

PRESENT: Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Palmer; Attorney Leone; Deputy Attorney Koryl; Finance Officer DiRamio; Building Inspector Masters; Town Engineer Lannon; WWTP Chief Op. Lockhart; Recreation Director Dashineau; 2 Press; 1 resident and Clerk Donna Garfinkel

Supervisor called meeting to order – 5:40 p.m. and asked Board members for any additions to the agenda.

Bax requests an Executive Session to discuss litigation and a Parks/Recreation issue. Newlin and Johnson request to add the contract with Lewiston-Porter School with regards to the Police Dept.

Bax MOVED to approve the Agenda as amended, Seconded by Johnson and Carried 5 – 0.

First Agenda Item – Approval of Abstract

Palmer MOVED to approve the Regular Abstract of claims numbered 2630 to 3125, and recommend payment in the amount of \$424,831.84 and a Post Audit of \$268,341.98, Seconded by Edwards and Carried 5 – 0

Second Agenda Item – National Grid Issues

Newlin introduced Attorney John Dax. Dax was retained several years ago to represent the Town in the New York Power Authority re-licensing process.

Dax said he was retained at the end of 2007, at the tail-end of the re-licensing process and the process of negotiating the implementation of the agreement.

Dax's role is largely swallowed up with negotiating the final deal with NYPA and then negotiating the implementation deal with both NYPA and National Grid. The last year and a half has been an auditing role – trouble shooting – looking at numbers. The re-licensing deal with NYPA ultimately gave to the Town of Lewiston 6½ mega watts of capacity from the project at the NYPA tariff rates.

In power there is capacity and energy. Capacity is measured in mega watts or kilowatts, and energy is measured in kilowatt. Capacity and energy have a value in the market place. Separate markets, controlled in New York State by the New York Independent System Operator (NYISO). The deal with NYPA is that NYPA takes 6 ½ mega watts of capacity and markets it through NYISO and gets cash. It then sells energy into the market and takes the value it derives from the market place and that is essentially the end of NYPA's responsibility.

The Town has a separate contract with National Grid. National Grid gets the energy and capacity value from NYPA, and puts it into an account with Lewiston's name on it.

National Grid takes that value and redistributes it to residential customers in Lewiston. This is done through a Forecast Process, a "look ahead" basis. The important forecast is "what is the value of that power that NYPA is going to be selling in real time".

The Towns contract year runs from September 1st – August 31st. So by September 1st of each year they have to have a forecast of what the value of that power is going to be for the next twelve months. They also have to forecast how many customers in Lewiston, what the delivery charge is going to be, and the delivery revenue. They then do a calculation to figure out the discount rate. The value, net processed, from the NYPA deal are subtracted from the delivery charges that a Lewiston resident would otherwise be paying. The discount is not from the total bill, it is a discount from the delivery charge. That is done on a forecast basis.

From September 2007 to August 31, 2008 National Grid distributed \$2.3 million of the discount value to residential accounts in Lewiston, and in September 2008 to August 31, 2009 National Grid distributed \$2.43 million.

National Grid discovered their forecast of the value, in the competitive market, was very, very high. It overstated the actual value of the power, to the tune of \$1.6 million. Of that \$2.43 million, \$1.6 million needed to be trued back-up to them.

In year three, even with the \$1.6 million returned to National Grid, Lewiston residents will get \$673,000 total discount from their delivery charge.

Mid-way through year one, Dax discovered NYPA was not properly crediting the capacity payment, capacity value. NYPA agreed with this mistake and made the correction. This was worth approximately \$170,000. This is a start-up process for them so the software kinks need to be taken care of.

Paperwork for the contract year of Sept. 2007 to Aug. 2008, was received in January - 2009. In going through the papers, several errors were discovered which ultimately totaled \$212,000. If these errors had not been found they would have been repeated year after year.

Newlin notified Dax on Sept. 10th that the discount to Lewiston had dropped dramatically, Dax called Mr. Dzimian of the National Grid Buffalo office. Dzimian provided very preliminary paperwork. More digging needs to be done. Dax found that National Grid did not capture the \$212,000 mistake. The discount received, 14½%, should be higher with the next bill.

Dax will request National Grid turn the twelve-month look-ahead process into a quarterly look-ahead process. If mistakes are being made, they won't grow and become a major ordeal at the end of the year.

Newlin thanked Dax for his time.

Newlin said when the Town got the 6½ megawatts from the Power Authority for this deal, Mark Zito and other Power Coalition members said there is no way to effectively transfer this credit into a discount that resident can actually realize. The Town was first told the 6½ megawatts would be a "use it or loose it" posture. There was talk, that if there was unused capacity, it may then be forwarded to the Fire Companies. Even then all 6½% may have not been utilized. The process changed when it was discovered the megawatts could be changed to a monetary value. This way the entire value of the 6 ½% would be utilized.

Newlin said the Town was notified of the decrease in discount the same day that Lewiston residents received their bills with the decrease on them. Newlin, Dax and the Supervisor's Clerk tried numerous times to contact National Grid, but no contact was made until Monday the 14th.

The Town and National Grid are in a partnership in this deal and National Grid should have given the Town the courtesy of notifying us when wild swings like this will occur.

Newlin thanked Dax for making himself extraordinary available to the Town.

Lewiston has the cheapest residential rates anywhere in Erie and Niagara County. The headline read "Rates set to rise in Lewiston", when really the truth of the matter is, the discount is decreasing. Lewiston remains the only community in New York State that used the re-licensing power to reduce residential rates.

Palmer has a hard time understanding how there can be a drastic reduction in the discount that Lewiston residents received based on demand alone. Demand has not been that great but this is a 75% drop.

Dax said yes a 75% drop in the discount rate. Last year National Grid forecasted the kilowatts price to be 6½, the actual for Sept. 08 – Aug. 09 was 3.6¢. National Grid has forecasted 6.3¢ for contract year 2009 – 2010.

Palmer questioned if the residents will be subject to such wild fluctuation in the future.

Dax said this can be avoided by obtaining quarterly reports for review. The numbers would be trued-up four times a year rather than once a year.

Johnson said when the deal was first discussed the discount was proposed to be 15% - 25%. This is basically where it is now.

Bax thanked Dax for all his assistance in finding the discrepancies in the accounting.

Newlin thanked Dax for all assistance. Dax identified about a million and a half in errors in credits between NYPA and National Grid and that has really proofed his worth. This has saved Lewiston residents about \$4.8 million over the first two years alone.

Third Agenda Item - One Lot Subdivision Approval – Staub – Ridge Road

Palmer MOVED to accept the recommendation of the Environmental Commission for a Negative Declaration, Seconded by Bax and Carried 4 – 0, Johnson abstained.

Palmer MOVED to accept the recommendation of the Planning Board to approve the subdivision as submitted, Seconded by Edwards and Carried 4 – 0, Johnson abstained.

Fourth Agenda Item – Drainage Update – 4645 Perry Court

Lannon said it appears approximately 200-feet of 6-inch diameter stone pipe has been installed across the back of two lots. It is from the south-east corner of lot 260, westward to a catch basin, which is a rear-lot drain that appears to have been filled in with that 6-inch storm pipe. The work appears to have been done recently. The site was graded but no grass was growing.

Lannon said Perry Court was installed in 2002. It is believed there were no drainage problems existing in this area. None was brought to their attention.

Edwards said the procedure in the Town for filling in your ditch is up to the land owner, not the Town. The resident would call the Highway department, get a quote, the resident purchases the pipe from the Town, the Highway Dept. installs it, rough grades, and then the final grading of top-soil and seeding would be up to the resident.

The Town has turned down three or four requests for private drainage issues. Edwards said the resident at 4679 Perry Court called to complain of top-soil being dumped on their property. Masters went to the site with a Town Constable to find out whose it was, and have them get rid of it. As it turned out, embarrassing enough it was ours (Town). This request was never brought before the Town Board.

Masters said nobody asked or told the resident and there were truck tracks. This is where the investigation began.

DiRamio distributed pipe invoice sheets for this year, to date, and there is none for Perry Court.

Palmer asked if the Highway Superintendent has been contacted.

Edwards said not as us of yet.

Newlin said Reiter should be contacted. This is a mystery right now.

Leone suggests the Board should discuss this in executive session.

Fifth Agenda Item – Tree Removal Update – East Eddy Drive

An estimate, in the amount of \$3,200, has been received from Arbor Tree, for the removal of two (2) cottonwoods located on a Town easement at the rear of 4828 East Eddy Drive. Edwards request Town Board approval for payment.

Edwards MOVED to enter into a contract with Arbor Tree for the amount of \$3,200, with funds coming from H-72, for the removal of the two trees, Seconded by Bax and Carried 5 – 0.

Sixth agenda Item – Building Department Issues

The Town Hall parking lot sealing and striping project has been completed. At this time Masters requests the Board direct the Highway Dept. to install new Handicap and No Parking signage as per the Building Code, for a total of six.

Johnson MOVED to direct the Highway Dept. to install Handicap Parking and No Parking signage at the Town Hall parking lot, Seconded by Palmer and Carried 5 – 0.

Masters requests the Board direct the Highway Dept to install a conduit under the entrance to the parking lot and excavate so the parking lot light located at the east-end can be repaired.

Palmer MOVED to direct the Highway Dept. to install a conduit under the entrance to the parking lot and excavate for the parking lot light repair, Seconded by Johnson

Edwards MOVED to add a friendly amendment that the cost incurred be documented so funds can be budgeted correctly, Seconded by Bax and Carried 5 – 0.

Maters requests an increase in the Building Inspectors cell phone stipend from \$35.00 to \$80.00, and the Zoning Code Enforcement Officer from \$25.00 to \$40.00.

Palmer MOVED to approve the stipend increase for the Building Inspector and the Zoning Code Enforcement Officer, Seconded by Johnson and Carried 5 – 0.

Seventh Agenda Item - Arts Council Request – Penny Salmon sculptures

The Arts Council is looking to place two Salmon sculptures in a permanent place. Newlin suggests the Welcome To Lewiston display at Military Rd and the thruway exit. It needs to be determined who owns the property.

The Council is requesting the cost of digging and concrete for the foundation, with the cost not to exceed \$800.

Newlin MOVED to authorize the Supervisor to pay an amount not to exceed \$800, with funds from Contingency, to the Arts Council upon receipt of their receipts, pending Attorney and Assessors determination of the owner of the property, Seconded by Bax and Carried 5 – 0.

Eighth Agenda Item - Sanborn Issues – Greenway dollars

The Sanborn Historical Society is looking into purchasing a portable commercial trailer with bathrooms. These will be used at the Sanborn Museum. It is difficult to install permanent bathrooms due to bedrock located 2-feet under the surface.

There are no permanent bathrooms at Washuta Park either so this maybe an idea for there. If two are purchased a better price may be received.

Newlin is waiting for a response from the Sanborn Library and the moving of the book cases for the installation of the carpet. Newlin thanks Mr. Shaw, Lewiston Library Director, for going to Sanborn to see if he could help.

Ninth Agenda Item – Request to move Fire Hydrant – 2799 Ridge Road – Danielewicz

Danielewicz built a garage, which made an addition to the driveway on the east side. A fire hydrant is located at the base of the driveway. He is requesting it be moved so it doesn't bring damage to the owner or the hydrant.

Johnson suggests the request be forwarded to the Fire Bureau for review. Masters will speak with Bob Nablo of the Water Dept.

Tenth Agenda Item – Schedule Public Hearing – Electrical Inspections

The proposed amendment to Chapter 8B – Electrical Code will be Local Law no. 1 – 2009, if approved after the Public Hearing.

Newlin requests the Public Hearing be held after the Worksession of October 19th. This will allow interested residents to attend.

Bax MOVED to hold a Public Hearing to amend Chapter 8B – Electrical Code on Monday, October 19, 2009 at 7:00 p.m., Seconded by Palmer and Carried 5 – 0.

Eleventh Agenda Item – Modern Corporation Issues

Leone said the Town has been served with a letter indicating a possible suit. This should be addressed in executive session.

Twelfth Agenda Item – Schedule Public Hearing – amendment – Zoning Code 30-107.

The amendment is to change the number of members on the Zoning Board of Appeals from seven (7) to five (5). It also encompasses training and attendance requirements.

Johnson requests Masters research surrounding areas to see the number on their Board.

Masters said if the law addresses the means of allowing for an alternate that may solve the issue.

Leone said an alternate can only vote if there is a conflict of interest. If a member is not able to make a meeting, an alternate can't just be called.

Masters asked what if a member is deployed.

Leone will need to research.

Thirteenth Agenda Item – Village Merger Vote

Newlin said the Village, in a 3 – 2 vote, decided not to proceed with the funding of a merger study. With the Village being the Lead Agent the Town would not be able to continue.

Edwards is disappointed that the dollars were spent on the first phase, to no avail. Edwards believes that there will be a merge eventually.

Palmer was disappointed in the product that was returned from the study.

Bax requests a letter be drafted to suggest the talks continue. Newlin will draft.

Fourteenth Agenda Item – Approval of Letter of Intent – Water Quality Improvement Grant

This letter allows the Town to continue seeking dollars for the Stormwater Implementation Grant.

Bax MOVED to authorize the Supervisor to sign the Letter of Intent to continue pursuing the Stormwater Implementation Grant, Seconded by Palmer and Carried 5 – 0.

Fifteenth Agenda Item – Drainage Issue – Orchard Drive

A letter received from Bartko - 853 Orchard Drive, outlines a drainage issue that has occurred since building a new home.

Masters updated the Board. When Bartko applied for the building permit they were told down-spouts and all drainage should be directed to the road ditch. The foundation was put in and at that time it was discovered there was no road-side drainage. All the houses on the north side of Orchard Drive, sumps and down-spouts spill out onto the ground. The whole neighborhood is like that.

Edwards asked how a building permit could be issued if there is no infrastructure to handle the home. This needs to be prevented in the future.

Masters asked to work with Lannon on this issue for Orchard Drive.

Sixteenth Agenda Item – Army Corps LOOW Site update

Newlin worked with Congresswoman Louise Slaughter's office to obtain funding for a \$1.3 million project that will direct monies toward some identification of possible radiological and chemical threats at the LOOW Site and to secure the perimeter. This has passed the House; it now goes to the Senate; then to Conference Committee and then hopefully the President will sign it. Newlin has requested repeatedly of the Corps to address the fencing of the perimeter at the beginning of the project.

Seventeenth Agenda Item – Request to place unpaid water and sewer on tax

Johnson MOVED to place unpaid water and sewer as follows: Water - \$144,121.26; Sewer (Master) - \$65,528.03; Sewer (South) - \$10,244.24 for a total of \$219,893.53 on 2010 Town & County tax, Seconded by Bax and Carried 5 – 0.

Eighteenth Agenda Item – Riverwalk Homeowner's Assoc. – No Through Traffic sign

During the past month, numerous members of the HOA have noticed vehicles driving west on Pletcher Road turning north onto Riverwalk Drive South, and then west on Riverwalk. When the vehicles reach the barrier at the west end of Riverwalk Drive, many either move the barrier or drive across private property to go around the barrier. The HOA is requesting a temporary sign.

Palmer MOVED to direct the Highway Dept. to place temporary “No Through Traffic” signs as follows: 1 - On barrier located at the end of Riverwalk Drive running east from Lower River Road; 1 – On barrier located at the end of Riverwalk Drive running west from Riverwalk Drive South; 1 - At the Northeast corner of the T-intersection of Riverwalk Drive South and Pletcher Road, Seconded by Bax and Carried 5 – 0.

Bax MOVED to enter into Executive Session to discuss accident litigation, Police contract with Lew-Port, Perry Court Piping, Grievance – workers clothing and Modern letter of intent to sue, Seconded by Johnson and Carried 5 – 0. (7:30 p.m.)

PRESENT: Supervisor Newlin; Councilmembers Bax, Edwards, Johnson and Palmer; Attorney Leone; Deputy Attorney Koryl;* Town Engineer Lannon; Recreation Director Dashineau

Edwards MOVED to exit executive Session, Seconded by Palmer and Carried 5 – 0.
(8:10 p.m.)

Johnson MOVED to permit the Supervisor to sign lease to move Lewiston Police Dept. to a Lewiston – Porter School Bldg., Seconded by Palmer and Carried 5 – 0.

Bax MOVED to approve payment of \$296.68, Legal Contingency, to Schmidt's Auto Glass for the Wilksmore claim, Seconded by Johnson and Carried 5 – 0.

Johnson MOVED to authorize the Supervisor to sign papers (pending investigation of prior motion) to enter a memorandum of understanding with Teamsters Union regarding Highway, Seconded by Bax and Carried 4 – 1. (Edwards)

Edwards MOVED to refer to Attorney General any issues regarding installation of 200-feet of pipe at 4649 & 4645 Perry Court, Seconded by Bax and Carried 5 -0.

Motion by Johnson to adjourn meeting, Seconded by Bax and Carried Unan. (8:15 p.m.)

* Minutes of the executive session taken by Attorney Koryl

Transcriber and Respectfully Submitted by,

Donna Garfinkel Deputy Town Clerk