

Present: Supervisor F. Newlin; Councilmen A. Bax, S. Edwards, M. Johnson & E. Palmer; Dep. Sup. E. Elgin; Atty. J. Leone; Eng. R. Lannon; WPC Admin. T. Lockhart; Bldg. Insp. T. Masters; Clerk C. Schroeder; 2 press; 4 Residents

The Supervisor called the worksession to order at 5:40 p.m. The Supervisor asked for any changes to the agenda as presented.

Agenda:

Edwards asked to respond to several recent articles in the Niagara Gazette on the increase in special district taxes.

**Johnson MOVED to approve the agenda, as amended. Seconded by Bax. Motion carried 5-0.**

Abstract:

**Bax MOVED to approve the Abstract of Claims, Nos. 119 to 426 and recommended payment in the amount of \$362,141.20, plus a post-audit of \$48,400.59. Seconded by Johnson and carried 5-0.**

Deputy Town Attorney:

Newlin said they have interviewed all but one of the applicants. Newlin said they would meet in executive session following the meeting to try and get the last interview done. "I'm not sure if any action will be taken tonight but if it is, I'll make sure to call the press after the meeting."

Parks & Recreation Advisory Committee:

Bax said the Town Board has before them two applications for appointment to fill a vacancy on the Parks & Recreation Advisory Committee. Submitting applications were Robert Flegal II and Daniel Kilmer. There is currently one vacancy due to the resignation of Benjamin Sicoli which the Board accepted at the last meeting (1.26.09).

Edwards asked that this be tabled until we make all the appointments in one night with the applications that we have on file.

**Bax MOVED to table the appointment to the Parks & Recreation Advisory Committee. Seconded by Edwards and carried 5-0.**

Association of Towns/Resolutions 1-12:

**Palmer MOVED to endorse the 2009 Proposed Legislative Program of the Association of Towns. Seconded by Bax and carried 5-0.**

Edwards said he would regretfully be unable to attend the Annual Meeting in NYC. He would reimburse the town for the cost of the airfare and registration fee.

**In place of Mr. Edwards, Newlin MOVED to appoint Councilman Palmer as alternate voting delegate to the Association of Towns Annual Business Session. Seconded by Johnson and carried 5-0.**

Johnson said Edwards should call the Association of Towns. In some cases they have agreed to waive the registration fee due to circumstances beyond your control.

For the record, Newlin said he has been working with other local supervisors to see if they can get some movement on examining the possibility of moving the Association of Towns Annual Meeting to upstate New York, possibly every other year. It's in the initial stages. I will come back with a report in two weeks.

Modern CAC Update:

Newlin said the Board received a very good, detailed oral report (summation) from the Modern CAC at the last meeting (executive session). The committee is trying to help educate and inform us on what is a very detailed, complicated contract. The CAC has come up with some questions they would like Modern to address. Newlin said he would like to set up a meeting before the end of the month between Modern's representatives and the Modern CAC. Newlin said he, and Councilman Bax, would attend as well. The purpose of this meeting would be to try and get some answers to some relatively technical aspects of the contract. We will report back in two weeks if we can meet between now and then.

Budget Transfer:

Newlin said the Board is in receipt of a request from the Town Clerk to replace \$8,300 that had been taken from the town hall contractual account, A1620.0400 during the 2009 Budget process, and placed into the town hall personnel line, A1620.0100, in error.

**Johnson MOVED to approve the transfer of \$8,300 from A1620.0100 to A 1620.0400. Seconded by Bax and carried 5-0.**

Special District Charges:

Edwards said that special districts are set up so residents of those respective districts can approve or disapprove projects and to approve funding or disapprove funding of projects in those districts. That is why we have special districts so residents get what they want. Is that correct?

Leone: That is absolutely correct. Let's say there is an improvement – sewer, drainage, water, lighting or curbs. You define a geographical area. Ultimately, you are going to have a public hearing to determine whether or not the public is in favor or not in favor of that particular improvement within that geographical area. There are a couple different ways to fund it. Usually, something like that is funded with bonds over a period of time. You can finance it with bond anticipation notes... Ultimately, you have a public hearing. Most of these things are subject to permissive referendum which means that the public has the right to bring action against this Board if they feel it is not appropriate. Depending upon the amount of the financing, it needs to be approved by the State Comptroller.

Edwards: Also, just to clarify what bonding truly is – it's on what this town's worth is – the residents of this town. Those residents, by allowing us to go to bond, are saying, I'm using equity on my home for these improvements in that district. Is that correct?

Leone: It's based on the taxable value of the property that is within that particular area. They are not actually putting their equity up. There are essentially saying that the amount of the real property assessed value within that area is going to be adequate to compensate for that bond over a period of years. There is a ratio. The State Comptroller's office won't let you borrow beyond that ratio if they feel that you're not capable of handling it.

At this time, Edwards said he wanted to respond to letters in the *Niagara Gazette* and *Sentinel*. One by Mr. DeVantier on the 13<sup>th</sup> of January in the Gazette in a letter to the editor and another from Mr. DiBacco on 2-3-09. Both, he said, are Republican Committeemen in the Town of Lewiston. I'm all for open government. I ran on open government. I take exception to some things in here. If they were really asking the tough questions that need to be asked I appreciate that but I do take exception to holding Mr. Edwards, Johnson and Newlin accountable for their fiscal mismanagement.

We found out that we can't fund special districts thru a town tax because those districts took on the debt. There is no means. If there were, we probably would.

I spent most of the weekend in this town hall doing research. Our support staff in this town hall is second to none -- the clerk's office, the water dept., the assessor's office, the supervisor's office, and our tax collector.

One of the first projects dates back to 2002 – the replacement of water meters in the town. The Board, at that time, opted to bond the money, to do this project. It was

\$700,000. From the research that I did on the basis of what they were doing, they relied upon a 20% increase in revenue due to the new water meters to pay down the \$700,000 debt in 2 - 2½ years. That didn't happen. Former Councilman Ceretto on two occasions 3.27.01 and 4.23.01 at both board meetings said the debt would be paid in 2½ years. We currently owe \$495,000 on that project. The meters are failing. We have to replace them. Mr. Langlois (former councilman) also said that the cost per household would be \$23 per year thru a 10-year bond. That didn't happen either. At the end of the day, the bond for the water meters will be paid off in the year 2020.

It brings us to a \$5,000,000 project -- roughly 10 miles of water main. Before you go to bond, you have to fill out an application to the State Comptroller. In that application, they ask reasons why you want to go to bond. I would like to read those reasons why that Board at that particular time went to bond this 2002 infrastructure improvement.

Edwards read: Since its establishment, the Town of Lewiston has expanded its water system to meet the increasing demand of population. As the existing infrastructure has aged, the town has been experiencing an average of 30-35 water main breaks per year. In 2002, the infrastructure has aged immensely. In 2002, the town had approx. 70 occurrences of water main breaks. As a result of that increase, the town has initiated plans for major replacement of existing waterlines which have been proven to be highly susceptible to breakage. In areas within the town that experience disruption problems, and/or less than desirable fire flows – that's what caught my attention – that is the reason this project has been initiated. It goes on to list all the streets where the project was to take place...

I'm totally for that. We have saved in the long run, so far. Between what we are being billed from the County to what we're paying as taxpayers on our water bill.

Secondly, they asked 'how you are going to pay back this debt'. In their application asking for \$5,000,000, they proposed a tax levy of 39.47¢ per \$1,000 assessed value. I totally agree with that. That's responsible. That is what should have happened. That did not happen. Currently, we owe \$4,200,000 on that project. In fact, in 2002-2003 there wasn't even a tax levy to pay the debt. In 2004, that Board put in a 17¢ per 1,000 tax levy. In 2005 – 20¢; 2006 – 20¢; 2007 – 24¢; 2008 – 24¢; and 2009 – 44¢.

I'm really taken aback at these accusations of mishandling public funds. I was informed, and I'm pretty sure this whole board was informed that our water revenue was down last year. It was a very wet summer. Our revenues were down immensely. We were informed that our fund balance was decreasing at an alarming way. Would we have been in trouble in 2009? No. Would we have been in trouble in 2010? Yes! We're basically heading for a train wreck. We have an obligation to stay within the law – between 10-15% that we have to carry in fund balance in that district. That would have been exhausted. I think we did the right thing by increasing the tax levy by 20¢. It's the responsible thing to do. I voted for it and I'll stand by it.

We negotiated a contract with the fire districts and I thank Councilman Johnson and Attorney Leone. They came back with what they thought was a fair contract for our firefighters. It was a \$10,000 increase from 2008 - 2012. In these times everything's gone up 10%. Firefighters do a lot with very little. I take exception to anybody saying our firefighters are fat. They're scouring the country buying used equipment. They're doing a heck of a lot more with less than most organizations out there.

Let me just close with the refuse tax. The letter is right. We shouldn't have a refuse tax. There should never have been a sunset in that Host Community Agreement with Modern. This Board didn't negotiate that agreement but we have to abide by it. That's all I have to say on this whole matter. If the reporters will report this correctly – this whole Board has never done anything unconscionable to hide taxes thru special districts.

Newlin thanked Councilman Edwards for his time and research. He asked for comments from the Board.

Bax: I support Mr. Edwards in what he said, specifically about the firefighters and also about the issue with the Modern sunset. We shouldn't second-guess our firefighters. They do an amazing job. Secondly, the fact the Modern facility is within our town borders bodes well for us to get a special benefit in the future. I'm hoping that in our future negotiations with Modern we're going to be able to make some modifications to that particular part of the contract.

I apologize that I haven't read the article but it seems to me that a majority of what was said was misguided. With what you've put together and what we've talked about since you've done your research, I would like to commend you for the effort. I know you have a particular bone to pick in the sense that your name was mentioned and it's too bad that it was. I agree with you. I don't think that anything was done in a way to hide the taxes.

Johnson: ... With the fire districts, it makes me feel real bad. I've had probably 10 public hearings since I've been here. We raised the service awards to try to benefit and retain our firefighters that we have now. Many of the fire companies are trying to recruit and get new members as the other members become older. At any given time did we not have a public hearing... Almost every single time we've had firefighters and publicized the public hearings, you would see very, very few people here. So, I think they are very satisfied with the fire service they get. The contracts increased over the time Mr. Leone and I negotiated. It was mostly cost of utilities, gas and goods & services.

The water districts – our infrastructure, both in the Village and the Town are in dire straits and need some improvements... I'm hoping this Board will go forward in the future and address the infrastructure problems that we have. Any new projects coming in we are going to have to be more careful on how we approve them and what direction we go with them...

I give you a lot of credit for going back and digging out the paperwork. You have to remember you're in the political season. It's always the case that they want to attack the people that give their time and energy to try and make this town as great as it is.

Palmer: My colleagues have spoken well about the makeup of this Board. One of the strengths this Board brings to the Town of Lewiston is the fact that we can work together despite whatever political party we belong to. Let's face it – town issues aren't political in nature for the most part. They are what's right for the town or what's wrong for the town. You're never going to please all the people all the time. I think you won't find anyone of us up here who would vote against a certain issue if it was the right thing to do. I was elected by all the people in the Town of Lewiston, not just one party or the other. I'm here to represent all of them.

Bax interjected. He remembered when the meters were installed back in 2002. What is the fall out? I know they are failing now. Do we have a plan in place or is that something that is coming up on the horizon?

Johnson said the meters are not failing; technology has changed where certain parts of the badger meters are no longer available. As time goes on, we're going to look for upgraded technology. The problem is that we have to have a different reader for the meters that are worn out. They're working now until you have to go get the replacements for them.

Newlin: I'm going to chime in with what other people have said. I think Mr. Edwards did a remarkable job in getting thru these documents. Sometimes when you research municipal history, you wind up with more questions than when you started – sometimes with more questions than answers. I think the basic facts of the case are clearly this – a prior board, before almost all of us were here, was advised by well-trained staff and outside consultants that water mains had to be replaced. The evidence is pretty clear. You had breaks that were causing a lot of overtime in the water department. There was water that was just going thru the system that wasn't being paid for. No municipality can keep that up forever. You can imagine what the repercussions would be. There

were warnings from fire officers saying there was not enough pressure in some of these lines to even have a fire hydrant operate correctly... The prior town board tried to come up with a good capital project and address those problems. We don't know all the particulars but we certainly can't blame them for that.

They were told it was going to be a \$5,000,000 project. The next thing is, how do you pay for it? In New York State, you cannot take money from general revenues, i.e. sales tax and put it in a special district. A special district has to stand or fall on its own weight. That leaves them with one option – to increase the ad valorem of \$1,000 tax in the water district. That is every resident in the Town of Lewiston. Papers that were filed by that administration on the advice of bond counsel pointed to a 39¢ tax. There were other documents that said they would have to put in a 70¢ tax to pay for that. For whatever reason, they did not increase that tax. So now, this Board is faced with bills that are coming in. We have to pay them. Thru accounting we tried to come up with the best way to do it and we had to increase our ad valorem tax. That's still a very minor tax. If you take a look at other municipalities we have one of the lowest ad valorem tax for water districts in WNY.

I also want to touch on a couple of other things. One is fiscal management. The accusations that this board – which acts unanimously 99% of the time and acts in a fiscally responsible manner – is plain-out wrong supported by the fact that we got an increase in our bond rating from Moody's Investor Services... Investment services are becoming more stringent on how they rate bonds because of the economic debacle that faces this Country at this time. That was the first bond increase rating we can see the town has enjoyed since the early 1990's. It certainly wouldn't be coming from a place like Moody's unless we were taking fiscally prudent steps... The fact that we don't have a town tax is actually a negative mark in the eyes of investor services like Moody's. They like to see the regular income coming into the town...

I also want to say that the refuse tax again is a legacy issue that we inherited from another town board. I'm sure all five of us wish we could go back there and help negotiate the contract from 2003 but we weren't here and that contract and the contracts prior in 1999 & 1995 said that in a certain year you're going to start paying \$35.00 a year for garage. That's kicked in. We can't turn the clock back...

Finally, I want to say the politicizing of fire company issues and the tax they asked for is a shame. If there is anything that I've seen this Board act unanimously in support of is that of the fire company. By being a volunteer service, they save the town literally millions of dollars a year compared to if we had a professional service. These volunteers do not get paid a dime. They have as many or more meetings than we do as elected officials. The training requirements for fire service in NYS are extremely stringent. They go for training once every other year and they're dealing with issues that firemen didn't have to deal with 30-40 years ago, such as hazardous materials. So, when they come to us with a reasonable proposal, I think it's only fair on our part that we meet them at their request.

Again, thank you Mr. Edwards for your time. I would like to thank all the councilmen for their comments. I know this board is going to continue to work together on these important issues that are facing us now.

Newlin said they would now enter into executive session to discuss potential litigation and personnel (police) and (deputy attorney).

**Johnson MOVED to enter into executive session for those items listed. Seconded by Palmer and carried 5-0.** Time: 6:25 p.m.

**\*Executive Session:**

Present: F. Newlin, A. Bax, S. Edwards, M. Johnson, E. Palmer, E. Elgin, J. Leone, D. T. Masters, R. Lannon

T. Masters & R. Lannon left at 6:50 p.m.

**Edwards MOVED, Seconded by Palmer to exit executive session and reconvene worksession. Carried 5-0.**

Action Taken: Vote to compensate Town Attorney Joseph Leone for 6 weeks additional pay from Attorney Personal Services (A-1420-0100) for time the town was without a Deputy Attorney.

**Edwards MOVED for approval. Seconded by Palmer and carried 5-0. (Atty. Leone was not present during discussions but was present for the vote.)**

**Edwards MOVED to re-enter executive session to discuss a personnel matter, Seconded by Palmer and carried 5-0.** Time: 7:20 p.m.

Also Present: Steve Reiter, Highway Supt.

**Johnson MOVED, Seconded by Palmer to exit executive session and reconvene worksession. Carried 5-0.** Time: 8:35 p.m.

Action Taken: Approved the following payments for repairs to Muckland Pump Station, Route 31 & Chew Road: Robert MacVie, Inc. - \$8,200; EDR - \$2,200; and J.F. Machining Co., Inc. - \$3,500.

**Edwards MOVED for approval of the foregoing payments, not exceeding \$13,900 from the appropriate fund\* as determined by the Finance Officer. Seconded by Bax and carried 5-0.**

- Infrastructure Improvement H72-7140.0400.

**Bax MOVED to adjourn, Seconded by Johnson and carried 5-0.** Time: 8:40 p.m.

\*Executive Minutes taken by:  
Joseph Leone, Town Attorney

Transcribed and  
Respectfully submitted by:

Carole N. Schroeder  
Deputy Town Clerk