

Town Board Meeting

October 26, 2009

7:00 p.m.

Present: Supervisor Newlin; Council Members Edwards & Johnson; Town Atty. Leone, Deputy Tn. Atty. Koryl; Eng. Lannon; Bldg. Inspector Masters; Finance Officer DiRamio; Adm./Op. Lockhart; Police Chief Salada & Town Clerk Brandon. 2 press reps and 25 residents.

Excused: Councilmen Bax & Palmer.

The Supervisor called the meeting to order at 7:07 p.m. followed by the Pledge of Allegiance and a moment of silent reflection and asked for prayers for the family of Sandy Wizner, Recreation Secretary.

RESIDENTS:

Gloria Hailey of 739 The Circle. The construction of the NYPA brought a lot of jobs to the area but many left after the construction and the high costs of taxes. The Power Authority has never paid taxes on the land it sits on. Now after 50 years the residents get a discount on their electric bills and this is something we deserve. We were getting a discount of 59+ percent and now it is 14+.

Art Fitzpatrick of 2030 Langdon Road. I spoke with some of the members of the Board and asked that the Board look over the material he will leave.

Kathryn Mazierski 614 Park Lane. Many residents are unhappy about the recent rise in the their electric bill. I believe that you (Newlin) knew it was coming. Two years ago you stated that you had negotiated this deal. Whether we got notice from National Grid in July or Sept. does not change that the rate was going up. Lewiston is the host community for this facility at a cost of approximately 2200 acres. We are the ones who have given so much and receive a pittance in return which is tied to market rates.

Rob Nichols 471 Aberdeen Road. Lewiston gave up a lot (2200 Acres). The Board made some comments about the mayor and why he didn't go forward with the shared service agreement. He responded by saying that he surmised that several members of the Town Board have a cavalier attitude and not respect the efforts of the Village nor their vision. Councilman Edwards referred to the Village's infrastructure as a "train wreck". Also this Board constantly is bickering about fully funded our library. You should reflect on how you treat the Village.

Tom Deal 4645 Perry Court. I would like to thank Councilman Palmer, the building inspector and the newspapers for clearing up the drainage issue and thanks for the remaining board members for their sincerest apologies. I would like the Board to consider replacing our Town Engineer. We pay them hundreds of thousands of dollars annually and they do not figure out what it took a newspaper reporter five minutes. The only "sweet" deal is the deal that our Supervisor got from Modern in bringing his family and friends to Modern's luxury box at HSBC to see numerous Sabres games. With the huge pay raise he awarded himself it could pay for his own tickets. Also a picture of our Supervisor in Independent Health's box and he believes it is ethical to accept tickets from anyone who does business with our Town. This is a bad example for our employees of our Town. Mr. Newlin's campaign treasurer /committee chair stated her joy in paying a higher electric bill. Because of Mr. Newlin's bad deal the "Power to the People" has turned into an electric shock.

Diane Roberts 4391 Autumn Lane. I listen to the last board meeting and there was work done on the island in response to Mr. Jim Page. The work does have a lot of curb appeal. At that meeting 2 invoices had been submitted and was astonished at the \$14,000 total amount payable to Yarussi Const. Under a FOIL request there were no bids obtained for the project and living there I went in and out when the work was being done. It was all done at one time. The information I obtained was that there was 2 invoices, one dated in August for work on one island and one dated in late Sept. for the other island. This was

one island split into 2 parcels for curbing. They are not the same length. I don't understand a bill for equal amounts (\$7000 each) could have been submitted by Mr. Reiter. They are not the same size. Also, the invoice for the plants planted was submitted before the invoice for curbing was done. I hope the board will look at this and the contractor who submitted the invoices who donated to Mr. Reiter's campaign.

Dan Kilmer of 5109 Dana Drive. I served as a Councilman for 4 years and Deputy Supervisor for 2 years. While I served on the Board, Mr. Reiter asked for a \$30,000 reimbursement for unused sick time when he became an elected official. and I wouldn't be worried about the Supervisor's pay raise. Mr. Reiter always submits vouchers in an inappropriate way and I will submit again the vouchers that were split for *Jose's Collision* in order to hide it from the Town Board that our vehicle had hit a private vehicle and it was submitted for a town vehicle. I am upset about the people who are upset about their electric bill. I worked for 4 years on this re-licensing and we got this Town of Lewiston 6½ megawatts that will be owned by the residents for the next 50 years. You cannot control what the power is worth. I will take 10-15-20 dollars any day of the week. I don't understand that they don't appreciate what they got. Nepotism...Mr. Reiter hires his son, sues the Town and nobody says anything about it. I never saw the job posted and I have friends that are unemployed. He is allowed to do what he wants, when he wants. We had to sue Mr. Reiter to stop breaking the law and we won and he conceded and stopped his illegal actions.

AGENDA:

Newlin added under Old Business, alarm system at the Town Garage. Under my agenda, add the Sanborn pavilion and a proclamation for Lee Simonson.

Edwards: Nothing to report on item #2 Drainage/Perry Court unless we have info from the Seneca Nation.

Motion by Johnson, seconded by Edwards to approve the Agenda as amended. Carried 3-0.

Johnson MOVED to accepted the minutes of 9/21/09 Worksession and the 9/28/09 RTBM. Seconded by Edwards and carried 3-0.

Edwards MOVED for approval of the Post Audits payment to Home Depot \$449.37; OCE Financial Services \$565.00 and Mountain Glacier LLC for \$30.22. Seconded by Johnson and carried 3-0.

OLD BUSINESS:

1. Modern Response:

Newlin said they have not been able to return back to the Town the questions that we asked with regards to some discrepancies to the tonnage that is reported to DEC; issues of the waste coming in from Canada.

2. Perry Court Drainage:

Newlin stated that he had talked to Kathy Walker, CEO/Seneca Nation and she said that their project managers are looking at this piece of land and that the pipe was installed on their land and that they did not ask for that work to be done. They are determining whether they want it removed. Also, it does not serve any purpose for the golf course.

Johnson noted that when we sold them that land we were concerned about the property being kept clean and they promised they would maintain it. Would you speak to them about this matter.

3. Possible Litigation/National Grid:

Newlin: The contract that we signed with National Grid in 2007 stated that they would provide the Town with 60 days of advanced notice before the power credit year began. Per the contract the power credit year begins on 9/1 of each year. We did not get notification from them. We got via e-mail to me, Mayor Soluri and Mr. Dax on 9/10. It was 2 days after the bills had been sent out to the public. Not only missing the July deadline, they did not notify us before the bills were sent. National Grid went on to say

that the Town sets the rates which is not true. We have Mr. Dan Spitzer here tonight and Mr. Fluskey from Hodgson and Russ who will tell us where we stand.

Atty. Dan Spitzer: For the record, neither you or National Grid set the rates, it is the NYS Public Service Commission and the issue here has nothing to do with electrical rates. It has to do with the amount of the discount. You have zero town tax rates so the question is what to do when you have the possibility of benefits. Call your State reps and find out why they are not paying taxes on the plant. You cannot do anything about it. You are alone in this state of an entity receiving benefits from NYPA who have given it to the residents. Most people used it for economic development. There is no other community in this state that shares what it got directly with its residents. I am confused about people complaining about the decline in power rates which has resulted directly with the power being sold to the market and discount is created by that price. In a year of economic recession with rates at historic lows along with a cold summer and no great demand for electricity across the state you don't have the volume of profit that you had last year. That is what is involved here.

National Grid breached it's contract with you by failing to give notice on time. When we received notice was the adjustment correct? Mr. Dax has determined that the rate was not properly calculated because there was an overcharge by National Grid in administration fees by \$50,000 which goes back into the reconciliation to be credited to the community as part of the process. The Town did not accept what National Grid said. We found the mistakes and have corrected it and continue to work with them on their responsibility. Certainly you could bring a lawsuit and having gone thru the Power Coalition which did not even move us forward. The damages could be possibly the time value of 60 days of notice and if the court found it was a jurisdictional defect you would have a right to increase the amount of the discount but at time value which is so minuscule it would not cover the cost of bringing the suit. Has National Grid made a mistake? Yes. Should we be upset about lower energy costs? I leave that to the community to decide. We are not going to recommend a lawsuit for political purposes. We are not going to let National Grid get away with inappropriateness. My concern was if the rate was properly calculated and the answer is yes. If the state economy picks up the discount will pick up. This is an unique deal.

Johnson: I was in the negotiations from day one working with 3 different supervisors and several different board members and I am upset sitting here and with drainage problems and other problems that we need to address and all that is being said is for political sides. I have never believed in negative campaigning now or before and I am tired of listening to inaccuracies. I spent a long time negotiating with the PA and if you want to know what they tried to put down our throats from day one which came from State legislators. Every day I sit here and listen to people talk about stuff they don't know about. In the first place they sat and told me if I don't take the deal I am out the door and you will get nothing and they would walk away from us. I asked what kind of negotiations is this. We fought it real hard and when Mr. Newlin came on board.....this is not Mr. Newlin's deal....they told us we would never get power, we would never give it to our residents. We went to the county for a MDA that we could possibly use so we could sell our own power and they turned us down. The rest of the entities did not want to belong with us and some of the entities that don't belong with the Town of Lewiston right now or the seven entities that didn't want to spend \$35,000 a year to see what we could have done to bring the Village and Town closer together. Nobody wanted to do that. After 14 years of sitting through these negotiations with just not them but the Modern agreement which we came up with by going out to the public and did a survey. They gave us a million dollars and we took that and gave it back to the residents in Niagara County over a 3-year period to reduce county taxes because we did not have a town tax. Then the county raised taxes. With National Grid, I am fighting for the realtors and homeowners with the federal gov't. regarding the tax liens that are being put on. We had said we would probably get 14 to 20% off of your bill. We did not expect it to go to close to 60%. I am asking our attorneys to negotiate with National Grid to why don't you give us 20% across the board and if at the end of the year if there is extra money then perhaps we can put that money into fund to be given back to the residents. The Board has always felt strong about giving back to the residents and also get the power. We were told that there was no possible way that we would get the power and give it back to our residents but we did it. They found some mistakes and we are working on them. I sure would want more from the PA

but you get the records of the negotiations and see. You got a pretty good deal and better than the other 6 communities. My last comment is that we have lost a lot of jobs and employment and with 220,000 people with 21 levels of government and 14 school districts.... so where do you think the taxpayers are going to go for that. The reason the power went from 6½ to 3 cents is because they had an abundance of power. Why not give that power to the people and the businesses. When I hear people say the deal was no good, go and look at the records.

Atty. Spitzer: Massena was so upset with your deal that they wanted to reopen the deal.

Newlin: For the record Massena which has the St. Lawrence project which is twice the size of ours get \$80,000 a year in cash. We get 1.4M per year plus about 2½M worth of electricity.

Atty. Spitzer: When you look at the MDA and look at what you are paying National Grid vs. the cost of doing this yourself, you are paying them far less. People say we should have gotten more, but you can't prove against the negative.

Edwards: What came to haunt National Grid is their assumption rate of 16½ and ended up with 2-3. Is it possible to negotiate with them to have a 2½ cents per kilowatt and assume the 2½ cent and then an annual disbursement at the same timing of this September report. Would that be feasible?

Atty. Spitzer: It is feasible and Mr. Dax is talking about it. Also, record consolidation is possible. There are some limitations with PSC but it is not impossible.

Newlin said it is forecasted that the price of electricity is to go up with demands for more electricity and the costs will go up.

Atty. Spitzer: We are depended on natural gas which is on the increase. There are studies that say that energy prices are going to go up.

Newlin: When I started I wondered if we could do a cash disbursement to our residents and the NYPA said no way and neither did the State. We found cost obstacles with a MDA. The system in place means we do not have to maintain the system.

Atty. Spitzer said the current system is by far the cheapest. If you were to form an electric company today there is no reason to believe that you would get a NYPA allocation of megawatts. You cannot start your own system without the PSC approval. There are issues with franchises.

Newlin: Your opinion is that probably litigation with National Grid is not advisable at this time.

Atty. Spitzer: I think it is more important to work on long term relationship. It was based on an assumption that didn't come true and reflected a payment out that was above what was deserved. It did not have anything to do with electrical rates. It did not create any kind of entitlement. It is a discount based on the rates of electricity and I will not urge you so you can have a higher discount.

Johnson asked about companies that offer discount on utility bills.

Atty. Spitzer said they are a number of ENESCO'S that can buy your energy generation, etc. and pay a third party vendor which buys in capacity and sells it back to you at less. Check them out.

Newlin said Lewiston is still paying less for it's electric bill than anybody here in Niagara County. Nobody in the State gets it.

4. Payment to Yarussi Const.

Newlin: We have a median at the entrance to Thornwood that was made into 2 parts. We have two bills for \$7000 each.

Masters: I measured and the island on the east side is 158 linear feet. The one on the left is 225 linear feet. Approximately 28 inches wide.

Newlin asked if it is odd that the two bills from Highway Dept. are similar and the work size is different.

Masters: Yes.

Newlin: Is it one project or two?

Masters said if I was going to do the project as a contractor, I would do it as one project.

Lannon: Similar to what Mr. Masters reported, my measurement was about 220 feet and 150 feet for a total of 370 feet. With it 60% to 40% at \$35.00 a foot comes out to about \$13,000 plus \$1000 for site preparation, demo and restoration.

Newlin: So, the price that we received is in the ball park, correct. Is this one or two projects?

Lannon said one project.

Newlin: Counselors, in the opinion of staff this should be one project but the Highway Supt. decided to divide it into two separate bills of equal amounts. I suppose we could turn this over to some outside authority so they can do an independent review outside of politics. What options do we have with this.

Koryl said you can certainly do that. The project is divided into two and the \$14,000 is in an area under our own procurement policy where you would have to have 3 written bids either written, mailed or faxed to the dept. head and then into the bid file with the clerk. I don't know if that has been done or not. What the intent or why it was done, I can't ascertain right now.

Newlin said the bills came in five days apart and it seems that it was done all at the same time. In my opinion we have one project that was split into two projects to get in under the \$10,000 limit. We will pass it on to the appropriate authorities for an opinion as to what to do.

Edwards: Meanwhile, Mr. Yarussi is holding \$14,000 until this is settled? The number seems within reason and because the procurement procedure and our policies and possibly the laws in NYS has been broken, I don't feel this contractor should be holding the bill.

Newlin stated that he would not support a resolution to pay Mr. Yarussi because there are so many open ended questions. Do you have an opinion as to the legality of paying...if something was done improperly here should we move forward, counselors?

Leone: The question is whether or not there was a violation of the General Municipal Law and our own Town Code policy in bidding. As to whether or not the contractor is entitled to payment is one question. The other question could be are there any other contractors out there you may have been capable of putting in a bid because there appears to have been no bidding procedure involved. I am not talking about sealed bids just 3 written or faxed quotes. I understand that there is nothing in the Town Clerk's file indicating that that had been done. Presuming it was not done, the contractor ultimately is going to need to be paid because he performed the work. As to whether or not we did something as a Town to circumvent our own Town policy in the General Municipal Law that is a different question.

Newlin said hopefully we will have some answers by the next meeting.

5. Alarm System/Highway Garage/Doyle Security:

DiRamio: I received a purchase order dated 9/26/09 from the Highway Supt. which states one (1) alarm installation---\$13,775. The same day an invoice came in for it and it is my understanding that there should be bids on this amount and it is being charged to the Highway Garage contractual line and this is clearly equipment. It is equipment to be purchased and also a transfer to an equipment line for it.

Newlin: This is alteration to a publicly owned building....publicly owned buildings within the Town can only be altered, added, modified, constructed or destroyed by measures of the Town Board not the Highway Supt. Did you contact the Assoc. of Towns on this?

DiRamio: They said clearly that they do not believe it is in his jurisdiction to make this purchase without Board approval. Not the Highway Supt.

Newlin: Mr. Edwards, up until recently you were the liaison....do you remember him coming to this Board to install this.

Edwards: We never had any discussions on this. It is a fire and security system.

Newlin: This will merit further investigation. To concur with State law, the Highway Supt. is not entitled to move forward with projects like this at the town garage which is owned by the Town. He should not go forward with capital projects without the Board's authorization.

DiRamio said there were no other quotes on this.

Edwards asked what about Doyle Security?

DiRamio said the work has been done and we have received another invoice for the maintenance agreement for it and it is dated Oct. 21st. This is for one year and the cost is \$1670.

Leone said this in tune with the last one that Mr. Koryl discussed but the only difference is in the last project the authorization to do the work did come before the Board and that issue is whether or not the Town under General Municipal Law requirements were circumvented...this issue never came before the Board and approval or disapproval was never given. It was just done beyond the scope of authority. The installation is in and now you are faced with do we pay the bill or don't we. Given the amount of the project were there 3 bids received in writing and were they maintained in the files or the Town Clerk or not.

Newlin asked to whom do we go to. The AG's or the State Comptroller Office?

Leone said either of them.

Newlin asked that Mrs. DiRamio try to contact the Comptroller's Office and ask for advice if it is legal to pay for these bills.

DiRamio: We have another issue. I sent a memo to the Board, Mr. Leone and Mr. Reiter back in July about a bobcat equipment purchase costing \$9,000. It was charged to the Mt. View paving project and it can't be done. It has not been paid. It is my job to sign off on bills that come in and I have to account to the Supervisor, the Chief Fiscal Officer and to the auditors and the State Comptroller. I am not signing my name to something that is not right.

Newlin said there is an easy procedure here and the person involved is not new to Town government and what the proper procedure are.

Johnson asked if a notice should be sent to these people and tell them that we are checking this out and don't do any more work without an official town purchase order etc.

DiRamio: Part of the purchase order problem with the Highway Dept. is the purchase order comes in the same day the voucher does. Isn't it the understanding that purchase orders are suppose to come thru first and be approved but not on the same day.

Edwards: Regarding that piece of equipment, is there any money in the equipment line to pay for it?

DiRamio: No.

Edwards asked do you want to take it out of the material for that job.

DiRamio: Out of the Mt. View Paving Project. When I inquired I informed the Highway Supt. that he would need approval from the Board and that has not been done yet.

Newlin said you can't buy equipment with money for materials per State law. Mr. Leone do we have an update on an accident that occurred in the summer.

Leone: The bill was presented and removed because no accident report had been filed. Our town policy requires that an accident report be submitted with Ms. Cich who then turns it over to our insurance agent to determine whether or not we have proper coverage or not. That was not done. It was not paid. A memo went to the department head and I received no response. Also, no report was ever filed.

DiRamio: We did not pay them. We have not received a bill since. The invoice was charged to the Town as if it was a personal vehicle. Our sales tax I.D. # was used and no sales tax was charged.

Newlin: We will forward these issues to the Comptroller's Office or AG's office for guidance and ask whether or not it is legal for the Town to pay the bill even though the contracts were let properly nor authorized by this Board.

NEW BUSINESS:

No new correspondence.

NEWLIN:

Legal: I will address some of the comments that we heard during the public comment period. Anybody who lives in Lewiston should look at their tax bills from 2003-2009 and see what taxes have actually gone up and which ones have gone down. In 2003 by looking at your county tax and your refuse tax those numbers have gone up. Refuse tax has gone from 8¢ a 1000 to 12¢ a 1000. County legislators are saying that they are reducing county taxes but you are paying more to the county. Niagara County has been reported nationally as being the highest taxed county in this country. If you wonder why we are taxing people out of our homes, why our children are leaving and we can't get any economic development here that is the number one reason.

However, the reason I ran for office was to try to do something in my own position about those taxes. If you look at the total Town taxes whether it is fire, town, water etc and add them all up in 2003 the year before I came here, for a \$100,000 home the bill was about \$387.00. In 2009-2010 the number is \$353.00. We have made our efforts here to try and reduce taxes.

Regarding the Power Authority, the last time I saw an assessed valuation of the PA was set at 2 billion dollars. Let's say there was 50% margin of error and they were assessed at 3 billion. We haven't had have a town tax now for the last 4 years, so it would be hard to say to them we are out "x" amount of dollars. At the last town tax of approximately 46¢ to 50¢ and when we as a Board to get a fair number to get compensated from the PA, I applied a fifty cent tax to 3 billion dollar assessed value. That means about 1½M dollars. That was our target number. Messer's Johnson, Langlois, Kilmer, Ceretto and I were here and we got a deal that provided 1.36M dollars in cash every year which will go up every year as the price of power goes up and it is guaranteed at about 1.36M. Then we got 6½ megawatts of power which is worth anywhere from 1.5 M to 2.5M per year. If you look at a 3M assessment with a 50¢ tax which we do not have anymore we are getting more than we would get had we been able to tax that authority. I compare that to what the County is at. I argued at the sessions with the PA that the power plant was in

the Town of Lewiston. I had people who represented the County some of whom represent Lewiston; said no-no-no-it is not in Lewiston but in Niagara Cnty. So, if the PA is in Niagara Cnty. isn't Lewiston, is it in NYS or the USA. If you take a look at the County they have about an \$8.00 tax per thousand. Apply that \$8.00 tax to the 3B assessment and the County is out 24M a year. What did the County get from the PA in cash...about 1.2M which is less than what the Town got. They got about 9 megawatts which is worth about 2.5-3.5M per year. The County got probably a total of 5M in cash and power from the PA when they are out 24M a year.

As much as people have complained about variations in this deal, think about what Lewiston is out and think about what the County is out. Has the County reduced any of your bills that they negotiated this. No they haven't. Your electrical are not going any further down because of the County and your property taxes have gone up. Get your own tax bill and look at it. The school districts have far much more money than the Town. The Town got the best deal of any of the entities in the county. When you look at what we are out tax revenue wise and we got the best deal compared to any other town, city or village in the State of New York.

A comment about the Village.... this Town Board allows that Village to stay afloat in a number of areas. We make more than a half a million dollars of investment into that Village each and every year. The Village unfortunately to my great chagrin did not participate in the NYPA re-licensing. I don't see any outrage going to the Village Board of Trustees that they did not participate in Power Auth. money because they got zero from the PA. That despite the land the PA owns which is about 100 acres within the Village which is known as Artpark that is not taxed. The Village tax is up from 2003 and you pay over \$6.00 per 1000 village tax. Out of our concern for the Village and the realization that it plays an integral part of our economy we give them a fair share. We give them about \$120,000-\$130,000 a year. We just funded a huge Greenway project of \$150,000 to the Freedom Crossing Monument. The Village participates with us with a library...we were getting criticized for not respecting the Village. We fully funded the library's request this year and last. We can only give them what they asked and that is what the library executive director told us they wanted for a number and that is what I gave them last year and that is what the Board gave them in the past year. I don't know what else we can do for them. The Village who owns part of that library and also appoints some of the trustees give the Village Library almost nothing and so we are carrying that. The Town pays for more than 75% of the police force and the police force as the Village becomes more and more successful, the police force per Chief Salada that his forces at times are stretched to the limits because we have so many people in the Village which is a great thing. But, the Village could not afford that type of police protection by itself if it wasn't the Town helping. The Town has always worked in conjunction with the Village. We were opened minded when it came to the idea of consolidation but when the Village Board voted on whether or not to consolidate or not, the Mayor cast the deciding vote and his vote was no. It lost 3-2. It is not our fault that we are not going forward with consolidation anymore. Our door has been open, we supported that effort and our door will remain open. We hope we can help the Village out as it works toward reducing taxes and a better fiscal future.

The other tax that everybody should keep an eye on are the special district taxes and when Sen. Maziarz appeared before this Board last March '09, I said if you really want to help Lewiston taxpayers and the fire companies the first thing the State should pursue is the elimination of the exemption of the special district tax on the Power Authority. Again, imagine if the fire companies who have to protect that monstrosity, the huge commercial building with their limited resources because they live in a rural town...imagine if they could pay the special district tax to help that fire protection budget. Since they don't that falls on all of us here as Lewiston taxpayers. We are supplying solely the amount of money that has to go to the fire engines and the training and the personnel that goes to respond the fires there. So again, I urge the State to strongly reconsider its position and remove the special district exemption. That would make a huge difference on the tax burden of the people of Lewiston and all of Niagara Cnty.

Regarding Modern, I did not go to a Modern hockey game since the 2006-2007 season and if you asked Modern if that brought any favors with me, I think they will tell you no. They can't wait for me to be gone from this office because I stood so strongly against their expansion. Some of these points that are being said in the public discussion period need to be addressed and addressed correctly.

Mr. Leone, we have gotten some other points already developed here...that is the National Grid litigation. The outstanding issue with the police report with Mr. Reiter and the car accident that we covered. Leone had no other matters.

Engineering: Nothing at this time.

Water Dept. Transfers:

Johnson MOVED to transfer \$8750.00 from Acct. #SW1 8340.0200 to #SW1 8340.0400. Seconded by Edwards and carried 3-0.

Sanborn Pavilion:

Newlin: I will contact Niagara Construction who will be fixing it.

Sanborn Library:

I will be contacting the Town of Cambria for financial assistance to move the books.

Freedom Crossing:

Newlin: Lee Simonson has taken a lot of credit for it and if the Board would authorize me to present him with a proclamation regarding this.

Newlin MOVED to present a proclamation to Lee Simonson from the Town for his dedication to the Freedom Crossing. Seconded by Edwards and carried 3-0.

EDWARDS:

My name was mentioned by a citizen about my remarks and were taken totally out of context. The remark about the Town infrastructure heading for a train wreck were responds to the Village not wanting to participate in the consolidation of the Village and the Town. If that were true, we would be getting monies from the federal government to help fix infrastructure. It is not unique to the Village or the Town, our infrastructures are failing. They are between 50, 75, and 100 years old. They need to be addressed. If it was not for that NYPA settlement this year they wouldn't be addressing any infrastructure improvements because we gave them \$150,000 to do some upgrades. I have always been pro fix and help the Village. So, for anybody to take out of context what I said is shameful and incorrect.

Newlin: You have constantly been saying that we spend PA money in the Village and that is the best place to spend it fixing those old sewer lines that date back more than 100 years.

Edwards: There is a Planning Board request under Mr. Palmer's agenda which is a request from Niagara Univ. /NYPA.

Johnson: This is contingent upon the existing easements on the sewer line on Penrose Drive and in talking with the attorney we should probably have a municipal agreement with this.

Lou Paonessa from the Power Auth. We had talked with Mr. Martinez and we have already gone thru the process with the Town of Niagara regarding providing the water bills from the Town of Lewiston for the sewer check. The issue of the 12 inch line we have incorporated that into our plan.

Leone: I have a copy of the proposed agreement. We previously did an agreement with the Town of Niagara with property on Divide Road. I would like to compare the agreement with this one and assuming that every thing is in order it should be okay.

Lockhart: We have had open discussions and things have been ironed out. The Town of Niagara is going to provide water and the sewer that goes to the Town of Lewiston and what mechanism is going to be issued for the sewer bill. I don't see a problem. Maintenance on the sewer pressure system that will be coming from the new structure that NYPA will be putting up in their section of the gravity will maintained by them. When it comes back into the public improvement project and once it comes into the Town's R.O.W. it will be billed to the Towns' specifications. Penrose Drive base will be

upgraded to a 12" and the 12" sewer line will be on Penrose and it will be dedicated to the Town and we would take over the maintenance of that section.

Masters: How are we going to get the water bills from the Town of Niagara to do our billing? Is the Town of Lewiston going to incur any cost in doing so?

Lou Paonessa said we are going to provide the bill to the Town of Niagara.

Leone: The proposed agreement requires the Authority to submit their bill that they get from the Town of Niagara to us within 10 days of receipt. The agreement as it stands appears to be okay but I would like to check it with the Divide Road agreement.

Newlin: We could go on a contingency approval based on the input of Mr. Lockhart and Mr. Leone if it is time sensitive or we could do it when we meet again.

Lou Paonessa: We would like to move forward and we are contingent on the agreement that we have with Niagara Univ. to turn over the property and construct our new warehouse.

Edwards MOVED that contingent upon input from the Engineer Lannon, Atty. Leone and Adm. Lockhart and authorize the Supervisor to sign the agreement. Seconded by Johnson and carried 3-0.

Edwards MOVED for a Neg Dec for a one lot S.D. on Saunders Settlement Road SBL#118.00-1-11.1 for Robert Stachewicz. Seconded by Johnson and carried 3-0.

Johnson MOVED for approval of a one lot S.D. SBL#118.00-1-11.1 At 2569 Saunders Settlement Road for Robert Stachewicz. per Planning Board recommendation. Seconded by Edwards and carried 3-0.

Newlin: The Tower Cmte. has indicated to the Board that sooner or later we are going to be faced with the influx of power generated windmills not just on farms but perhaps on residential areas. Chairman Latko suggested that we have a public hearing for feedback from the public as to esthetic, environmental and noise impacts etc. from these small turbines that would serve as generators for electricity for home residential use. We have info on a small wind energy conversion system law. They are looking for approval for a public hearing in November.

Leone: Having looked at several versions, I think it is appropriate to set a public hearing. I know that you have another one on ZBA membership at the next meeting and although I will not be here, I do think it is appropriate that you set a public hearing. The one on the ZBA is probably going to be short, while this one would probably be longer.

There is another proposed local law that was not discussed under legal and there is a CAC presentation. It has been suggested about amending our sewer code to basically make it unlawful to discharge certain types of industrial waste into the public sewer system and depending on the opinion of the Town Board at the next meeting, you may want to have a public hearing as well.

Newlin: Let us hold off on setting this public hearing and let's hear from the CAC Cmte. and then we will gauge the urgency and figure out what are the best dates.

Parks/Recreation:

We have received a resignation from Michael Guerrucci from the commission. Mr. Dashineau you have recommended the appointment of Robert Flegal.

Johnson MOVED to accept the resignation of Michael Guerrucci with regret. Seconded by Edwards and carried 3-0.

Newlin MOVED to appoint Robert Flegal to the Recreation Commission to fill the unexpired term which ends on 12/31/10. Seconded by Edwards and carried 3-0.

CWM/CAC Presentation:

Al Ogg: The Lewiston delegation to the CWM/CAC Advisory Cmte. is here to discuss the draft Hazardous Waste Facility Siting Plan issued by DEC. DEC will hold a hearing at the Lew-Porter H.S. on Nov. 19th at 6:00 p.m. This is an opportunity for the Town and its residents to comment on the final draft of the siting plan which will be adopted next year. The State must adopt a plan prior to declaring CWM's application to extend its capacity is complete. As a reminder the CAC was convened about 15 years ago under NYS Law Section 27-1113. This law requires that municipalities which host commercial hazardous waste landfills and appointed the committee for the purpose of entering into a dialogue with the facilities owners to develop mutually acceptable solutions to problems which maybe created by the siting of the facility and its' uses. Lewiston and Niagara Cnty. appoint five members each on CAC. Councilman Bax, myself, Dr. M. Gallo, Robert DiFrancesco and Amy Witroyl currently serve on the CAC as appointed by the Lewiston Town Board. While CWM decided to stop attending the CAC meetings 2 years ago the committee is still recognized by the NYS DEC and we continue to meet quarterly with DEC monitors and discuss problems at the CWM facility. Tonight, we are taking a step back from what problems occur in the operation of the CWM facility and inform you as to how CWM's landfill relates to the siting plan. The siting plan does not evaluate environmental issues associated with a particular application and it is important guidance document given to a state siting board which is appointed by the Governor for each application. The plan guides the Board in determining 1) whether the State needs more capacity and 2) whether there is equitable geographical distribution of existing hazardous waste facilities. On the first question, this draft concurred the Town of Lewiston and Niagara County position that there is no need for an in-state hazardous waste landfill for businesses or Brownfield Program cleanups. This came as no surprise. For 15 years the EPA has stated that hazardous waste landfill capacity was adequate for the foreseeable future. Last year DEC demonstrated that there was 40 years of capacity nationwide without CWM. The second question of this draft concluded that there is an equitable geographic distribution of facilities across the state. The CAC, the Town of Lewiston and Niagara County all disagree with that conclusion. Not just because it seems to be unfair, but because DEC's analysis seems to be at odds with the law.

The relevant part of Section 27-1102 states "the plan shall include but not limited to a determination of a number, size, type and location by area of the State of new or expanded industrial hazardous waste treatment, storage disposal facilities which will be needed for the proper long term management of hazardous waste management of hazardous waste consistent with the assurances required pursuant to section 1 of this section and an equitable geographic distribution of facilities. Amy Witroyl will brief you on how the plan and the law differ from the issue of equitable distribution.

Amy Witroyl: We want to thank Councilman Bax for raising this issue to everyone on the Board. I would like to tell you what an honor to serve with Mr. DiFrancesco, Mr. Gallo and especially Al Ogg who you know served 8 years on the Town Council and who has continued along with his wife Donna to make tremendous contributions thru volunteer work throughout this area with no compensation, with no big public pat on the back and without fanfare and it truly an honor to serve with him.

As you heard it is a long required plan ????? waste facility and the siting of that facility was considered in evaluating the burden of any area of the State. The law also requires indemnification of the facility as needed for long term management at the facility. Long term management includes closed landfills which still generate leachate, still need repairs and still operate under post closure premise. However, the plan omitted these facilities. Instead of counting at least 9 commercial hazardous waste landfills in Niagara County this draft of a plan reported only one. There are at least 3 closed landfills in Niagara Falls at the former CECOS facility and 5 closed landfills plus another one in use at CWM. By ignoring the requirement to include facilities used for long term management of hazardous waste namely closed landfill, the State omitted 10 million tons of hazardous waste from consideration in the plan. Approximately 2 million tons in Niagara Falls and the 8 millions tons at CWM. Behind the ECL Section 1102 in your handouts, from Chapter 6 of the plan regarding equitable distribution, (Page 6-11) and while the map shows NYS is divided into 9 DEC regions the plan equity analysis divides the State into just 4 areas. One of which we have not heard of before. It is called "mid state area" and includes DEC Regions 7,4 & 3. Syracuse and the NY City suburb of Westchester are both part of this one single "mid state" area. Now to the map, our remarks will refer to

the 9 DEC regions shown on the maps not the 4 areas created by this analysis because to comply with the siting law requirement to hold hearings in each region of the State, DEC has in fact chosen in these 9 areas. Last year as well as this year. Let's see how the plan ??? hazardous waste facilities in the state. On page 6-11 the map shows the number of facilities not the type or size of the facilities. This map shows we have more facilities than any other region of the state. On page 6-12 shows the number of facilities not the type or size of the facilities. According to the map we are second however, the plan undercounted at least 2 facilities in Niagara Cnty. so its' factual matter once again we are in first place on this second map. Looking now at page 6-13, this map shows the number of facilities not the type or size of the facility and that is 3 maps now. On this map we tie for first place. On the 4th map on page 6-14, this map shows the number of facilities not the type or size of the facility. Once again, our region is in first place. On page 6-14 this map shows the number of facilities that note each type of small ???, we have the only landfill. The map incorrectly refers to one not the minimum of 9 commercial hazardous waste landfills that are already located in Niagara Cnty. The narrative tells us there is an incinerator in the eastern part of the state and a landfill in the western part of the state but they don't tell the reader that the incinerator burns 7000 tons of low grade fuel while the hazardous waste landfill is permitted to accept up to 500,000 tons per year of the widest variety of toxics, the most dangerous of toxics and the among the highest concentrated toxics compared to most hazardous waste landfills in the U.S. On page 6-16 to a map that shows the amount of hazardous waste generated that is shipped from each region and the amount of waste that is received in each region. The plan tells us that the amount of waste generated in each area of the state is relative to the location of the commercial facilities which imports waste from anywhere.

However, inclusion of generator data here leaves the reader to compare waste generated and received in each region instead of comparing the volume of waste received between the regions. Therefore, it is not easy to see on this map that our region received more waste in just one year than every other facility in the state combined. You would study the map closely because that fact was not mentioned in DEC's analysis. Here again the plan considers volume received as temporary storage or recycling facility just as significant as volume sent to a hazardous waste landfill where it will stay forever. That flies in the face of the siting law that Mr. Ogg read to you that directs the DEC to analysis the burden of the type and size of the facility, not just the number of facilities in determining equitable distribution. As Dr. Gallo has pointed out merely measuring the waste process absence of the inclusion waste and permanent residents using analysis. In summarizing these 6 maps DEC writes "considering all these wasted fine facilities it is concluded that the distribution of all hazardous waste treatment storage and disposal facilities as of 2007 is relatively ????? equitable across the state." A siting board can overturn this conclusion but that board is appointed by governor so it is unlikely that the board would overturn the decision of the governor who ultimately approves this plan. There was no announcement of this as required by law and the 10 million tons landfilled in Niagara County is no where here on any of these maps. If Gov. Patterson believes that this legal and fair when the final plan is issued next year, the Town will no doubt be disturbed. However, the Town and County would appear to have a very strong case should it decide to challenge the equitable distribution funding. Lewiston residents and the Board can help obtain the attention of the governor by pointing out these flaws as the 11/19/09 hearing at Lew-Port H.S. or by simply attending the hearing to show support for the Town's position on this matter. If the plan is revised and is adopted ????? approved facilities are not equitable distributed because of our landfill; CWM's application would be essentially become unlawful as would future applications here. Also, just because the DEC has found CWM's current RMU-1 landfill capacity equitably distributed it does not mean that a siting board would preclude that additional capacity from RMU-2 would meet equitable distribution requirements. Chapter 9 states "to be consistent with any future siting determination must maintain equitable distribution". Chapter 9 also clearly states that there is no need for the additional capacity; a siting board may deny the application. The State has determined that there is no need for additional capacity at CWM when RMU-1 becomes full which is in about 48 months from now. This conclusion puts the burden of proof on CWM to demonstrate that its' facility is otherwise in the public interest. To do so, charitable donations and sponsorships like those letters from the Chamber of Commerce for example may be used by CWM before a siting board wishes to assert them and enter them into the public interest. This important new Chapter 9 was added to the plan as a result of comments offered by counsel for the Town of

Lewiston and Niagara County with support from the Village of Lewiston and the Village of Youngstown. In other words, this chapter represents a major obstacle for the siting of additional hazardous waste landfill capacity in the Lewiston-Porter community and this chapter came about as a result of the commitment of resources by this Town Board in partnership with Niagara County. Finally, a brief update on the status of CWM expansion...CWM expected approval five year ago and obviously that has not happen yet but while their expansion application cannot proceed until the State adopts the siting plan that is the not the reason for the delay. There are many problems for the applicant to overcome due to contamination at the site. CWM's 2003 RMU-2 application has essentially failed. CWM is in the process of redrawing up a proposed RMU footprint and revised a new application that has not been submitted to DEC for review. This concludes our comments on portions of the siting plan and we remind you of the final hearing on the siting plan that this region has been waiting 20 years for will be 11/19/09. Additionally the Town may wish to consider posting this plan.

Newlin: If I go on and find that this is an outrage with that conclusion that to say that this waste is relatively geographically equitable across the State...I can't see any basis in reality when you take a look at these numbers...what are the units...tons. We have more coming into this Region 9 than all of the others combined. We are 50% more than the 2nd highest one and how can they point to geographical equity is beyond me. It is just outrageous. When we see 166,000 tons of what we are getting specifically at CWM how does that compare to the 4200 tons in Region 7 or the 2400 tons in Region 4. We receive things here that nobody else has to deal with.

Amy Witroyl: We are the only permitted repository operating in the state. The preview page does not show you the types and size of facilities on the same map. The second facility is a recycling facility and so they have zero hazardous waste. Our view is that the State is comparing apples and oranges. On the front page is the excerpt from law that directs the board to consider type and size of the facility not as number of facilities not only for determining capacity but for determining equitable distribution. The Town's view is very well substantiated and we are hoping that comments from the Town and residents that it is unfair. It seems to be a sharp conflict with the law will move DEC a little bit further in the right direction. The final plan will be adopted next year. Moving up in our direction that this based on existing capacity and if you wanted to put a new facility in place you have to look at that capacity. I think the most important issue here is needed for the long term management and there is not one map showing long term management of waste. So, even if at one year's of receipts which is an unusual low year, 166,000 tons is a near record low. It has been typically 250,000 and the facility is permitted for 500,000 tons. With 22 of these facilities left in the U.S. and 2 more closing this year that this expansion already approved utilization of waste of this facility for waste coming from others in the U.S. could increase. This is not just Lewiston but Niagara County and WNY where all the trucks for this facility travel.

Newlin: I have heard the State say the capacity is an issue. That is not true is it?

Amy Witroyl: The State has concluded that the capacity is not an issue but this Chapter 9 which came about as a result of comments by the counsel of the Town and County specifically set the Siting Board that we have determined that there is no need for capacity and it would have been difficult if not impossible for DEC to challenge 15 years of EPA assurances. Last year DEC showed in their own survey was there was more than 40 years of capacity. If the need for disposal did increase it would prompt an updated hazardous waste siting. But if the DEC finds for equitable distribution and some wants to make a new application in NYS they can't come back here. CAC has not analysis its' next step in detail but in meeting the plan you see a number of record decisions where the waste didn't need to go to any landfill. Economics and competition from landfills has been driving up the costs of treatments and in this plan making Brownfields cleanups more expensive by siting landfill capacity and not less expensive. DEC did conclude that there is no evidence that closure of CWM would increase the cost of Brownfield cleanups. The Hudson River waste is going to Texas and there is a national market in transportation.

Newlin: The DEC should be representing the best interest of the health of the people of NYS and with reports with such ludicrous conclusions make wonder whose interests are they protecting. I have been solely disappointed by the DEC's findings and actions and I do ask that the public make the meeting on the 19th. We have to get the public out so that we get our perspective on this siting plan heard by the State government.

Edwards: I would like to thank you along with Councilman Bax.

Leone: There was an issue brought up at the last Board meeting about whether or not the Town Code should be amended to add a new subsection 21-5 G & H which would make it unlawful to discharge into the public sewer system any industrial waste water from a hazardous waste treatment storage disposal facility that is defined in NY Code of Rules and Regulations Part 373 of Volume 6 or the same thing of a solid waste facility and the language is relatively straight forward. I took a look at the NY Code of Rules and Regulations and so has Mr. Lockhart...whether or not this Board wants to entertain that as a potential amendment to the Town Code....if you do I will prepare what has been presented, put it into a format and get to you quickly if that is what you want.

Newlin asked if this would require a public hearing?

Leone said it would because it is an amendment to your local law.

Newlin: It would be difficult to set the public hearing because we don't have the writing in front of us.

Leone: You do have some writing but it is not the final version. I will get it to you before the end of the week and then you can decide.

Edwards: In the version that we have now is the intent or the change in the law there and whatever changes are they considered minor?

Leone: The intent of the law is there in front of you...the modifications that I would make be format type of things...procedural L.L. #3-2009 suggests that our Town Code be amended as follows...format things. The proposed addition to the subdivisions; G & H of 21-5 are substantial going to be the same.

Newlin: If we are not going to make substantive changes can we move the public hearing on this language tonight and we want to do it right so...

Leone: I would like to see it in final form in front of you and I guess the question is subject to versus defined in maybe interpreted by someone to be a change so I would rather get it in correct final form and you will have it for your next meeting and that should give you time to set your public hearing and to get this done probably by the November 23rd meeting.

Newlin said we could set the public hearing at the budget public hearing.

Masters said he didn't think we have to notify the other communities on this.

Wind Energy Law:

Johnson MOVED to hold a Public Hearing on Nov. 9, 2009 at 7:15 p.m. on the Wind Energy Law (Local Law #3-2009) Seconded by Edwards and carried 3-0.

WPCC: Cooperative Bid for Chemical w/ N.F. Water Board:

Lockhart: This is the annual cooperative bid that we have participated with first the City of N.F. and now the Water Board for the past 15 years. It is an aggregation of common chemicals that are used through out waste water in the plant. The Water Board acts as the bidding agent and we all participate in it. I need approval to move ahead and participate in the bid and then a copy of the Board minutes. If we were to go alone we could but it is beneficial to go with the cooperative bid.

Johnson MOVED for approval of the WPCC to participate with the N.F. Water Board in a cooperative bid for common chemicals. Seconded by Edwards and carried 3-0.

Sanborn Band Contract:

Leone: At the prior meeting this Board approved that the Sanborn Band be designated as the Town band. The contract with the Sanborn Fire Co. has expired.

Edwards MOVED to designate the Sanborn Band as the official band of the Town of Lewiston and authorize the Supervisor to sign the contract for services in the amount of \$5000 per year. Seconded by Johnson and carried 5-0.

Motion by Johnson, seconded by Edwards to adjourn. Carried 3-0.

Time: 9:15 p.m.

Respectfully Submitted and Transcribed by:

Carol J. Brandon
Town Clerk