. Boniello meet with Supt. Reiter on this matter.

NYPA Re-Licensing Update:

We have picked Mr. Chuck Miller as the President of the Power Coalition. Mr. Miller who is in the real estate business is from Erie Cnty. and has no real attachments to Niagara Cnty.

NYPA/Electricity:

I have consulted with our attorneys in Buffalo and Albany and it looks like we are on track in receiving the cheap hydro electricity in September of this year. It should be reflected in the October billing statements unless we run into some unforeseen impediments. This is the first time any town has done anything like that and the residents should be seeing a reduction of their residential rates at that time. We will have to do our job as a Board perhaps with newsletters which I brought up last year in the budget session to inform the residents what if anything they can do in terms of notifying us that they are not getting a credit and they should be but we are going to have to have some give & take between the Board and those residents.

I want to notify the Board that I am starting to do some research into conservation. What worries me long term is that once this electrical rate goes down there will be incentives to use more electricity. As there are more incentives to use more electricity since it is cheaper we could be quickly whittling away our precious cheap kilowatts that are coming from the power plant. I have seen across this country there are towns some smaller than Lewiston that offer incentives for residents to take good energy measures like maybe being able to give a small credit \$10, \$15 or \$25 for the purchase of an energy star rated appliances. I'll try to do some cost analysis on how much that may cost us, but I think in the long run any steps that we

can take encouraging good behavior. I think that is something government probably doesn't do as well as it should. We can encourage that good behavior with taking out some of the money we have already gotten from the Power Authority and I think it will well serve the long range interests of this town. I will share it with all of you in an upcoming meeting.

K-9 DCJS Grant:

We had a sudden opportunity to pickup the canine unit with this dog coming from the Czech Republic. We approved tonight the payment which is coming out of the police budget for this. The biggest impact on the use of the dog will be with the school districts where it will be checking for drugs. This canine unit offers our Police Dept. a chance to further enhance that message of keeping children off of drugs which we would all benefit from.

JOHNSON:

Seniors:

The Senior Center recently had an "80 & 81 Over" luncheon and I was unable to attend. The Clerk represented me and we received a thank you note from the Director.

Van Driver:

Johnson MOVED to hire Richard Helfrich of 904 Oneida Street as a van driver at the rate of \$9.00 per hour. Seconded by Bax and carried 5-0.

This came about as a result of the resignation of one of the van drivers that I will discuss in Executive Session.

Fire Bureau:

With respect to the Wendt's Propane application, it was approved at the last meeting.

BAX:

Tennis Court Repair:

The Recreation Dept. needs to go out to bid for the repairs for one of the tennis courts at Kiwanis Park. We have received one bid which we will keep confidential at this time just so we have a fair bidding process. The bid was a voluntary bid that someone gave to Mr. Dashineau.

Edwards said referring back to our procurement policy, was there a spec in that quote which I did see from that certain contractor. I would like to have Mr. Lannon review it and then we will put it out to bid. It is in order.

Bax said it should go out the same way and follow policy even if this individual has to resubmit the bid.

Edwards: It was a court specialist (company) that does this and it was design built.

Johnson: We had talked about how bad the courts were and perhaps somebody read that into the minutes and submitted a bid.

Bax asked if the bid that had been submitted was it solicited for the tennis courts or just voluntarily submitted.

Dashineau: No, Mr. Reiter was talking to a person that did the former Village ??? and got a rough estimate.

Bax said if we follow the procurement policy, we advertise it and send it out to bid. If this individual is interested they can submit a supplemental bid that follows our policy and make sure that it includes everything necessary.

Dashineau said that is only if we approve those specs.

Edwards: Upon Mr. Lannon's approval, I have no problem.

Bax: I understand that if it goes over \$20,000 it has to be publicly bid.

Dashineau: At Kiwanis one is a shuffleboard court. Colonial Village tennis courts were resurfaced 6 years ago. We built a basketball court in with that and we checked it and it is still okay. Right now the only court we need to resurface is the shuffleboard court at Pletcher. It is not just blacktop, it is special type of blacktop with a different type of coating over the top.

Bax MOVED to solicit bids for the repair of one of the tennis courts at Kiwanis Park with the Engineer to review. Seconded by Edwards and carried 5-0.

EDWARDS:

Highway Dept.:

They have finished their annual paving and have started the trimming of the paving projects via driveway repairs. Also grass and lawn repairs.

Drainage:

The Lewistowne drainage project started last week.

Parks:

The crews helped out with the landscaping and trimming around the new parking lot.

Town Hall Sign:

Cooper Sign Co. is in possession of our new sign and with a minor repair to one of the columns. They will co-ordinate with the Clerk.

Lannon said we will co-ordinate with the installation and there will be training and the startup.

PALMER:

Center St. Electrical:

I met with the Chamber regarding the electrical problems. When it was discussed before we were to contact Bernie Rotella who was checking into the possibility of grants with maybe some available through the electric company. I have not heard from him yet.

Newlin said he would contact him tomorrow.

Johnson: Mr. Barber of the Lighting Cmte. who works for National Grid met with the engineer regarding the lights off of Bronson Dr. and he had some suggestions. He would like to meet with you when you are available. He wanted to come up with a proposal to the zoning codification of what they think should be done. When you have an association where you can put a light district in without even creating a lighting district through them. A lighting district is more in depth.

BAX:

Recreation Dept.:

There have been 3 bids submitted for a grinder pump at Kiwanis Park for the sewage. There is a low bid of \$6950 from Gross Contracting and we are hopeful we can accept this bid.

Edwards: We haven't actually approved that project in October of 2006. Why wasn't it done beforehand?

Bax said it came in June 12th & 15th.

Dashineau: I had a problem getting the specs together because we had to patch in and completely rebuild it. This is a complete rebuilt.

Edwards asked the Engineer if they had a problem with the specs.

Dashineau said the specs were all reviewed.

Edwards asked who wrote the specs and why has it been 6 or 7 months. It went out as an emergency bid, didn't it?

Dashineau said no not really. We put a temporary patch, a secondary grinder pump late in the season. When we put that in we were hoping that it would last longer. We paid \$2500 to put in a second pump. This bidding includes everything. The control panel, new sewer work. We were hoping that the work that we did last year would extend a little longer but it didn't.

Edwards: The \$2000 pump that we put in late in the season does not work right now.

Dashineau said the control panel, the sewer break and everything is about 30 years old.

Edwards said he is just wondering why it takes so long. Why?

Dashineau said they were hoping that the patch would hold up. Last year they told us we could do it this way and hope for the best or we could do it the other way. In retrospect we should have done it the other way. We wouldn't do it until after the season but we did pump out the holding tank and now we put in a temporary grinder free of charge that is on, per the specifications. It will get us through the rest of the summer. We will take it out as soon as our programs end.

Bax MOVED that we accept the bid of Gross Contracting in the amount of \$6950. Seconded by Johnson and carried 5-0.

Town Hall Renovations:

Lannon said he spoke with Mr. Karl Frizlen and he will be co-coordinating with the Clerk and myself regarding putting out the bids.

Motion by Johnson, seconded by Bax to go into an Executive Session for 2 personnel issues and contract negotiations. Carried 5-0.

Time: 9:10 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk

Executive Session

Present: Sup. Newlin; Council Members Bax, Edwards, Johnson & Palmer; Deputy Sup. Elgin; Town Atty. Leone & Deputy Town Atty. Boniello.*

Issues Discussed:

1. Issues regarding the Senior Citizen Center.
2. Police Chief issues with the Village.
3. Current lawsuit concerning mining.
4. Modern contract issues.

Motion for adjournment by Bax, seconded by Johnson and carried 5-0.

Time: 10:00 p.m.

Transcribed by:
Carol J. Brandon

Taken by:
David Boniello

