

REGULAR TOWN BOARD MEETING August 22, 2005 7:00 p.m.

Present: Supervisor Newlin; Council Members Ceretto, Johnson, Kilmer & Langlois, Tn. Atty. Leone; Dpty. Atty. Boniello; Dpty. Sup. Elgin; Finance Officer DiRamio; Adm./Op. Lockhart; Eng. Lannon; Bldg./Zoning Officer Coulter and Tn. Clerk Brandon. 2 press reps and 6 residents.

The Supervisor opened the regular meeting at 7:30 p.m. The Pledge of Allegiance was recited followed by a moment of silent reflection.

The Supervisor asked if any resident wished to speak at this time and no one did.

AGENDA:

Ceretto MOVED to accept the Agenda as presented. Seconded by Johnson and carried 5-0.

MINUTES:

Kilmer MOVED for the approval of the following minutes: 6-27-05 RTBM; 7-11-05 Ex. Session re Labor Negotiations; 7-11-05 Work Session; 7-25-05 PH re Firefighters Service Awards; 7-25-05 PH re PIP Code Amendments & 7-25-05 RTBM. Seconded by Langlois and carried 5-0.

Langlois MOVED for the approval of 8-17-05 Special Mtg. re Air Conditioning Unit. Seconded by Johnson and carried 3-0-2. * (Mr. Ceretto & Mr. Kilmer were not present for the meeting.)

POST AUDITS:

Kilmer MOVED to approve the following items for Post Audits: Home Depot \$69.99; Office Max \$749.41; Office Max Credit Plan \$59.25; Radio Shack \$300.97 and Sam's Club \$421.41. Seconded by Johnson and carried 5-0.

Kilmer MOVED to approve the following items for Post Audits (Time Constraints) NYS Building Officials Conf. Registration \$75.00 and the Bonnie Castle Resort Reservations \$308.00. Seconded by Johnson and carried 5-0.

OLD BUSINESS:

Firefighters Awards Incentive:

Leone: I contacted the Bd. of Elections and we have until the beginning of October and it is subject to mandatory referendum. The current level is \$480 per year per volunteer firefighter who is eligible. The maximum State level is \$700 per year. So, this Board would decide whether or not that issue should go on the ballot in the coming election. The other question was which voters vote. The answer is whoever pays votes. So, if the service awards come from fire district assessments then whoever has acquired this assessment is entitled to vote. I have spoken to one of the attorneys (also a Village firefighter) and he indicated that our only involvement with the Village with respect to Lewiston Fire Co. #1 is a contractual involvement. They don't get the service award the way that the other 3 fire companies do. My reaction is that the Village would probably not vote. I think that if our budget officer said that here is whoever is paying the bill is entitled to vote. The issue is #1, should this issue go in front of the voters this coming election and #2 is what is the proper question. I framed a question and the if Board approves it, it can go before the voters. "Shall the service awards program for eligible volunteer firefighters be increased from the current level of \$480 per year to the State allowable level of \$700 per year."

Johnson MOVED that the question as presented be put before the voters. Seconded by Kilmer.

Johnson said it is up to the voters to make a determination. We did increase it before and I am sure that 9/11 had a lot to do with it. It will help maintain the members that

are in there and the awards are based on the number of activities that are performed during your career. I think it is benefit to those who protect us.

Ceretto said the voters will decide for us and we have been fortunate with volunteer fire service.

Newlin said the companies are having a hard time recruiting and perhaps this will help.

Kilmer said this is not easy to obtain.

On the motion, carried 5-0.

NEW BUSINESS:

Item #1: Recommendation from Bldg. Inspector R. Coulter to hire Jerry R. Pedley as part-time Ordinance Enforcement Officer. When Mr. Pedley starts work he will need office space with a desk and phone. He will require use of a car, if available, otherwise if he were going to receive mileage, the money would have to be transferred into the budget for that purpose.

The Supervisor said there are questions that will be discussed in executive session regarding personnel.

The Clerk indicated that a desk and phone is available in Conference Room #1 for his use.

Item #2: Request from Larry Carbone, 430 Dutton Drive for consideration of some improvements to the area of Dutton & Apple Drives. He is requesting a stop sign be re-installed at the corner of Apple & Dutton making it back to a 3-way stop again. Also, installing "Children At Play" signs. The road markings on Dutton & Apple are not visible.

Johnson said that this item should go to the Signage Cmte. for review.

Item #3: A request from James B. Preston Jr. for re-zoning of parcel 90.00-1-35.1 (100x400) from RR (rural residential) to B business. The first 200' feet are zoned business and the rest is rural residential.

Coulter said if you choose to look to rezoning property you are the ones that rezone. You can refer it to the Planning Bd. for their recommendation and then you would hold a public hearing for rezoning. The Zoning Board only hears appeals.

Newlin asked that the secretary inform Mr. Preston what information he will need for the Planning Board.

Coulter said that they would notify the neighbors surrounding the property.

Ceretto MOVED to send the request of James B. Preston to the Planning Board for their recommendation. Seconded by Newlin and carried 5-0.

NEWLIN:

Legal:

Leone: We have the proposed dedication deed for Riverwalk Phase 2A (the roadway) and we have the proposed sanitary sewer easement for the same area. I checked with the developer and his attorney and the maintenance and performance bonds have been filed. I checked with the Town Clerk and that is so. I contacted their engineer, Mr. McIntyre because there are some questions that I have with the legal description of the road. I am looking at it again and so is Mr. Boniello and I will have the engineer look at it. It appears to be "good" to go. So, if the Board approves them we can give them to Mr. Deck for the purpose of filing upon our okay of the legal description. If the Board does approve them, I would also ask that they authorize the Supervisor to sign whatever documents need to be signed.

Langlois MOVED that we approve the dedication of the above mentioned Phase 2 of Riverwalk subject to the definition as stated by the Attorney and that the legal description match the criteria needed. Seconded by Johnson and carried 5-0.

Langlois MOVED that the Supervisor be allowed to sign upon Resolution of the previous motion. Seconded by Kilmer and carried 5-0.

Street Light Contract:

Boniello: The contract is relative to the streetlights of which you all have copies. If you have any questions please call me. Mr. Kilmer and I are going to have a conference call with the company and report back at the work session.

Newlin: I would ask that you both contact people in the Town of Porter (the Supervisor) and the Village of Williamsville. Williamsville rejected the request as did Porter largely for liability reasons. That may help you formulate your opinion.

1% Share of Sales Tax w/ County:

Newlin: I felt that the Town had a strong interest in making sure that we did claim our rightful share of the additional 1 ¼ % sales tax that the County tacked on to residents' purchases. We have a copy of the Town of Niagara, which approved a similar motion.

Johnson: It was my thought that the 1% that was added on was to be used to help defer some of the Medicaid costs to the County. If they take that whole 1% and use it for that purpose then I have no problem asking them to give it to us. If we say we want a portion of our 1%, the same as the rest of the Towns want and we take our portion then all they would say is we are short in our budget so we are going to take County tax and raise the property taxes. It is a catch 22. We could with the support of this Board send back a resolution stating that we would not request any portion of the 1% providing it is totaling used to pay down the Medicaid costs. If not, then we would ultimately want our fair share.

Kilmer: Robbing Peter to pay Paul is the problem in Niagara Cnty. Not knowing what the intent of the 1% was and some people have said that they committed it to a certain expense (Medicaid) and they are not using it for that. Well, how do you know that they are not using it for that? They are paying the bills. Obviously we spend money better than the County does. We have proven that. To go after a percentage of this is going to increase my county tax. They are talking 9-10% now. If we all take a chunk of this money they will have to get their money somewhere else and that will be in property tax. We need to talk with these legislators and determine where we are going with these taxes. They are spiraling up and we are trying to hold the line. Robbing from their 1% is not going help.

Ceretto: The additional 1% for the sales revenue is legislation that was done for Medicaid. It will take more than Sen. Maziarz and Assemblywoman DeMonte to do anything but that 1% is for Medicaid. In this resolution, it is a 1% extra tax that we are talking about who gets that share of it. This is a 1% added cost or added tax to the taxpayers. We get our share from the sales tax and it cuts our burden to the taxpayers. If the 1% sales tax weren't there we would do better economically here in Niagara Cnty. The bigger picture is we have to get rid of this 1% and stop talking about who gets it. We have to attack the problem on the Medicaid issue. Maybe we need to start having meetings with the County because it isn't just the County or the Town of Lewiston, it all of us as taxpayers. I am glad that the 1% is there because it is helping us but it is bigger issue. If we can eliminate our taxes we are going to be healthier. This would be a short time solution as to who would get the 1%. We have to consider the whole picture if we want to resolve the problem.

Langlois: In Erie Cnty. they wanted to increase their tax because they needed the money for various government costs including Medicaid and the people said no. They should look at the cost of government overall. They have found a way to reduce the cost significantly. I think it would be similar to Niagara Cnty. If they say

we will add a little more sales tax here it makes it easy to get along with the way you are going without taking a hard look at where you can cut other expenses. I don't like the idea of taxing more especially a sales tax that unfairly burdens the lower income people. As far as sharing that, the sales tax is a major source of income to all of the Towns, so we do get a share of the overall tax and this one we are not getting a share of....I would prefer that they find a way to cut other costs and not have the extra 1% tax.

Newlin: I think it is important to realize what Medicaid cost increases are (1) the expense of Medicaid options that the State has taken on for all of us and a cost we all have to pay and secondly lets be clear that Medicaid is a program to help those that are poor. The greatest way to reduce the Medicaid burden on the County is to increase economic activity within Niagara Cnty. and that is best done by lowering taxes as other members of this Board have said. In order to reduce taxes the County has to do a better job of reducing spending. That is what the real enemy is here. Until they take a hard look at their spending as Erie Cnty. has taken the first steps in doing so, we are going to be driven with more and more taxes to pay for more and more costs. The County really has to look at decreasing it's spending, encouraging economic development and thereby reducing the Medicaid roles. I agree with Mr. Langlois in that the sales tax is an unfair tax and I think it is a regressive tax. It forces upon every person regardless of income a certain burden to pay. It hits those on fixed incomes who most often are the elderly, more so than those on the upper end of the economic scale. In robbing Peter to pay Paul and if I knew they could keep all of this 1% and therefore our property taxes would not be raised by 10%, I would be in support. My suspicion is that they are going to keep this 1% to themselves and slap a nice 10% increase on all of us taxpayers here in Lewiston. When they tax people here in Lewiston, that dollar is more often spent outside of Lewiston rather than within this Town. I was thinking about making a motion that we send resolution to the County to eliminate the additional 1% sales tax altogether.

Johnson: Nobody likes taxes. The sales tax going up 1% is already in place. The Tn. of Niagara has taken a position that they would like to take a portion of it. If we can tell them that the 1% needs to be designated for the purpose of reducing taxesbut they never do it. They have a 200M+ budget and unless they can come up with some alternatives they are going to raise taxes no matter what. It is a catch 22. What do you want to do? Do you want to tack on the 1%? Do you want to say reduce it and then add to the property tax? By adding it to the property tax that will go on forever. They are not going to reduce property tax.

Ceretto: The legislation was created for the 1% extra sales tax strictly for Medicaid. It cannot be used for anything else. You can request a change for that and that is the issue. You can decide if we should share that...the legislators in the County can't decide that. This is what was...it is a soft solution. Eliminate the 1%, control the Medicaid costs....those are the things we have to do. We need to look long term. The 1% shouldn't be there in the first place.

Johnson: If your statement is correct that the monies had to be used for that, then how come the Tn. of Niagara asked for a portion of it?

Ceretto: Anybody can ask. This is what the law is now. Legislation can change but the County can't decide. It is the State.

Johnson said if that is what you are saying then that is what we should take our stand on. If the 1% is designated for the cost of Medicaid then maybe we need to send a letter back saying it is our understanding that you can't pass it out.

Newlin: There is one county that is already doing that so it must be possible. I haven't heard of any legal objections to that yet.

Langlois said if you read Sup. Richards' memo he is asking that the Legislature change the law requiring the County to share it. The present law says it has to be

used for Medicaid. They are asking to change it so that it would be shared with the other sales tax. If we do anything that is what we need to do.

Kilmer: Why don't we send a letter to Sen. Maziarz and Assemblywoman DelMonte and tell them to reduce the Medicaid costs.

Newlin: The State government is not going to be back in session until January, so.....with no motions we will continue on.

A/C Unit Replacement Contract:

Newlin said on August 17th, 3 Board Members in a special meeting voted to replace the aged unit here at the Town Hall.

Brandon stated that we had received 3 proposals ranging from \$12,700 to \$17,250 for a 15-ton unit. The Board Members approved the bid of Duncan Heating & Cooling in the amount of \$12,700. Atty. Leone has been provided with copies of the bids and an insurance certificate from Duncan Heating. The funds to come from Town Hall Capital Account H-55-7140-0200.

Leone: I would like to inform the Board that I use to do work for Duncan Heating and Cooling, so I want to disclose that. I have not had anything to do with them in a while other than he did some work at my home several weeks ago. Having said that as part of the disclosure, I don't think there is anything wrong with the vote that occurred at the special meeting that was set up properly. It is just a question of informing the rest of the Board and the public which it did.

Johnson: You could just say that the August 17th meeting took place, a vote was taken to award to Duncan Heating and Cooling a contract in the amount of \$12,700 for an air conditioning unit.

Union Negotiations Meeting:

Newlin stated that on Sept. 26th at 6:00 p.m. prior to the RTBM the Board will meet in Executive Session to discuss in detail the status of the 2 outstanding contracts with the Police and the Highway/Water Dept. Mr. Richardson will be there.

Kilmer: Can't you break out Water from Highway? You said 2 contracts when we actually have 3.

Newlin: That is true. They decided to cooperatively negotiate or joint negotiate.

Kilmer asked if we have one dept. that wants to and one that doesn't, can we not move on?

Newlin: That is fine with me. That is a reasonable request. Any comments?

Langlois: It is at Mr. Richardson's pleasure.

Newlin: I will follow that up with Mr. Richardson.

Personnel:

Kilmer MOVED to go into Executive Session to discuss a personnel issue. Seconded by Langlois and carried 5-0.

Time: 8:15 p.m.

Executive Session August 22, 2005 8:20 p.m.

Present: Sup. Newlin, Council Members Ceretto, Johnson, Kilmer & Langlois; Deputy Sup. Elgin; Finance Officer DiRamio, Town Atty. Leone & Deputy Atty. Boniello.*

Board discussed personnel issue re: Assessor G. Virtuoso.

Board discussed an update on a personnel issue regarding a part-time assistant to the Building Inspector/Zoning Officer. No Action taken.*

- Minutes taken by Dpty. Atty. Boniello

Johnson MOVED to reconvene the Town Board Meeting. Seconded by Langlois and carried 5-0. Time 8:35 p.m.

Personnel:

Newlin: We have an announcement for the Town. Sadly, we are going to accept the resignation of Assessor Gene Virtuoso from his full time position. He will be come back and serve the Town until the end of this year or until we get another assessor as a consultant. We are stepping away from one more full time position that already took place with the budget officer's position when I moved it from full time to part time and now with the assessor's position we are going to be moving away full time and going into part time. There is a considerable savings there. One, the assessor right now makes a salary of about \$52,000 a year and as a consultant he will more or less pro rated on a salary base of about \$35,000 per year. Beyond that as I am sure everybody in the room realizes when you have a full time employee there is additional costs, specifically benefits. Health insurance is not cheap and is an ever-increasing liability for governments. So, anytime we can back off a full time position it is not only a savings now but there is an increased savings as time goes by and reduces the long term liability.

Kilmer MOVED to accept the retirement of Assessor Gene Virtuoso effective September 1, 2005. Seconded by Langlois. Carried 5-0.

Newlin: We want to thank Mr. Virtuoso for his long-standing tenure with the Town and the hard work he has put in and we look forward to working with him in his new capacity as a consultant to the Town taking care of various assessment activities. We will have to set a salary for the new consultant position that Mr. Virtuoso will stepping into.

Johnson: He is going to take his leave on September 1st (retirement) and he would like to return as a consultant and help us with the process of what we are going to do on September 6th.

Langlois MOVED that starting September 6th, we employ Gene Virtuoso at a prorated amount of \$1354.00 bi-weekly that will require him to work 2/3rds of the hours that he is currently working. Seconded by Kilmer and carried 5-0.

Newlin: Looking forward, this Board anticipates in the future when Mr. Virtuoso's time is entirely over with the Town of Lewiston, I will not be supporting and I don't think any other Board member in the future that is here now will be supporting another full time position. I think we will look forward to working cooperatively with another government that has an assessor. It might be the Town of Porter or another municipality in the County or it might be the County itself. Just as we have worked on bringing in more shared services so that one town does not have to over commit to a need that may not be there. So we are going to do the same here with our assessor. That will be a savings to our Town of thousands of dollars in the present and in the future.

Boniello asked if he would be hired as a consultant...as an independent contractor rather than an employee?

Newlin: Exactly.

Ceretto asked if we need a contract written up?

Boniello said a simple contract would be good idea.

Ceretto MOVED that Atty. Boniello prepare a contract between the Town of Lewiston and Mr. Virtuoso for consulting services. Seconded by Johnson and carried 5-0.

Ceretto asked that a letter be sent thanking him for his years of service as Assessor and look forward to another relationship as a consultant. The Board approved this.

Newlin: For the record, we have a letter dated August 15th to the Clerk, requesting the notice of retirement be kept confidential and not made public until after the Board acts in Executive Session, which we just did.

LANGLOIS:

Recreation: Program is going along well. The baseball season is over and a family picnic was very well attended.

Starting in September, additional work is going to be done at the Kiwanis shelter and other work that was authorized to be done after August.

WPCC: There will be a meeting on August 24th at 6:30 p.m. at the plant to discuss the 2006 budget-sewer use contract for the plant operations. I will represent the Town.

JOHNSON:

Liaison Reports:

Seniors: I want to thank the Board in joining me in visiting Ted Czechowski. Also, I have a letter from Senior Director Collesano thanking Sen. G. Maziarz for the new senior van.

Water Dept. We meet with Foreman Bob Nablo and he and Steve Reiter and his employees have helped out with recent major water breaks.

Engineering: Engineer Britton has written some recommendations on several issues.

Lannon: On drainage, 1962 Swann Road request by the homeowner to clean out approximately 400 feet of an existing deep drainage ditch that discharges to Swann Rd. Memo states that the ditch has accumulated significant silt, misc. debris and is over grown with small trees and brush etc. This ditch is identified in the Lewiston Comprehensive Drainage Study as a tributary to 12-Mile Creek. The ditch is located on private property and handles a significant amount of storm water runoff between Ridge Rd. and Swann Rd. Based on review of the Town drainage study, the drainage ditch under consideration for Town assistance is recognized as a Town ditch. The requested cleaning project will help relieve standing water that has been trapped as a result of silt accumulation and potentially reduce localized flowing along Swann Rd. It is our recommendation that the Town Board consider granting the homeowners' request for Town assistance. If so granted that signed ditch cards are required prior to proceeding with the work from all of the affected property owners.

Motion by Johnson that the Engineer /Steve Reiter be allowed to get the work completed as stated. Seconded by Langlois.

Langlois asked how long will it take to do this work?

Lannon: No longer than 2 days.

Kilmer questioned that if we pay for time and equipment it should not cost anything else. There should be no additional cost.

On the Motion, carried 5-0.

5226 Townline Road: Proposed Injection Well

Lannon: Much of this was done in 2004 and I would like the Board to consider to table for further discussion at the work session.

5945 Walmore Road: Drainage

Lannon: Memo of 8-10-05 regarding request to clean out approximately 175 feet of an existing shallow drainage ditch that discharges toward the road, then flows south to Cayuga Creek. This ditch carries public drainage from Walmore Road. It is our recommendation that the Town Board consider granting the homeowners' request for Town assistance.

Kilmer MOVED that the Engineer/Supt. Reiter get the work completed as discussed. Seconded by Langlois. Carried 5-0. (approximately 1 day job.)

Kilmer asked to return to the Townline drainage issue. I believe that we asked to get permission and that Mr. Britton and Mr. Reiter were to do some test digging, as it has not been determined how deep the rock is there and that they could do gravity drain.

Lannon: There are 2 items that were done. We did a topography survey in that area and found out that the elevation difference between the invert of the rear yard and the invert of the front ditch was less than 3 inches over 200 feet. That is very, very flat and therefore can't get to the front by gravity. That is really not an option. As recommended by the Town Board in 2004, test pits had been dug to determine what the depth of bedrock in the rear yard. That is approximately 4 ½ feet from the surface. What the recommendation is to construct an injection well by drilling into the bedrock, intercepting some fissures and cracks within that bedrock and allow the water to be directed and collected and discharged into the ground. Mr. Britton's recommendation is to proceed with that injection well and subsequent permeability tests for the well at a cost estimated at \$3000. The Town is also required to have a water truck to assist with the permeability test. Mr. Britton and I discussed that if the injection well is constructed then that in affect would allow those residents a point to drain to. It will be up to those residents to construct swales along their rear property line to get their drainage to the well.

Kilmer said it is basically following our policy and we dig the ditches and you get the water to it.

Lannon: This was done in 2004 when I was not present.

Langlois said this came up as a result of a 100-year rain and problems do show up when you get that much rain throughout the Town. Are we correct in trying to cure problems as if this was a 100-year flood or rain...I don't know. He has not had any problems since.

Johnson said we have told our residents that we would give them somewhere to drain to and that they would have to pay to get their water moving to there. This will help other residents as well.

Lannon said he agrees and the recommendation is sound. I have had varied success with the use of an injection well. I want to kind of avoid creating what might be considered in the future a maintenance.....if the Town puts it in and provides a place for it to drain and it should plug up...I want to be a little cautious.

Langlois stated that it could be very a expensive proposition and I don't know how much we ought to spend.

Lannon said there might be some discussion about putting it in the front and at least putting it in an acceptable location.

5589 Bridgeman Road Culvert Replacement:

Lannon: There was a letter requesting that the Town Board provide this resident (R. Fegley) with a date for a culvert replacement. This is based on the July 2004 storm which, caused drainage problems along this road. There is an existing 12-inch culvert that goes beneath Bridgeman Road, which is undersized. It is not properly sized to handle the 10-year storm event. This is not sized to handle the 10-year storm. In Mr.

Britton's letter of Sept. 2004 recommended that the 12-inch culvert be replaced with a 36" by 22" pipe, which is properly sized. I do not have a cost for this.

Langlois: I thought we had approved this several months ago. I suggest that we check the record.

Lannon said in his view, I don't think there is any problem with the recommendation or the Town's acceptance of the recommendation as I interpret this letter from the resident...it is the implementation of that recommendation.

Langlois MOVED that the culvert be replaced as recommended in the Sept. 8, 2004 memo from Eng. D. Britton.

Kilmer: If there is only a 12-inch pipe receiving the water, what are we going to do for water flows continuing? If you are changing the diameter of a pipe from 12 inches to 22 by 36, what are we doing to handle the water that is now going to be rushing through there?

Lannon: I believe the ????? capacity is sufficient.

Seconded by Johnson and carried 5-0.

Capital Plan Drainage Improvement:

Lannon: We have worked out a plan and we would like to discuss this with Supt. Reiter and then discuss it further at the next work session.

Kilmer noted that this is the capital project that has been discussed for over 1-½ years.

Johnson: Supt. Reiter is doing the roadwork and rather than go out to bid we would like to talk with him about handling this type of project for the drainage and then continue.

Lannon: It is also to review where the Drainage Dept. is. This is just what we have proposed.

I will ask that Eng. Britton and Supt. Reiter look at 913 & 1162 Ridge Road for drainage issues.

SEQR Lead Agency Designation:

Lannon: A letter from DEC regarding a proposed mine land reclamation permit modification for Mawhiney Trucking Helmich Site of 1752 Ridge Road. In accordance with Article 8 (SEQR) of the NYS Environmental Conservation Law, we have identified the proposal as a "Type 1" Action since it involves the physical alteration of more than 2.5 acres in an Agricultural District. Accordingly, preparation of an Environmental Impact Statement or issuance of a Determination of Non-Significance must be done after designation of an appropriate "SEQR Lead Agency". This is to inform you that the DEC proposes to act as SEQR Lead Agency for the review of this mining permits application, as the Mined Land Reclamation Law assigns principal authority over mining activities to this Dept. However, the purpose of this letter is twofold: 1) to request your concurrence with designation of the Dept. as SEQR Lead agency; (which my recommendation will be) and 2) to request information regarding any project impacts, which should be addressed in our review, especially regarding setbacks, barriers to access, dust, hours of operation and zoning prohibitions.

It would be my suggestion that this get directed to the Environmental Commission for review at their August 30th meeting. The DEC needs a response no later than September 6th. If we do not meet that date, they will go without us.

Kilmer said an immediate response should be sent right now and says it does not meet our zoning. There is no mining in that area. There is now a 20-acre pond and this was an irrigation pond for agriculture. They took out trees to make the pond bigger. This is a clay mining operation.

Lannon: They want to expand the irrigation pond by 27 acres.

Kilmer: This is a 50-acre pond. This will back up to the pond that Mr. Wolf has and that whole block is going to be a lake.

Langlois: Isn't the purpose of this to have farm ponds but not to allow somebody to essential allowing somebody to dig up the whole town with clay mining?

Kilmer: They came in under an irrigation pond.... expand, expand. I really question DEC's legitimacy here because what they came in under and what they are doing are 2 different things. I think this is out of control. We can re-zone. We can zone them out.

Newlin said he did not want to see any more of this type of mining in this Town. We have too much of it as it is.

Langlois: If this were a true farm pond, it would be fine but obviously, he already has gone through this twice and now he wants to expand. How big should a farm pond be?

Johnson asked if we had approved him?

Lannon: One, the DEC requests the Town concurrence with the DEC being the lead agent. You can argue that you should be, but you should be sure you want to do that.

Kilmer: We don't mind them being lead agency, but specifically it is the only thing that we put in the law to keep people from mining all of Lewiston is that we have zoning that zones out mining in certain areas.

Lannon: That is an issue that you want to bring up but are there other issues. Setbacks, dust, access etc. that you can bring to bear as well in addition to the zoning. You can bring all these issues to the DEC with them being lead agent to have them respond to the Town's concerns.

Kilmer asked if it is not zoned could they get around it being lead agency? Doesn't the Town have some sort of home rule...the only thing to keep us from becoming a huge hole and we enacted it a few years ago...that we would legislate mining.

Newlin: If we have mining regulations, the Town does have a say in what goes in, as I understand it.

Leone: DEC is properly the lead agency in my opinion for mines and I think it is the Mining Reclamation Law that says that the regulation of mining activity per se is something that is totally within the purview of NYS, not the local municipalities. In my opinion the answer to the first question is that the State should be the lead agency because they are the ones that are going to regulate that activity. The second question, I think that the Town should send a letter to DEC much the same way that we did with Bergey Mine and say that they did not apply for a zoning change and it was originally granted as a farming pond and it does not comply with our Master Plan. Also, that we have issues concerning the environment, dust, traffic, noise etc. and see where it goes. I can send a letter out and perhaps the Board could also send a letter.

Ceretto MOVED to concur that the NYS Department of Environmental Conservation be the Lead Agency for the Proposed Mined Land Reclamation Permit Modification of Mawhiney Trucking Helmich Site. Seconded by Kilmer and carried 5-0.

Ceretto MOVED that the DEC be informed by Town Atty. J. Leone of the Town's concerns regarding this application. Seconded by Kilmer.

Kilmer: I think we should get each one of the things that they do not conform with. We should give them a litany of things i.e. agricultural pond, which it is not (a mining pond) etc. They will roll over this if we don't.

Boniello: This is supposed to be subject to the zoning and you may want to indicate that as an option that any permit that they issue is subject to the zoning requirement and rules. Also, it is not a permitted use in that zoning district (RR).

Kilmer: That is correct. It does not meet our zoning so it should fail. The DEC is going to figure a way around it so we have to beat them.

Boniello: It is suppose to be subject to local zoning.

Newlin said perhaps the State is now aware of this. This letter will make them aware of it.

Lannon asked if we want to involve the Environmental Commission?

Langlois asked it be put on their agenda and ask that they specifically address this.

On the motion, carried 5-0.

Langlois MOVED that the Environmental Commission at their August 30th meeting review this issue and respond by letter. Seconded by Kilmer and carried 5-0.

Johnson: Mr. Reiter informed me that at the April meeting, the Board approved to allow CRA Eng. to prepare an annual report of SPEDES Storm Water Discharge not to exceed \$2000 with funds to come out of drainage or fund balance. This amount was out taken of the Drainage Dept. budget. Mr. Reiter sent a letter to the Supervisor stating that the Board is not allowed to take money out of his drainage budget without his permission. We have enough money left in the engineering budget, so I will make the following motion.

Johnson MOVED that the \$2000 be replaced into the Drainage budget with funds to come from Engineering for the SPEDES report. Seconded by Newlin.

Kilmer: At conferences I have attended SPEDES talks about drainage. It is a drainage issue, so why are we not charging drainage?

Johnson: Mr. Reiter's memo states we cannot take money out of his drainage budget.

Kilmer: I am not going to co-operate on this. This is a drainage issue.

Newlin stated that Eng. Lannon is working under budget this year and it is going to be the engineers that do most of the work on this SPEDES application so it makes sense to me. I don't see any harm in proceeding with this motion.

Langlois: If it is engineering work but it is for drainage. It should be under the Drainage Dept. in my view.

Newlin: However, Mr. Lannon said they could handle it on their end.

On the Motion, Ceretto, Johnson, Langlois and Newlin Yes; Kilmer No. Motion carried 4-1.

Cable Meeting: Scheduled for August 25th at 7:00 p.m.

DOT Meeting: We met with the DOT. We brought up the lighting request of the restaurant (J.J. Cabins's) and they provided us with the name of the person in the lighting division to speak with. There is a new person with regarding to drainage. There was discussion of some charges from Mr. Nablo. They called for another meeting and I will inform you when that is.

Chamber Meeting/Sanborn: The Sanborn business group are starting to form their own alliance and be part of the Chamber. They are moving forward to come in with a request to the Town for them to have as the GLPBA used to be. They discussed issues such as the phone number (long distance). They are going to start up a 503 C-6 because they cannot be a not-for-profit. They asked if they could get some legal advice from us. Ransomville has done this for their businesses with the Town giving them \$1000.

Langlois: I don't see this as a Town's responsibility. I think it is a business responsibility. Maybe we could give them some legal advice to start with, but we are not in the business of doing business with private entities.

Johnson: This is not the Sanborn Area Historical Society (the farm). I will have them contact the Supervisor.

Towers: Cingular came to the Town as well as the County Planning Bd. regarding a tower on Vrooman Drive. We suggested that they co-collate to the Lew. #1 fire hall. However, they are telling their customers when they get bad reception that the Town of Lewiston is holding back. I would like to get permission from the Board with the approval of the attorneys to send a notice in the paper explaining to the customers of Cingular. The County rejected their request based on closeness to properties. The ad should tell them that they were referred back to the Sprint tower that is at the fire hall to co-collate. They withdrew their proposal.

Langlois: I believe that Cingular said that they needed this tower because they could not get a reception from the Village tower because it was inadequate. I use to have Cingular and because I couldn't get the calls, I no longer have it.

Johnson said that Cingular is on the Niagara Mohawk tower that we did approve on Upper Mt. Rd.

Kilmer: 4 towers are being held up right now are because of the plan (weight/fall zone) but the engineers have said they are safe. It is taking too long getting these approved. I will talk with you on this.

KILMER:

Lighting Contract: I will be handling this with Atty. Boniello on the legal concerns with a conference call.

CERETTO:

Highway: Reimbursement for damaged mailbox of Timothy Drabik of 5220 Bridlepath Lane in the amount of \$144.61 with funds to come from 5142.04DB.

Ceretto MOVED to reimburse T. Drabik \$144.61 with funds to come from 5142.04DB. Seconded by Johnson.

Kilmer: We should set a policy of a \$50.00 limit on repairing mailbox. The cost of this mailbox is absurd. By State law we don't have to do anything. I think we should set a limit.

Newlin: We will address this at the next work session.

Motion carried 5-0.

Sprinkler Damage: Request from Duncan Tyler for repair costs in the amount of \$189.43 for damage to sprinkler system. Funds to come from 5142.04DB.

Ceretto MOVED that reimbursement in the amount of \$189.43 to Duncan Tyler with funds from 5142.04DB. Seconded by Johnson and carried 5-0.

Traffic Sign/Escarpment & Callan Drives: A petition has been received asking for a 3 way stop sign at the corner of Escarpment Drive and Callan Drive. I would suggest that this go to the Signage Cmte. and report back. After discussion, the following motion was made.

Ceretto MOVED that the Highway Dept. install a 3-way stop sign at the intersection of Escarpment /Callan Drives. Seconded by Johnson.

Langlois commented that this had been looked at carefully but if we start doing this we may end up with stop signs all over. Chief Winkley has expressed concerns over the number of stop signs.

Johnson expressed his concern about the intersection with houses and bushes.

On the motion, carried 5-0.

Dump Truck Request: Supt. Reiter has provided a purchase order for a 2005 Ford 350 mini dump truck with a lift gate. State bid is priced at \$25,835. I have \$23,560 in the Machinery Equipment account #5130.02DB. He is requesting that \$2075.00 be taken from the Highway Garage account 5132.04A.

Ceretto MOVED for the transfer of \$2075.00 from 5130.02DB to 5132.04A. Seconded by Kilmer.

Kilmer asked what isn't he doing with the highway garage for this \$2075.00 that he asked for in the budget last year? Usually, it is \$60,000 for highway improvement so what are we not doing? If you rob Peter to pay Paul, you miss out of something. He didn't want to take money out of the garage last year. I approve of the truck, but should we take the money for something else other than highway garage? It is his budget but we approve...but if he keeps spending money from different lines for different things.....why do we have a budget line to begin with? All I am saying is what is not happening to the garage? I will approve it but I would like him (Reiter) to tell us what he is not doing.

Newlin said it is possible he had a savings.

Kilmer: I approved the truck at budget time and I am glad he got it done.

On the motion, carried 5-0.

Library: They are working on their budget at this time and addressing serving the public better.

Motion to adjourn by Kilmer and Seconded by Ceretto. Carried 5-0.

Time: 9: 35 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk

