

MAY 19, 2008

Regular Town Board Meeting

Present: Supervisor F. Newlin; Councilmen A. Bax; S. Edwards, M. Johnson & E. Palmer; Dep. Sup. E. Elgin; Atty. J. Leone; Dep. Atty. D. Boniello; Eng. D. Britton; WPCC Admin. T. Lockhart; Bldg. Insp. T. Masters; Finance Officer A. DiRamio; Police Chief C. Salada; 7 Residents; Dep. Clerk C. Schroeder

The Supervisor opened the regular meeting at 6:25 p.m. The Town Board presented a proclamation to Alan F. Baird upon his retirement in recognition of his many years of service in the Town of Lewiston Police Department. The Board expressed its best wishes to Mr. Baird for a long and happy retirement.

Next, Irene Rykaszewski and Eva Nicklas made a presentation on behalf of the Council on the Arts. A packet was provided to the Board that included brochures of what the Council has planned for the upcoming season. The Arts Council, partnered with *Arts & Culture Niagara*, created a trip planner that organizes cultural and historic attractions by regions throughout the County. Rykaszewski summarized what the organization has been doing to date – ballroom classes; yoga; music concerts; and a Toast & Jam event. The Arts Council will continue with its Blue Monday Concerts; Jazz Wednesday Concerts and will introduce a new series – International Sundays.

Arts Director Eva Nicklas spoke of the history related programming. She and Tim Henderson are writing a new play *Marble Orchard – Star of Niagara* which tells the history of Stella Niagara. This is being written in conjunction with the facility's 100th Anniversary. They will continue the Marble Orchard Historic Walking Tours as well as the Marble Orchard Ghost Walks. They are also working on a short film which will air on television of Lewiston's role in the War of 1812. They are collaborating with a composer to create a new War of 1812 Opera that is going to be written just for Lewiston.

Other projects they are working on include the Marble Orchard: Cemetery Project Restorations. The Council has partnered with the Historic Association to mobilize volunteers to help clean-up & restore some of the grave stones in the cemetery.

In closing, Irene Rykaszewski and Eva Nicklas thanked the Town Board for its generous support to the Council on the Arts to allow them to continue and create new programs.

Following the two presentations, the Pledge of Allegiance was recited followed by a moment of silent reflection.

RESIDENTS STATEMENTS:

Amy Witryol, 4726 Lower River Road: It appears that CWM has been short-changing the Town of Lewiston on its tax assessments. Lewiston Town Code calls for a gross receipts tax of 5% on hazardous waste facilities. NYS Environmental Conservation Law, §27-0925 –Local assessments on hazardous waste treatment, storage and disposal facilities, casts that at 4%. It further says that if a facility operates in more than one town, the towns will split that 4%. CWM, as far back as 1996, and in all likelihood further, is paying a 2% gross receipts to Porter and 2% to Lewiston. When I looked at the ECL for the division of funds, it said that *“in the event that a facility subject to local assessment pursuant to this subdivision is located in more than one city or town, the total annual assessment imposed shall not exceed four per centum of the gross receipts. The maximum portion of assessment revenues allowed to the cities or towns in such a situation shall be determined by multiplying the maximum total of assessment liability which can be imposed on the facility by the ratio of the population of the assessing city or town to the total population of all the cities or towns in which the facility is located. Population shall be based on the most recent census.”*

The 2000 Census puts the Lewiston population at roughly 70% of the total. What this means is that in 2007 CWM short-changed the Town of Lewiston by almost \$115,000. In 1999, that was closer to \$210,000. Averaging that to around \$150,000 going back 21 years

to the time the Town Code was adopted in 1986, we're looking at a back assessment potentially owed to the Town of Lewiston of \$3,000,000. I don't know if there are any statute of limitations, if at all, but I have one request of this Board and that is if we're owed anything go get it – every dime, every principle, every interest, every penalty. Notify the DEC because this would be a violation of CWM's permit, as well. Any monies that we collect on these back assessments – the difference between 2% and what should be 2.8% -- I would ask be put in a separate fund for the specific purpose of protecting this town from the siting of any more hazardous waste on any facility that owns property in this town while preventing the designated transportation route for any such facility to run thru this town in addition to hiring legal and scientific experts to protect us. History has shown that we cannot rely on the DEC to hold its permittees to the full regulations or the full force of the State Law... Thank you for your support on the issue of hazardous waste siting. I don't know whether or not we have any money coming but \$3,000,000 is a really big number and I urge the Board to work with counsel, clerks and budget officer to look for any documents to support this issue. Once again, be sure that, as long as we have to live with this, we're holding CWM to its full obligation of the law.

In response to a comment from Councilman Bax, Witryol noted that if CWM overpaid another municipality (T/Porter) that's between them and the other municipality. State Law, she said, gives School-Districts in any of the host communities up to 2%. They give the Towns up to 4%, pro-rata. Each year, they are required to provide an audit to the town, which they do. They just allocated it improperly.

The attorneys were asked to take a look at this and respond back at the next meeting.

Mark Rossman, 687 Scovell Dr., came before the Board to discuss the placement of stop signs on Scovell Dr. at the intersection of Powell Lane and the impact it will have on the area. I understand the rationale behind it was to curtail the amount of speed a vehicle may use on Scovell Drive. The idea is flawed with serious implications for a number of the residents with homes in the area. If I'm heading from west to east on Scovell Drive, I pass the house in question where the concern was raised about speeding, before I'm ever impacted by those stop signs. If I'm heading east to west, I've stopped at the stop in question, and have gone past that house where I already have a long thoroughfare where I'm going to pick up speed. Consequently, it won't work. It won't solve the problem. What will happen is, essentially, you're going to create a bottleneck at Scovell and Powell. Traffic is going to be tied-up, especially during times where you have events and activities in the Village where people use Scovell Drive for quicker access to Creek Road to by-pass Center Street. It's going to make it very difficult for people trying to get in and out of their driveways. Scovell Drive is a narrow, long street that does not lend itself to the placement of stop signs. You also create other issues with regard to parking on the street. Parking is limited as it is. When families have functions at their homes many of those people park on the sides of the road. If you put stop signs there you're going to limit that even more. What you are doing is a knee-jerk reaction to a situation that's not going to resolve the problem but create a situation where you are going to have to revisit when the individual in question says it still hasn't slowed traffic enough. Stop signs were not designed to slow down traffic flow in an area. Other created measures can be taken. As a parent, we try to protect our kids but we also as parents have to take a little initiative to protect our kids, other than impacting other individuals.

Newlin said other residents have expressed concerns to him. He has since asked the Highway Department to hold off putting the stop signs up pending review of the Signage Committee and Police Department.

AGENDA:

Newlin said he had a matter with regard to personnel (Water Dept) to discuss under his agenda. Edwards asked for an executive session to discuss a contractual matter within the Parks Department.

Palmer MOVED for the approval of the agenda, as amended. Seconded by Johnson and carried 5-0.

MINUTES:

Johnson MOVED to approve the minutes of 4/28/08 (Worksession; Jt. T/V Meeting; Public Hearing; RTBM). Seconded by Bax and carried 5-0.

POST-AUDIT:

Johnson MOVED for approval of payment to Home Depot \$580.27; Office Max (HSBC Business Solutions) \$248.34; Office Max (HSBC Business Solutions) \$134.96; Sam's Club \$657.52; Wal-Mart \$20.00; Lewiston Computer Service \$1,201.59 and Niagara County Attorney \$1,492.73. Seconded by Bax and carried 5-0.

TABLED ITEMS:

Ponds: Newlin referred to correspondence requesting farm ponds at 1804 Langdon Road and 2539 Upper Mountain Road, respectively. The Building Inspector said the ponds do not fall under the mining criteria. Masters said it would be his request that the soil remain on the respective properties and asked that this be made part of the approval.

Attorney Leone said it would appear to him that these ponds may be exempt from the Excavations Law. In the matter of the request for the pond site at 1804 Langdon Road, the owner indicates in his correspondence that the material from the pond will stay on the property. The request for Upper Mountain Road does not indicate this but it should be stipulated in the approval. This Board could indeed determine that they are exempt but part of the exempt process requires that the soil stay on the same property, Leone said.

Edwards MOVED for approval of the ponds at 1804 Langdon Road and 2539 Upper Mountain Road with the recommendations stated by Attorney Leone that the soil remain on the respective properties. Seconded by Bax and carried 5-0.

NEW BUSINESS:

Clerk's Correspondence:

None

Supervisor Newlin:

National Grid: Newlin said he invited representatives Dennis Elsenbeck and Tim Dzimian to clarify for the record the power discounts/credits on National Grid bills. He deferred to Mr. Elsenbeck to explain what happened with the Town and National Grid's negotiations and the shortfalls and complications that have arisen and how they have been addressed since then.

First of all, Elsenbeck said, National Grid has nothing to do with the settlement. We're not a member of the Power Coalition. The idea of where the benefits are directed is not up to our control, nor do we have an opinion, relative to what was settled upon by the Coalition members. There were essentially two options at the close of discussions that were brought forth by the Power Authority and Coalition members. We were not involved in those discussions. One was to create an agency by which the allocations could be made. The other option was to adapt the utility's billing system. When the settlements were reached, we were brought into discussions and asked what benefits could be brought forth by utilizing either the billing system or some other mechanism. You have to realize our billing system is geared towards 3.5 million customers. It's a very general, uniform billing system. It equates trying to look at 7,000-8,000 accounts out of 3.5 million. We adapted and reached an agreement with the Town of Lewiston thru 2011 that we would try this to see whether or not both parties felt that it was beneficial. In 2007, we implemented the power discount. The billing system applied the benefit across basically all accounts within the Township of Lewiston. That went on for about two months. We ran queries to test the program and discovered that the allocation of the benefit was going to all residences and businesses within the township. In the Jan-Feb billing system we corrected those accounts that were given the credit that shouldn't have

been given the credit. We also corrected some residences that weren't getting the credit because of an oversight of the Town of Lewiston.

Newlin said there was an unfortunate implication a few weeks ago that there was some relationship to an election... The implication was clearly that I had persuaded National Grid to give some elements – specifically the fire companies – discounts just to get me thru the election and then they would be taken away afterwards. Unfortunately, that same implication was repeated in the Gazette in a letter to the editor. I know it's untrue but if you could explain the timing of those.

Elsenbeck said it is not National Grid's position as to where the benefits were directed. It's not our issue. The discussions with the Town of Lewiston and other coalition members went throughout almost all of 2007 to come to the resolution of how the benefits were going to be distributed. We ran a revision to the billing cycle to try and find a way to apply those credits for two months. We discovered that the error was there and made the corrections. We had to go thru a corrective process to make the right adjustments. We did that in the January/February billing.

When asked, Elsenbeck said the Town of Lewiston never asked National Grid to direct those credits to the fire companies. When it did happen, it was an accident. It went to everyone within the Town of Lewiston. Elsenbeck said there is a service classification code in their billing system. When we re-wrote the logic of the billing to calculate the credit, it didn't pick up to apply the credit uniformly to what we refer to as service classification one – which is our residential customer. It generally applied it to everyone. It was an accident that everyone received the credit for the period of time until we corrected it.

Newlin stated that it was a mistake that was corrected and where the mistake was given they gave payment back for that mistake. Elsenbeck concurred.

Newlin then asked if National Grid, thru its directors, would consider refunding that credit to the fire companies. I ask you as a favor if at all possible to please take back to your directors to see if it's possible to address the fire companies' concerns and see if you can issue that credit.

Elsenbeck said the direction of the benefit is solely in the hands of the Town of Lewiston and not an issue with National Grid whatsoever.

Johnson noted that by law, every two-family, three-family or four-family property has to have a separate meter for hall lights, outside doors, etc. In a residential building, why would that meter not be included in the discount? Why would they call it a commercial use?

If the Town of Lewiston is trying to define those within the framework of residential, and within the tariff can be defined under the residential terms, it should be brought forth by the Town of Lewiston, Elsenbeck said. The benefits really are separate from National Grid entirely. We don't have any say on how they are distributed...

Palmer asked if every business in Lewiston was receiving this discount during the two-month period of time when there were errors. How many errors were there?

Elsenbeck said any business that was within that billing cycle. Not all companies or residents are billed in the same cycle. It was everybody that was within the definition of the Town of Lewiston at the time. When asked, Elsenbeck said any entity that received the credit that should not have was asked to pay it back.

Palmer said there's been a lot of controversy over this in the last few weeks as the Supervisor alluded to. I appreciate you coming out and sharing with us some of your perspective. Because of everything we've dealt with here in the last few weeks, I think it would be fair for us on the Board to at least hear another side of the

story. There have been some allegations made about promises not being kept with regard to cheaper power. I would suggest that we hold some kind of meeting with reps. of the fire companies, Mt. St. Mary's Hospital and the Chamber of Commerce to try to get to the bottom of what is going on with this so we can right the ship, as it were.

It was mentioned, Bax said, that the definition for residents receiving the benefit could be tweaked. Is that up to Town to now say that we want two-family homes to fall into that residential classification? Would that be up to us to communicate that to you and you would then further tweak your formula on the billing end?

Elsenbeck replied that the Town would have to have the interest in making the change as to the disbursement of that benefit. Secondly, National Grid would have to review the definition of residential within the framework of its tariff.

Bax asked for a definition of "residential" within National Grid's formula.

It's a service classification, Newlin said. That's the issue. From my best understanding, it's not so difficult to award an entire service classification a discount. It's when you're carving out certain portions of it that it becomes difficult.

Edwards said he was fortunate to receive the credit for two months and unfortunate to have to give it back. I spoke to a service tech from National Grid who was very informative. Basically, in layman's terms, if you're living in it, you'll get the reduced rate. If you're not living in the building, you're not getting the reduced rate.

Bax said he's been approached by a couple people from the fire departments who have expressed interest in getting together at a meeting, as Palmer suggested. I think that would be a good way to get everything out on the table.

Newlin said he, Johnson and Atty. Boniello met with each one of the fire companies in March. We laid out everything for them. We told them we would work with them on the issues. We didn't hear anything back from them until that night here two weeks ago. Furthermore, and I said this for the record last time and I'll repeat myself, I did the intellectually honest thing before the election two months beforehand and notified the fire companies because I heard there was some buzz out there thinking they were getting the discount power two months before the election, I might add, and tell them the fire companies would not be getting the discount. There were other ways perhaps the town could help them. Fortunately for me, for those who do not rely upon my word, one of the fire companies memorialized that in their minutes – that said specifically – The Supervisor came to us on Sept. 4 and told us that the fire companies were not getting it. It was going directly to residents. Furthermore, I have spoken on the Power Coalition and the Re-licensing at every meeting now for 4 ½ years. At every meeting, I said it was going to the residents. I said if there was some extra left over we would do our best to help other entities... If you want to see another forum with the fire companies, I'm happy to speak to them but I tried it once.

You always told me it was going to the residents, Bax said. But, when we get approached – that's the concern. We need that rebuttal. Is that the same complaint with Mt. St. Mary's? That they are not going to be getting the power credit?

Newlin said there are two issues with the hospital. One, the Board had said that at different occasions that if there was power left over we would do our best to help entities like the fire companies and the hospital. That goes back to 2004. And, I don't know what the Supervisor before me told to people either so I should say that. What happened was that we got this brilliant attorney, Mr. Dax, who found a way to monetize all the kilowatts. Originally, the deal was that we were going to get 6.5 megawatts – use them or lose them... Mr. Dax came up with a way to monetize every cent of it and give it to the residents. I went to the fire companies and explained that to them. With St. Mary's, there's another issue. Since that is

incorporated under a religious institution, it violates the church/state barrier implicit in the constitution.

Palmer said he had a conversation with the director, Judy Meness. I did bring that concern up to her. She refuted that. She said they are not bound by any restrictions. That's why I would be interested in hearing what she has to say as well.

Boniello asked that they get that in writing. Newlin said he would contract Ms. Mendes.

NPC Update: Newlin said he met with the County. We have gone forward with the proposal that I mentioned last time we voted on unanimously that we come up with an agreement that calls for one NYPA payment every year for \$3,000,000 and secondly, failing consensus, a clear & simple majority will approve projects. I've gotten word that that language has now become amenable to the Power Authority. Hopefully, by 5/29, when we meet with them, this will finally be done with.

Police Update: Newlin said they interviewed candidates for the full-time position in the police department. We had two very good candidates before us, he said.

Newlin MOVED to hire Lauren Passanese to the position of F/T Police Officer. Seconded by Johnson and carried 5-0.

Water Department: Newlin said the Board approved the promotion of Mark Cantara as MEO II to fill the foreman's position in the drainage dept., with the recent retirement of Carmen Coney. This opened a position in the drainage dept. The Board approved the transfer of Jeff Cosgrove (MEO) from the water dept. to the drainage dept., creating an opening in the water dept. Newlin said he spoke to Mr. Nablo. He is aware, as the Board is, of my long standing position of trying to use attrition to control the cost in personnel, especially in health care. As a result, Newlin said they will be advertising for summer help in the water department that will help replace the lost manpower as a result of Cosgrove's transfer to the drainage dept. Newlin said he would report back to the Board once they get applications back to fill the vacancy.

Johnson re-affirmed the appointment of Mark Cantara as MEO II and Jeff Cosgrove as MEO I in the drainage department, effective May 19, 2008. Seconded by Palmer and carried 5-0.

County/Town Environmental Attorney – Update: Newlin said Niagara County and the Town of Lewiston have contracted jointly with outside counsel to represent local & county interests with regards to possible CWM expansion – to help deal with the complicated and technical aspects of environmental law. We need all the help we can to make sure the DEC is monitoring and making sure current State Laws and regulations are being complied with, Newlin said. The agreement with the County is that they pick up the first \$50,000 in legal fees. The Town of Lewiston would pick up the next \$50,000. We got notifications from the County that they have gone thru its first \$50,000. The Town Board approved its first payment of \$1,492.73.

4th July Fireworks:

Johnson MOVED to approve \$2,000 towards the Village of Lewiston Fireworks Fund. Seconded by Bax and carried 5-0. Funds to come from the Celebrations Account.

Edwards:

Highway: Edwards said he met with Supt. Reiter before the meeting about paving projects for 2008. The Board made a commitment to rehabilitate the roads in the Mt. View Drive area after the water lines were installed. It is the Supt.'s strong suggestion that this project be put on hold until 2009 until the waterline construction has settled. Supt. Reiter recommended the following paving schedule for 2008: Mary Lane, Michelle Ct; Curtis Ct. N; Curtis Ct; Raymond Dr; Powell Ln; David Ln; E. Eddy Dr; and Sarah Ct.

Edwards MOVED to permit the Highway Dept. to mill and re-pave the above-mentioned roads within the budgetary allocation (\$300,000). Seconded by Bax and carried 5-0.

Drainage:

542 & 546 Greenfield Road: Eng. Dave Britton said there is a new housing development behind these properties. The developers are currently having rear-yard drainage put in place. There is an existing ditch behind these homes which is currently being filled in and pipe being put in to replace the ditch. Britton said he would contact the homeowners on Greenfield Road and relay this information.

Local Law re Licensed Contractors: Edwards said the Board has a copy of the proposed local law regarding construction work in the Town of Lewiston. He asked that the Board schedule a public hearing in reference to this.

Edwards MOVED to schedule a public hearing beginning at 5:30 p.m.; June 23, 2008. Seconded by Bax and carried 5-0.

Kiwanis Park Repairs: Edwards said this is a contractual matter. He asked to address this in executive session.

Hire Park Laborers: Edwards said he received a request from the Parks Director to hire the following as **Parks Laborers**, at \$8.50/hour: Anthony Morreale and Derek Tracey. There two hires will be assisting the mowing and maintenance of the Parks, and will work until August 9, 2008.

Edwards MOVED for approval. Seconded by Bax and carried 5-0.

Lastly, Edwards commented on fuel related costs. To date, we are at \$55,000 for fuel consumption in the Highway Dept. All the other combined departments are at \$38,000. By the rate that it is going up, by September we are going to have budgetary issues.

Bax:

Bax said he wanted to re-visit the issue that Ms. Witryol discussed earlier re CWM Hazardous Waste Receipts Tax. Bax said this was an issue that he wanted to see addressed immediately. Is there anything we can do today as to how we would approach this? Once we discern that in fact we have been shorted some monies should we send them a letter and put them on immediate notice that there's been an issue identified and we would like to have some conversation about it.

After some discussion, Bax suggested that the Town Attorneys investigate the matter further and draft a letter as necessary identifying the issues with CWM.

Newlin asked the attorneys to look into the matter, including possible changes in the State Law and report back at the next meeting.

WPCC:

Sanitary Sewer Capacity: Lockhart said there should be language in place in the existing contract to address future development in the Village of Lewiston and its impact on I & I matters.

Sanitary Sewer Grouting: Lockhart said he obtained two quotes for grouting. The first quote from GeoTechniques is for grouting a sanitary line at Riverwalk for \$2,710 plus materials. The second quote is from Sewer Specialty Services, a daily rate of \$2,250 plus materials. Lockhart recommended **Sewer Specialty Services** to do the Riverwalk sanitary sewer/erosion issue and also some grouting work in the Gorgeview area at a cost not to exceed \$10,000 to be funded from Fund Balance.

Bax MOVED to accept Lockhart's recommendation for Sewer Specialty Services in an amount not exceeding \$10,000. Seconded by Palmer and carried 5-0.

Bax said he would discuss a liability issue in executive session.

Newlin said the Town has to appoint two members of the Board to review the consolidation process with the Village. Newlin recommended appointing Councilman Bax and Councilman Johnson.

Newlin MOVED for approval. Seconded by Bax and carried 5-0.

Johnson:

Roster Additions: The Sanborn Fire Company submits for active membership in said Fire Company the following names: Janine Blackburn, 5848 Pearl Street and Casey Blackburn, 5848 Pearl Street.

Johnson MOVED for approval. Seconded by Bax and carried 5-0.

Palmer: None

Executive Session:

Newlin asked for a motion to enter into executive session to discuss a liability issue (Bax) and contractual matter/parks (Edwards).

Palmer MOVED to enter into executive session. Seconded by Johnson and carried 5-0. Time: 7:55 p.m.

*Executive Session:

Time: 8:20 p.m.

Present: Newlin, Bax, Edwards, Johnson, Palmer, Boniello, Leone, Elgin

Issues Discussed:

1. Personnel Issues
2. Liability Issues Related to Ponds
3. Potential Litigation Issue

Motion by Edwards to exit executive session and reconvene regular meeting. Seconded by Johnson and carried 5-0. Time: 8:40 p.m.

Action Taken:

1. To authorize Highway Department to complete Drainage Project on Snead Property, 4696 Lower River Road, as per memo dated May 14, 2008 & Engineer's Plans at a cost not to exceed \$30,000.

Edwards MOVED for approval. Seconded by Bax and carried 5-0.

Bax MOVED to adjourn. Seconded by Edwards and carried 5-0. Time: 8:45 p.m.

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk

*Executive Session minutes taken by Attorney David Boniello.