

Final Audit Meeting

December 30, 2009

2:30 p.m.

Present: Supervisor Newlin; Council Members S. Edwards, M. Johnson & E. Palmer; Budget Officer A. DiRamio & Town Clerk C. Brandon.

Also Present: Councilman-Elect M. Marra and Supervisor's Clerk B. Cich.

Excused: Councilman A. Bax

The Supervisor opened the meeting at 2:45 p.m.

AGENDA:

Newlin: An addition to the Agenda is the lawsuit filed by Modern and a police equipment item.

Palmer MOVED to approve the amended agenda as presented. Seconded by Johnson and carried 4-0.

FINAL AUDIT:

Palmer MOVED to approve the Regular Abstract of Claims #4084 to #4410 and recommend payment in the amount of \$257,546.97 plus a Post Audit of \$212,817.21. Seconded by Edwards and carried 4-0.

Police Equipment:

Palmer: We received a request from Chief Salada for necessary equipment as part of their move into their new building. They asked for a command post trailer and other items which total \$100,000. I did an assessment of their immediate needs. I agree that some of these things on the list are essential.

Palmer MOVED to allocate \$50,000 from Account H-97 (NYPA Annual Funds) for the purchase of communication equipment, generator, computer, emergency lighting and other necessary items. Seconded by Newlin.

Edwards: Would GPS in all town vehicles add into this for the 9 police cars?

Palmer said yes and that is what they are estimating. With the monies, I would like to meet again with the chief and get an updated review of how he is prioritizing his needs. I see the need to bring the communication and computer equipment up to par especially with other agencies in the area. I would recommend that we bring the chief in prior to the spending of this money. Some of these items are under State bid and some are not.

Newlin said there is an interest in having GPS in all town vehicles for safety purposes especially those one-man crews. In addition, you also know where your vehicles are and the mileage.

Motion carried 4-0.

Highway Generator:

Palmer: There is no emergency generator at the Highway Garage and with the storing of police cars and highway vehicles there and in the event of a power failure it would be impossible to fuel them or remove them from the garage.

Edwards MOVED to allocate up to \$70,000 for the purchase of emergency generators for the Town Hall and the Highway Garage with funds to come from H-97. Seconded by Palmer and carried 4-0.

Newlin MOVED to allocate \$50,000 for the purchase and installation of GPS units and tracking equipment with software for all Town vehicles with funds to come from Account H-97. Seconded by Edwards. Motion carried 4-0.

Modern Lawsuit:

Newlin: I received from Atty. Leone a copy of the lawsuit being filed by Modern. There is no financial number listed but for the record this goes back in 1999 which predates this Board. The Town and Modern entered into an agreement known as the second amended Host Community Agreement which transferred a piece of land that had had been owned by the Town to Modern. Modern now makes the claim that during excavations that begin last year, they uncovered barrels containing *TCE* and were labeled *Hooker Chemical*. They are claiming that it was excavated on the land that the Town had sold them 10 years ago and they are now suing the Town for the cleanup of those barrels that are considered hazardous waste material. I have concerns. My personal belief is my fear that Modern will now hold this lawsuit as leverage against the Town to force the Town into taking another deal. In prior negotiations with Modern they said "if you let us bring in more garbage into Lewiston we will make this lawsuit go away". I hope the new Board considers everything before they might even consider entering a new agreement with Modern which would allow more garbage to come into town. But in any event one thing we are sure of is litigation has been begun by Modern. I think the timing is unfortunate assuming they didn't do this before the election so they snuck it in here between the holidays. It is unfortunate but in any event the Board will have to deal with this in the coming year.

That kind of segways into my next item, as we get into encumbrances, we have considerable assets that were not encumbered (not utilized) by the Town in the fiscal year 2009. We have 2 contingency lines in the "A" fund and that is what the monies we would use should we go into litigation. Legal contingency and contingency. I would at least give the next Board the bullet to fire should it decide to pursue this lawsuit and vigorously defend the Town which I hope is the case. I will be advocating for it as a private citizen. On top of what we are about to encumber for the 2010 budget next year, we have money already set aside, \$110,000 for legal contingency and \$100,000 for contingency. The new Board can appropriate any way they want and to whomever they would like but for today as we encumber we have to specify the vendor and in this case the specific attorney to whom we are encumbering this money. It is a 2 step process here. I have spoken to the Board members including Mr. Bax who is ill but the best idea that Mr. Bax & I could come up with and I shared with the rest of the Board and I think they are in agreement.....since we can't encumber right out of contingency, we are going to have to take the \$100,000 that we did not expend in contingency in the "A" fund and transfer that now within the 2009 year to the legal contingency line.

Newlin MOVED to transfer the unexpended \$100,000 in the "A" fund contingency line to the "A" fund legal contingency line. Seconded by Johnson.

Johnson: Are we done. We don't have any bills coming in from the lawsuits we...

DiRamio: They have been paid to date. There has been no action on one of the suits.

Newlin said that we gave 10% more to the legal contingency line next year from \$100,000 to \$110,000 so it could be spent on that. The bases have been covered for legal protection. The Town also has increased flexibility from the Power Authority Signing bonus money (H-99 Account) where there is about a half a million dollars where more or less the Board can spend it as they see fit whether it is on professional services or legal. I hope the next Board keeps that in reserve because the agreement with National Grid is coming to an end in 2011 so I think you should keep some for that. We have a very healthy fund balance of almost 35%. We haven't taken on any new debt. I don't think the Town is going to be hurting for financial reserves next year. First what we are doing now is a transfer from contingency to legal contingency within the "A" fund.

On the Motion, approved 4-0.

Newlin: Now, we are left with \$124,000 and after discussions with Mr. Bax, the best idea is since we have to name a specific attorney and we don't know who

exactly the new Board is going to be hiring next year or if they choose to contract out with other attorneys which is up to them, but the best idea we came up with is to encumber this money now to Gary Abraham for 2 reasons. One, he is known environmental attorney who has represented the Town and Niagara Cnty. very well by defending us or advocating for our rights in the ongoing CWM expansion procedure that is coming before the DEC. He has a good bi-partisan reputation and was hired by the Republican Legislature and what has been a Democratic majority Board here has hired him as well. There is some sign of bi-partisan support. Secondly, this money does not have to be expended by a Board next year but we do have to assign it to somebody and this also gives the Town a little bit of flexibility in that next year. We expect to be a very busy year with the siting plan for CWM with the DEC so if you need to spend more money towards CWM instead of the Modern issue you have that flexibility. It does give the Town a considerable sum to defend itself with should this Modern lawsuit get out of hand and become very expensive. You will have the money there but you don't have to expend it should you need it.

Newlin MOVED that \$124,000 be encumbered for the legal contingency line of the "A" fund to Gary Abraham for expected litigation in 2010. Seconded by Palmer.

Edwards: If you could amend your motion to have his legal fees....we have to pay him from an account or claim number that he is going to defend to....right? To defend us in a suit #09.....

Newlin said that we do not have to get that specific. This also frees the Board in case this goes away or maybe.....This land that we are being suit over was transferred from the Town to Modern was originally owned by the Federal Gov't. so it is possible those barrels came there during their ownership time. I think the Town got it from the Federal Gov't. in 1972 or 1973. That is going to have to be investigated by a court or some third party. We do not have to get that specific. We just have to say he is going to be the person.

Johnson: We have a commitment to the County to go along with Mr. Abraham's with the siting plan as well....so the money is there for anything.

On the Motion, carried 4-0.

Newlin: In the packet that I have, I want to compliment our Town Clerk and her staff who found old documentation from 1993.

Brandon stated that the quit claim info was at the request of Atty. Leone to determine at what point and who owned the property. Mr. Leone's contention was that the items that are contested is that at that time the property was not ours. I think it is of value.

Newlin: I will make sure the incoming Board members receive this info as this gives a bit of the history of the property. The DEC did some checking on this property and said that there was no hazardous waste (1993). We do have something in writing from a third party, a credited State agency saying that there wasn't any waste there and now Modern has found it. I am sure that will be added into the body of next year's litigation. I hope the Board keeps its' eye on this.

Johnson: Former Atty. Ed Jesella had a ton of knowledge about the Modern agreement and everything else, so if you are looking for assistance I would think he would be a good one.

Carryover/Personal Days/WPCC:

Edwards MOVED to carry over one personal day for Scott Clark, Richard Dreier, Leslie Frey, David Harvey, Thomas Kromer, Martin Lauer, J. Lester Myers and William O'Connor to be taken in the first quarter of 2010. Seconded by Johnson and carried 4-0.

Encumbrances 2009:

Newlin: We will submit to the Clerk's Office the 2009 encumbrances as prepared by the Finance Officer.

Johnson MOVED for approval of the 2009 Encumbrances in the amount of \$598,327.34*. *(This amount includes the \$124,000 for legal contingency.)
Seconded by Edwards. Carried 4-0.

Motion to adjourn made by Johnson, seconded by Palmer and carried 4-0.

Time: 3:20 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk