

Public Hearing Re: Amend Town Code/Sewer/Chapter 21 7:00 p.m.

Present: Supervisor Newlin; Council Members Bax, Edwards, Johnson & Palmer; Eng. Lannon; Town Atty. Leone; Deputy Town Atty. Koryl; Adm./Op. Lockhart; Police Chief Salada; Bldg. Insp. Masters; Finance Officer DiRamio; Rec. Dir. Dashineau & Town Clerk Brandon. 2 press reps and 18 residents.

Also Present: Supervisor Elect Reiter; Councilman Elect Marra; V/of Lewiston Trustee Winkley and Supervisor's Clerk Cich.

The Supervisor opened the meeting at 7:06 p.m. followed by the Pledge of Allegiance.

The Clerk was asked to read the Notice of the Public Hearing:

**Town of Lewiston
Notice of Public Hearing**

NOTICE IS HEREBY GIVEN, that a Public Hearing will be held before the Town Board of the Town of Lewiston, New York on the 23rd day of November, 2009 at 7:00 p.m. at the Town Hall, 1375 Ridge Road, Lewiston, New York for the purpose of conducting a hearing to consider and determine whether or not Local Law No. 4 of the year 2009 should be adopted, such proposed amendment of the Town Code of the Town of Lewiston and in particular Chapter 21 – Sewers, such proposed amendment being substantially as follows:

- a. Making it unlawful to discharge into the public sewer system, directly or indirectly, or otherwise transport or convey to the Town of Lewiston in the publicly-owned treatment works, any industrial wastewater from the operation of any Hazardous Waste Treatment Storage and Disposal facility or facilities which is or are subject to 6 NYCRR (New York Code of Rules and Regulations) Part 373; and**
- b. Making it unlawful to discharge into the public sewer system directly or indirectly, or otherwise transport or convey to the Town of Lewiston in the publicly-owned treatment works, any industrial wastewater from the operation of any Solid Waste Disposal facility or facilities which is or are subject to NYCRR (New York Code of Rules and Regulations) Part 360; and**
- c. To consider such additional terms and provisions as may be reasonable, just and proper.**

All persons for and against such proposed local law shall be heard. Should the same local law be adopted it shall be known as Local Law No. 4 of the year 2009.

BY ORDER OF THE TOWN BOARD OF THE TOWN OF LEWISTON, NEW YORK AT THEIR WORKS SESSION HELD ON NOVEMBER 9, 2009.

**Dated: Lewiston, New York
November 13, 2009**

**Carol J. Brandon, Town Clerk
Town of Lewiston**

Public Comments:

Richard Palumbo of 11 State Street, Pittsford N.Y. I am the attorney for Modern Landfill. I am here to speak about what Modern has with respect to the proposed amendment. Particularly to the extend that creates an obvious and I think improper classification of entities who can or cannot use the public facilities. I am only aware as a non-resident of this Town but I am familiar with solid waste issues here. I don't believe that there any part of 360 permittees in this Town except one and we all know who that is. This proposed amendment might just as well have been drafted with Modern's name on it. As I understand the current code it establishes very comprehensive and objective standards regarding permissible discharges into the system. Those standards that I understand define all discharges or least have until this time. Those standards are according to the purpose of the current local law intended for to promote public health and benefit the environment. The proposed amendment as I also understand continues all of those objectives unchanged. All the standards for discharge into the system would also remain unchanged. The only change is that any entity which happens to carry with it Part 360 permit would be prohibited from discharging into the facility even if it meets

the objective standards that are currently provided in your code. That is true regardless of what that 360 permittee Modern Landfill might be discharging. It is true even if they are discharging tap water and there is a fundamental unfairness about that. Whatever you may think of solid waste management facilities it is obvious. It is simple common sense to identify a single entity and carve it out and to say everyone else in this community can receive the benefits of a community facility....one that this taxpayer no doubt paid in substantial part for it except for one entity. That entity cannot use it for the sole reason that it is a properly permitted facility under 360. It can't use it even if the nature of this discharge is precisely the same as all the other discharges who are permitted to continue to use the facility in the community. Now if that hits you as fundamentally unfair it shouldn't be surprising then that there are constitutional prohibitions against it. Equal protection clause of the 14th Amendment of the Constitution is abundantly clear. You cannot make invidious discriminatory classification between entities that are similarly situated unless there is a substantial purpose and here there is none apparent to make. If the discharge of a 360 permittee meets the standards of your current law, the public interest is apparent and you can't distinguish between that discharge and discharge of some other resident in the community who's discharge also meets the objective standards of the statute but isn't a Part 360 permittee. I looked at the law on the 14th Amendment, Equal Protection Clause and I think it is abundantly clear and I think we need to say this much as well.....there are protections there in the Federal law against significant encouragement into an equal protection under Section 1983 of the Civil Rights Act. They would entitle anyone who is unconstitutionally deprived of their constitutional rights and you end up paying damages and even attorneys fees from the entity which enacts an unconstitutional law. I can't tell you how concerned we are about this and how clear this seems to be as a direct encouragement to the constitutional rights of Modern Landfill which is a very substantial taxpayer in this community. Thank you.

Newlin said they would take those comments under advisement.

Amy Witroyl of 4726 Lower River Road. I am in support of both of these amendments. One that would prohibit industrial discharges from hazardous waste treatment storage and disposal facilities and also to solid waste facilities. I would certainly encourage the Board to evaluate the comments that were just provided on behalf of Modern but it is my best understanding that tap water is not industrial waste water under the current code and there would be nothing unusual about prohibiting certain types of discharges to the system as the Town does now. I don't think that there is any resident capable of generating the type of industrial discharges that occur from a hazardous waste or a solid waste landfill and should Modern be able to demonstrate to the Board that this is somehow impacting its' current operations, I would certainly like to understand that but certainly would point out that ??? not currently using the public sewer system and in my view from looking at what is now their third re-innervation of an application that has not even been ready for DEC to review that.

I don't believe that the facility can expand as is currently proposed without unitization of the Lewiston Waste Water Treatment Plant so....that if CWM ????? particularly important and just to step back and explain how that fits in the overall process....last week we had siting hearings from the State about a plan that needs to be adopted before CWM's application can move forward and with the best efforts I think the press accounts of that process have been inverted. The press has kind of framed the siting plan as being something that assures CWM application if they are able to navigate around it. That couldn't be further from the case. CWM has everything to lose and nothing to gain from the adoption of the siting plan other than to simply go to the next step. If CWM's application is declared complete then it is subject to review for its' conformance to regulation and the ability to implement what they are proposing in that application. That is where this amendment to the sewer code becomes very, very important because in off ??? re-innervations that we have reviewed of the applications it does not appear that there is enough storage capacity proposed to handle some of that industrial waste water. So, this sewer code amendment particularly for CWM which is on the crest of trying to move its' application through the process...it is very important. Where

Modern is concerned again to the best of my understanding I would certainly encourage the Board to consider any immediate concerns on the part of Modern. It would not affect the current business but maybe if the Board were ever to have any occasion to discuss any terms of any agreements with Modern it would be certainly one additional issue...something that the Town has that could be used in consideration for other issues that might arise sometime in the future. In addition, I think fundamentally everyone in this Town is under the impression that we live in a residential and agricultural community and that the industrial facilities which are very unique to the area are not particularly compatible with the character of the Town. If you were to ask residents, are we taking residential discharges into our waste water system or are we taking industrial discharges such as facilities in Buffalo or Niagara Falls, I think that they would probably assume that we ...character and the liability of residential discharges to the residency and that it is not for industries that were not looking to grow in the community. So, I urge the Board to move forward on these amendments and supportive of them and I appreciate the Board's consideration. I would also offer this issue which has come before in the past but it was only in August that the members of the Advisory Committee in the normal course of reviewing the documentation on the current operation of RMU-1 saw a statement from CWM to it's regulators that it's application to use the Town of Lewiston plant was "on hold". Going back and reading that it is hard to tell whether or not they believe that the Board has put it on hold or whether they put it on hold to advance it at a later date. But, from the regulators stand point that is being used as a signal to the regulator that "hey we think we are going to have this opportunity in the future" that is inappropriate and incompatible with the Town's stated position on expansion of hazardous waste. So, by passing this modification to the code that application is no longer up to code and whole application is moot and if there should ever comes a time in the Town's history when the people change their minds and decide we want our growth to come from expanding solid waste or hazardous waste landfills then I think it is very appropriate that this municipal town code which obviously puts a higher burden on the Board not to modify the Host Agreement but to require the mandatory public hearing to insure maximum public participation on any changes to what I would consider a very major part of the Town code. Thank you very much.

Ron Winkley of 730 Seneca St. Trustee for the Village of Lewiston. I was here for something else but hearing this law tonight it is obvious that there is a specific target that this law is aimed at. Has there been a problem with this Modern discharge at the treatment plant?

Newlin: We are talking about a future situation which this is trying to address.

Ron Winkley: It sounds like a shotgun law for a specific target and then to hear someone say that if you want to go after the law and then go to that person maybe we can work out another deal...it just doesn't sound right. We are going after this person but we can make a side deal over here. I don't that it is going to carry that much water in the future. So, if you are going to make a law you are going to have either exclude the Town people that don't bring stuff in or something else...but I don't think this is the right way to go about it. I don't think it is going to hold up in court. It just doesn't sound right. It is obvious what is going on. You have a target and that is fine whatever that target might be, but don't blast the whole industry trying to get on specific thing done. I don't think it is going to work.

Newlin: We are at the end of public comment period.

Brandon: We received a letter faxed from CWM late Friday with a hard copy delivered today. Do you want it into the record?

Newlin: You can submit it into the record.

The following letter was received from CWM Chemical Services on 11/20/09:

Dear Members of the Lewiston Town Board:

CWM Chemical Services, LLC respectfully submits these comments with regard to proposed Local Law #4 of the year 2009 which was the subject of a November 17, 2009 Notice for a Public Hearing scheduled for November 23, 2009. Given the short notice that was provided, CWM is unable to attend the public hearing scheduled for November 23.

As each of you, no doubt, is aware, the Lewiston Sewer code includes the pretreatment standards mandated by the Federal Clean Water Act, and every industrial user must demonstrate its ability to meet the discharge limits in order to obtain a permit from the Sewer Authority to discharge to the Lewiston publicly owned treatment works ("POTW"). The pretreatment and discharge limits are designed to assure that the POTW will consistently meet its SPDES permit discharge limits, and every industrial user of the sewer system is required to apply for and obtain a discharge permit from the sewer authority before any discharge may occur.

CWM is a property owner and tax payer in the Town of Lewiston. CWM objects to the propose Local Law No. 4 because there is no rational, technical or water quality basis for discriminating against any source of industrial wastewater that otherwise meets the existing requirements in the Sewer Code. Adoption of proposed Local Law No. 4 would have no impact on water quality to enter the sewer system nor on the POTW's ability to adequately treat any such waters.

The Public Notice gives no reason or basis for the proposed Local Law. As noted above, the existing provisions in the Sewer Code are more than sufficient to prevent any discharge to the POTW that could impair its ability to meet its SPDES discharge limits or otherwise adversely affect the POTW facility. In the absence of any demonstrated legitimate need for this addition to the Sewer Code, CWM urges that proposed Local Law No. 4 not be adopted.

Very truly yours,
Michael Mahar
District Manager

Newlin stated that the Board will be meeting with counsel in executive session after the regular Town Board meeting to discuss this and determine if we act on this tonight.

Johnson MOVED to close the Public Hearing. Seconded by Bax and carried 5-0.

Time: 7:30 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk