

Present: Supervisor Newlin; Council Members Bax, Johnson & Palmer; Tn. Atty. Leone; Deputy Tn. Atty. Koryl; Eng. Lannon; Adm./Op. Lockhart; Finance Officer DiRamio; Bldg. Insp. Masters; Police Chief Salada & Town Clerk Brandon. 3 press reps and 30 residents.

Excused: Councilman S. Edwards

The Supervisor called the meeting to order at 7:15 p.m. followed by the Pledge of Allegiance and a moment of silent reflection.

Newlin: I was reminded by Councilman Palmer that we should stick with the rule that we ask that you address the Town Board as a whole and please don't single out individual members of the Board. You can speak on an issue facing the Town either in the past or future. We will take your comments under serious consideration.

RESIDENTS:

Tom Deal 4645 Perry Court. I found the actions taken by our Supervisor at last month's Board meeting very questionable. To what lengths will you go to Mr. Supervisor to try....

Newlin: Mr. Deal, why don't you address the Board in general not individual members. It was a good recommendation by Mr. Palmer and I think the rest of the Board agrees. If you want to speak about a Town issue please speak about the Board and we will get away from this personalization. Thank you.

Tom Deal: I just wonder what lengths will go to try and push the blame for this power credit debacle onto someone else. A bad agreement was signed and even National Grid was bagged to give the credit to us early for political benefit last election. It was done even though our advisors recommended that we shouldn't. But that is how it usually works under supervision. It is always about personal, financial and political gain and never what is best for Lewiston. You were front and center in letting us all know how great this deal was for Lewiston and you even sent out campaign flyers stating what a great job was done in negotiations. Full credit was taken for this deal and this issue alone unfortunately won the election. Now the deal has blown up and our electric bills have gone through the roof. Our advisor warned us when he recommended that we not sign this deal in the first place. It is time to man up. It is like in football when the team wins the quarterback get all the credit and when the team loses the quarterback gets all the blame. In our situation that is the Town of Lewiston team that is losing. Our quarterback is blaming everybody else.

Rob Nichols 471 Aberdeen Road. One of the things that I wanted to talk about goes back to a letter that I wrote in early January of 2009. I think it reflects the comments of that we have seen in the paper recently that the Town is being sued again. This time it is being sued by a corporation within our municipalities and last time we were being sued by a fellow that was looking for his wages. In fact that the fellow that is to my right ....wrote extensively about that (the Zito settlement). In the past he actually gave you or his publishing desk gave you the 2008 Deer Award because it looks like the taxpayers were out \$232,000 fighting the Zito lawsuit. He was the director of the Power Coalition and he asked for his due salary. Mr. Newlin led the charge to deprive him of that. He ended up getting his due salary and the taxpayers were out \$232,000.

Today it was reported in the *Buffalo News* that this toxic cleanup could cost \$100,000 to \$500,000. Instead of settling this, entering in no negotiations or remediation and figuring out a way to keep the lawyers out of it, you persist in the wasting money and not being able to negotiate. (At this point, the Supervisor informed Mr. Nichols that he was out of order.) You can suppress me.....

Newlin thanked him for his comments

Diane Roberts of 4391 Autumn Lane. I still appreciate the \$20.00 to \$25.00 a month that I am getting off of my National Grid bill. It is still a reduced discount rate and I don't see National Fuel giving us this. I am appreciative of what the Town negotiated on the residents' behalf. I was here a month ago when Mr. Edwards brought out the issue about drainage on Perry Court and it was not until last week's work session that was on television and I noticed that there was a difference on the address on Perry Court from what I heard last month. Yesterday I heard was that the address was 4645 Perry Court. That would be Mr. Tom Deal's home. I hope that this Board will continue with the investigation of whatever is being looked into. I would like to hear what the Board is going to do to address that situation. I know that Mr. Edwards is very concerned and I hope that the Board will do it and make sure that Mr. Deal did not get a "sweet" deal that the rest of the Town did not get.

Wallace Moll of 5217 Bridlepath. I have been a taxpayer since 1947 and a resident since 1950. Although I own the land, I am not a developer. I have own 60 acres since 1970 with initially 100 acres zoned for housing in various dimensions. Lots without services today are saleable. I have offered to sell acreage in lieu of lots. The Building Inspector advises that any changes will be taxed as individual lots. Can I proceed to sell acreage in lieu of lots that is known to me. My initial sketch done about 40 years ago is my expressed proposal. I paid for all utilities and roads for the first 40 acres called Saddlewood. Will you permit me to sell 25 acres outlined as heavily treed farmland? Because of winter absence I will be represented by Barbara Kivi, realtor in further meetings. I have met with the Building Inspector and this message is in no way in contrast but merely my opinion and thoughts. Thank you.

Dan Kilmer of 5184 Dana Drive. I have a lot of things to say, but the opening comments by people make me veer off. I am going to leave copies of what I originally was to speak about. At the last meeting I watched on TV about a woman that submitted an accident report against our famous Highway Supt. hitting cars again and not filing a report. This is the same thing that happened when I was on the Town Board and the only problem it was a private vehicle and he tried to have it (fender) repaired and have the Town pay for it. I have the copies of it and I will submit them as evidence for whatever you want to do. The two people who spoke first...first of all I am a staunch Republican (Ron Regan Republican) and the individual who spoke before me doesn't represent the Republican Party I am affiliated to.

Regarding the suit...no one has caused more lawsuits in this Town than Steve Reiter. He has everyone beat on the amount of lawsuits and the amount of money it has cost the taxpayers of the Town of Lewiston.

The power deal...I was part of that Town Board and is it a good deal? It was as good as we could have got. I agree with other people and I would rather pay 14% less on my electric bill than nothing. It is ridiculous to think that isn't a savings. We worked hard for a savings and we worked as a Town Board. Mr. Newlin was not the only one that agreed to this contract. There were five of us and there are seven entities' that agreed to this deal. We are the only community that got power for it's' people. I think we should all be grateful for the people who worked hard on that decision. Mr. Johnson was one of them along with Mr. Ceretto, Mr. Langlois and I. Be happy for what you get. Don't look a gift horse in the mouth. Thank you.

Newlin: I will address two mischaracterizations of fact that we did hear in the public comment period because I am not going to allow that to take place. Opinions are one thing but the facts...nobody is entitled to their own facts. The advisor that was retained by Messer's Johnson, Kilmer, Langlois, Ceretto and myself was Paul Nolan. Paul Nolan was interviewed in the *Buffalo News* this past week and at the time when we were sitting in my office, the five Council members, our 2 attorneys and the Deputy Supervisor we had a big decision to make. Do we go ahead with the deal or not. At the time we were getting faxes left and right and I shared those faxes with every member of the Board so that they could make the best decision they could. One fax from Mr. Nolan said that in his opinion it was premature to sign the agreement and that has been well documented. I think that memo has been circulated in the public. However, if you speak to Mr. Nolan now and if you read his comments as recently as last week in the *Buffalo News* he clearly asserts that we got a very good deal. A great deal. What changed since that time and this National Grid issue is a

product of that is that they were able to monetize the entire amount of electricity. 6½ mega watts. Mr. Nolan had no idea that could be possible and we are thankful to the creative thinking of people on this Board like Mr. Langlois, Mr. Kilmer and others and Mr. Dax for monetizing that amount so that we could realize every bit of those 6 ½ mega watts. Again we remain the only town that has done that in the State of N.Y. I can also say that we got more from the Power Authority than any other town, city or village.

There were also allegations about a law suit and someone said previously tonight and let me be clear, this matter with Mr. Zito is in the public record. Some people might call it his due salary and he is actually suing us for more than a million dollars. I don't think anybody familiar with that would say he is due 1 million. I was one vote in a body of 7 that decided to engage him in litigation and believe me I did not carry the day 90% of the time within the Power Coalition. So to say that I led the charge and people followed behind me blindly is ludicrous. Especially when you consider the other players at the table ranging from Carmen Grant from the City of N.F. School District to Bill Ross of the County Legislature. Neither of them are shrinking violets and are certainly capable of their own thoughts. But they did agree that Mr. Zito was not owed that million dollars that he claimed. There is more that I could say but I will leave it at that. If there are items to be reproduced, the Finance Officer will make them available for the press.

#### AGENDA APPROVAL:

With no additions, the agenda is approved as presented.

#### APPROVAL OF MINUTES:

**Palmer MOVED for approval of the Minutes of 7/27/09 RTBM; 8/24/09 Jt. T/V Meeting and 8/24/09 RTBM. Seconded by Johnson and carried 4-0.**

#### POST AUDITS:

**Palmer MOVED for the payment of the following Post Audits: Home Depot \$203.03; Sam's Club \$896.96; Leas-Co Leasing, Inc. \$116.10; Mountain Glacier LLC \$29.22; Niagara Gazette \$152.79 and Kevin O'Brien-Umpires Assoc. \$3,420.00. Seconded by Johnson and carried 4-0.**

#### OLD BUSINESS:

1. Amendments to Town Code re ZBA.

Leone: I prepared a proposed local law last year and it contained that the ZBA consists of 5 members although our local law indicates that there are 7 members. I prepared a proposed draft that called for an alternate member. The alternate member however, was to participate only when there was a conflict of interest by one of the Board members. That alternate could then vote. There is relatively new legislation from NYS that requires Planning & Zoning Board members to have a certain amount of training. I wrote that into the local law. The questions that I see was whether or not this Board wants to have 5 or 7 members on ZBA. If it is 7, the local law that we have would stay and there would need to have to an amendment including training requirements that are now legislative mandates. Also, what about the alternate member. The only way that I had the alternate member would be for a conflict of interest. I have seen other local laws from other municipalities who have allowed for an alternate member in other than conflict situations. The State law seems to apply a conflict only. If they are allowing for alternate members in other situations it would have to be under the Municipal Home Rule Law or some case law that I am not familiar with. Do you want 5 or 7 members and the training requirements? Also what about how broad or narrow on the alternate if appointed if at all?

Masters: The only conflict we have with people not making the meetings and five works if they are all there. If we had an alternate that could fill in it would solve the problem.

Newlin asked if the alternate could then vote.

Leone: Yes. If there is a conflict of interest that I am directly involved in, then someone would come in and be able to vote but only on that issue. The question is do we make it so broad that if someone who is appointed to the ZBA can't make the meeting because of a commitment is that a good enough reason to have an alternate or do we look at the ZBA member and say why aren't you coming to the meeting.

Johnson said if someone became ill for a period of time it would be good to have the alternate. It is not necessarily that we need to go to 7 members. We can keep the 5 but to have only 3 show up to a meeting it would be better to have an alternate that could vote.

Leone: As I read the law, the alternate can vote on whatever issue that is in front of them for that meeting. I drafted it only for conflict of interest situations. If you want it broader I can do that. Whether it should so broad just because somebody can't make a meeting are we going to get a "pitch hitter" in there that maybe too broad. I checked other municipalities who have similar types of situations in their local law. I have not found a basis for it but I am not going to say if someone else is wrong or that I am right on that issue. There is no precedence to say it is illegal. I find that there are state statutes that specifically deal with a situation of a conflict of interest. I have not found anything in the State law itself. I have seen other municipalities put other language in there.

Bax: We need some more board language in order to have an alternate in extenuating circumstances.

Leone said he would give the Board additional language on this.

## 2. Request to Purchase Green Space:

Brandon: On July 24, 2009 the Board received a letter from David D'Aloise of 697 Sara Court seeking to purchase a portion of the green space behind his home. The Board on July 27<sup>th</sup> forwarded this to the Building Dept. and the Town Attorneys. This item was discussed again for another resident on June 25, 2003 and former Councilman Langlois sent out letters to the residents with green space. The response was low. Mrs. D'Aloise inquired about the status last week and stated that a number of residents have taken to maintain a portion of the green space.

Newlin stated that this deals with not privately owned open areas behind some of the homes.

Johnson: There are people who have built pools and we have had to give them easements because they encroached onto the green space. Unless everybody buys a piece of the green space we do not want to get stuck with one piece, so unless all the residents in that neighborhood agree to buy the space and maintain it. What about the other green spaces which are in other areas of the Town. Do we have any idea of the number of spaces that are in the Town? We need to do some work with the Building Dept. and the Assessor's office. Questions related to the assessment may be asked.

Newlin said it is publicly owned not privately owned. The Town owns it. Everyone has a different idea of what green space is. Some want it green and others want it wild.

Johnson said we did these developments before in lieu of recreation fees.

Newlin said we should do a counting of where these lots are and identify the neighbors and then ask them if there is any interest in them. Mr. Masters would you and the Assessor identify these areas which are mostly in Lewistowne Park. These were given to us in lieu of recreation fees.

## NEW BUSINESS:

Brandon: A letter from the Village of Lewiston regarding funding for the Jazz Festival.

Newlin said he would see if he can work it into the Supervisor's budget.

Brandon: There is a letter from Mr. Nablo regarding the moving of a hydrant. It will be put under the Supervisor's agenda.

NEWLIN:

Legal:

Leone: Last week, it came to this Board's attention from the Town Engineer who had been directed earlier to go out and look at the drainage improvements that were done on property on Perry Court. I understand that about 200' pipe was placed in the rear of this area for drainage. How this came to the Board's and Town's attention is that some soil had been accumulated on a neighbor's property. The neighbor had contacted the Building Inspector. He went out and looked at it to see what was going on and it turns out that it was our crews that were out there. The Board then directed the engineer to look at it and he did. Apparently there had been no prior complaints of drainage in the area. Now there is a complaint and as I understand it of the neighbor who says that their property is now having drainage issues that they never had before. The questions came up because the typical protocol is for those drainage issues to come before the Town Board. The Town Board directs the Town Engineer to look at it and determine whether or not it is a public problem or a private problem. It comes back before the Board and the Board either authorizes it or doesn't authorize the work. The work is done. If it is authorized typically the homeowner pays for the pipe and the Town pays for the crews to install. It doesn't look as though any of that was done. When we had our last meeting it was an issue for discussion as to whether or not this was ??? given the political season to get it out of the realm of the Town Board and resulted in directed to AG's office. I am telling you that I have not done that. I wasn't directed to do that myself so I have not done that. I did speak to a homeowner who did contact the AG's office and basically advised the homeowner that.....I believe the homeowner's position was that it shouldn't of been a problem because it was on Town property. I have no reason to doubt the homeowner but as to the same token I don't know the answer to that. It is potentially possible that it was on Town property. It is also potentially possible that it was a homeowner's property in an easement area that the Town can inspect. An easement being the right of another party to come on to your property to do that particular work, your utilities etc. I directed the homeowner's to contact the building inspector because that person was out there. I was not. That is where I left it. That is as far as I got. This of brings you up to date as to what I know. Anything that has occurred since then I don't know.

Newlin: We will have Mr. Lannon comment as we have had engineering there.

Lannon: My staff went out and there was evidence of recently reseeded lawn which appears to be within an existing Town drainage easement. At one time there was a swale.

Newlin asked if it was private land or Town land.

Lannon said it is an easement. It is private land with an easement. There are two easements there. One that goes north/south from the road back to the storm drainage easement and one that goes east/west. There was evidence of a manhole or catch basin grate that was covered over and about roughly 200' of 6 inch pipe was installed.

Newlin said the common procedure for the Town and as engineer for the Town for a long time is....

Lannon: It would be no different than if it was my house in Lewiston. It would be call up the Highway Dept. and they would come out, measure the distance of the ditch and in this case I would want filled in, ??????. I write a check and once the check is submitted then that work is scheduled. That check is for the purchase of the pipe. The Town comes in and puts the pipe in and then rough grades the area and it is my responsibility to put topsoil and seed in the piped area.

Palmer: We went through all the same thing last week at the work session and I did have an opportunity to speak to the Drainage Supt. as well as one of the homeowners

over there and I just don't want to be a little too hasty on this whole issue until we know for sure if that pipe is on public property or on private property. I know it is your opinion and maybe on an easement....you are judging that by the topsoil that has accumulated there and that could very well be. But it is the homeowners' contention that I spoke too that it is on public property. When I spoke to the Drainage Supt. he told me it was on public property and he also told me that he used excess pipe for the job and it wouldn't have required if it was on public property it would not have required any kind of private homeowner reimbursement. I don't know where the truth is in this. I am just telling you what people have told me. But I don't know if we want to take drastic action at this point in light of not knowing all the facts. I think it is important that we know exactly where the facts are and from what I am told from one of the homeowners and not the one who was referenced earlier here had a drainage problem behind their house. They have a handicap child and were trying to have a party for the child and the Drainage Supt. came in and rectified the problem and it required putting some drain pipe in near or at two or three of the other properties. So, that is all I can tell you. I hope that we use a little compassion with what we are doing here as public leaders.

Newlin: Mr. Masters, did you get to go out there and have an assessment as to the public vs. private property issue?

Masters: I was out there when I had the complaint about the topsoil on the lawn.

Newlin: More or less, this property went in the back of the persons' home. Not on the street side. Is that correct, Mr. Lannon?

Lannon: That is correct.

Newlin said it would be unusual if that was public property. Not impossible, but unusual. Public right-of-ways will extend off of the center of the roads.

Lannon stated that they had looked at the construction plans for that area and it mentioned that there it was an easement. A 10 foot wide easement that went east/west and 24 foot wide easement that went north/south.

Newlin said maybe the Assessor's office can help us with the plot drawings.

Palmer: The only homeowner actually stated that he removed the survey stakes just prior to the job taking place. He said there is no way that at least in his portion of it that it was on his property. It was outside the stakes for what it is worth.

Lannon asked if Mr. Masters would go to the Assessor's office and ascertain and if worst comes to worst we could always use a surveyor but my understanding as been that it is on public land. We will take a look at it.

Bax: What does it cost for 200 feet of 6 inch pipe?

Lannon: \$6.00 to \$8.00 a foot. It is not very expensive.

Bax said if that is what the Town is out, I say we talk to the homeowners and see if we can get that from them and try to rectify this to. Get the money in the coffers. I think the key is that is what the Town is out. We are out \$1600.

Newlin: Mr. Palmer, I think this is something you should make the Planning Board aware of. The Power Authority is increasing some of the sizes of their property and what they are going to use as usable land and in the deal they are going to put in some new sewers for the Niagara University. My concern that I would have is that they would then just be turned over to the Town. I think the Planning Board should consider having the Power Authority put in a bond so that this new infrastructure is not a burden that the Town would have to maintain. This just came up at last Thursday's meeting.

Pathway Update:

Leone: Mr. Rotella, our grant writer indicated that there are going to have a public workshop on October 9<sup>th</sup> at 2:30 p.m. dealing with the pathway issue.

B. Rotella: It is not a public hearing. It is a workshop with comments and public input and will be held here at the Town Hall.

Leone said that public business can be conducted if three Board members are going to attend. You may want to publicize. This is just giving the public the opportunity to look at what is being proposed and get feedback. It is not intended to be a voting session.

Bax: We had a number of people interested in this the last time and perhaps the clerk could put it on the outside sign and advertise in the papers.

Newlin said under legal, I am paging through some material that Mr. Kilmer gave us and I want to state for the record that while you will see.....billing from 2004 you will see my signature on vouchers and pay orders for *Jose's Collision*. I want to make it clear publicly here that I never issued a check or did the Board at that time issued a check to *Jose's Collision*. I think there is a bit of a summary there but there are a lot of odd things that were happening there. The Town Board at the time and I was told by the Highway Supt. to my face that a highway truck had been damaged in an auto accident. I think that is why Mr. Kilmer is bringing this up at this time when we have another accident from that department. Mr. Kilmer kindly warned me in subsequent weeks that it wasn't a town truck that was damaged but in fact a 1994 privately owned Oldsmobile. Not owned by the Town. I checked it out with *Jose's* and sure enough a town truck had never been damaged or at least did not get repaired by *Jose's*. It gets murkier from there. I wish I could say it gets easier to explain. In any event although you will see my signatures on these payments it was after Mr. Kilmer warned me and then some other investigated bodies but that was not the case. Mr. Jose Flores, I think will tell you that he was told by the Highway Supt. to write that repair of a town truck and that is why you are seeing 3 different bills here. After I confronted him on that, no town truck being repaired he changed it to a legitimate work order for the repair of the private vehicle hit by a town truck. When you spoke to investigative bodies at the time we were advised strongly not to pay for it and no check was ever issued by this Town. To make the issue more complicated the person who owned the 1994 Oldsmobile was the daughter of Jose Flores owner of *Jose's Collision*. I just want to make that clear that although you see my signature on those papers that was before we were advised by our attorneys and various law enforcement agencies that we should not issue payment. No payment was ever issued to *Jose's Collision* for that repair.

Palmer said he has absolutely no idea what you are talking about.

Newlin: To be fair, Mr. Palmer would not know nor would Mr. Bax as this happened in 2004 long before you gentlemen came to this Board. But take a look at it as the documents don't tell the whole story.

ENGINEERING:

Newlin: We asked Mr. Lannon to look at the Mt. View Drive work that is being done and you have exercised a punch list of work that had not been done or had yet to be completed.

Lannon: There is a memo that was initially dated April 23, 2009 that was provided to the Town Board and the Highway Supt. listing the properties that we felt needed some work on drainage up in the Mt. View area. This past weekend we went out to determine which items had been taken care off and which had not been completed. You have an updated status of each of those. There are still many to be done and the Highway Supt. will continue to work on this.

Bax: All of these projects would be done weather permitting and possibly by the end of the year according to Mr. Lannon.

National Grid Update:

Newlin: I spoke with our attorney John Dax and he stated that they are in first round discussions with them. National Grid has taken at least an initial favorable position to my idea of switching from a year out forecast to a quarterly forecasting. That should even out these volatile swings in the market that we have seen that have reduced the discount. However, I will repeat that the Town still gets the cheaper power for it's residents anywhere in Erie and Niagara Counties. Mr. Dax is working with National Grid and they have identified about \$80,000 in outstanding credits that have not been attributed. If we go to a quarterly true up period that \$80,000 can be applied sooner within 3 months rather than 12 months.

Budget Update:

Newlin: The Budget Officer and I have been working on the Supervisor's budget and it is almost complete. It doesn't look like we will be having a town tax or increase in taxes this year but that will be formalized on September 30<sup>th</sup> when I present the budget to the Town Clerk.

Brandon: I receive the budget on September 30<sup>th</sup> and then distribute it to the Town Board. A public hearing must be held no later than the Thursday after the general election. The county does not get the preliminary budget.

DiRamio: I passed out budget memos to all of the department heads in late August requesting that their budgets with estimates be given to me by August 31<sup>st</sup>. Everyone turned them as required by law by September 20<sup>th</sup> except for Mr. Reiter. I did not get his budget until September 24<sup>th</sup>. Subsequently I had to prepare his estimates.

Newlin: Some of the Council will have to work on that. But State law requires that if the Highway Supt. does not submit his budget proposals by September 20<sup>th</sup>. It is not a may or could...it is then the Budget Officer's responsibility to come up with an estimate. Mrs. DiRamio has done a good job on that. I don't think there will be big discrepancies. I will advise the Council at this time if there is going to be some major or moderate changes in the budget it is going to be reflecting whatever Mr. Reiter may have an agreement or disagreement with Mrs. DiRamio's best attempt at an estimate. But there certainly wasn't any cuts and we tried to take into affect normal increases in salary and health care benefits etc.

Palmer: I was contacted by Lewiston Police Dept. representatives today and they indicated that there may be a full time officer position put in the budget.

Newlin said that in my budget that will be submitted in a few days that position will be exactly what Chief Salada requested.

Palmer asked if it was to replace the 2 part time officers or 1 part time to a full time.

Salada: We have been down a full time officer for 2 years. We would like to replace that and keep the part time.

Palmer said we have a tremendous problem retaining part time police officers in Lewiston and in all small police departments. When your candidate is a full time police officer they are part of the community and that is their career. They turn out to be much more effective at providing police services to the community. Your turnover rate is quite as high. I think it is a good idea.

Newlin: It is fully funded in my budget and the challenge is always paying retirement costs and health care.

Modern Corp. Issues:

Newlin: I saw in the press today something that was disheartening and unfortunate. Mr. Gary Smith, Executive VP was quoted in the *Buffalo News*: "Mr. Newlin was hoping that this issue would just go away of the toxic dump." These toxic barrels that were found on a piece of land that was deeded over to Modern in 1999 agreement



which predates all of us here on the Board except Mr. Johnson. The land was turned over in 2002. The Town is prepared to deal with this issue and we have been keeping money in substantial reserve for any ecological issues or legal issues that may occur. Modern brought this up curiously very soon after they did not receive their increase in tonnage and you can draw your own conclusions from that timing but I find them unfortunate and frankly rather galling. I will turn it over to the CAC Chairman Vince DiMarco.

Vince DiMarco: They probably had the term wrong but the claim by Modern occurred almost simultaneously with the formation of our committee. Several discussions occurred within our committee regarding the linkage of any Modern claim to any determination that we may make in a Phase 1 & 2 proposal that Modern had pending at the time our committee was formed. It was agreed upon by our committee that the fact that litigation may or may not occur was not prevalent to the decision making process in which we were engaged and in truth it wasn't. I also read the article in the *Buffalo News* and although it may contain not some accuracies there. Some legally to be a misstatement that Mr. Smith may have made as far as his negotiations or lack thereof specifically with our committee and possibly the Town of Lewiston as a whole. The Modern Citizens Action Committee did not negotiate the independent claim of Modern during the discussions or recommendations in the matter of the Phase 1 & 2 Modern proposals. The *Buffalo News* today quoted Gary Smith as stating "that was a lack of discussion and left us with very few options."

In fact neither Mr. Smith nor any other Modern representative has been present at the CAC meetings for at least 6 months although they have been uniformly invited to attend our meetings. When Mr. Smith was present at the meetings he did not refer to the pending claim against the Town despite the fact that Modern filed the claim shortly after the committee was formed.

Mr. Smith also discussed a potential quid pro quo arrangement with the Town of Lewiston in which in consideration of a favorable ruling on his Phase 1 & 2 request of that delitigation and they would consider dropping the litigation. This was not discussed with our committee. In the future our committee looks forward to working with yourself and the Town Board to coordinate any efforts with the exchange of any information that the Board may want so that we are always on the same page. Despite the fact that Mr. Smith cites the lack of discussion, no discussion can occur when he is not present and he did have other options. Specifically, to discuss the things that he wanted before our committee. In fact Modern has steadfastly refused to negotiate any changes to the HCA other than the changes that would favor Modern's position. We submitted a report on Modern in May of this year but we don't really know if the Board has approved the recommendations that we made. The Board may have accepted the Modern CAC report but to the best of our knowledge has not engaged the services of an independent accounting firm or legal counsel to audit Modern's compliance with the HCA as well as six other recommendations that we made. Those recommendations include the checking of defective brakes to determine the use of jay brakes. We also recommended alternative daily cover should be included in the tipping fees that the Town receives. We wanted to determine if Canadian waste is certified to U.S. standards before importation. I believe that 46% of the waste that is presently being deposited in the Town of Lewiston is of Canadian origin. We also believe that notification to the residents of any request for HCA modification should occur. We wanted certain definitions of truck sizes going to the previous agreement which you are operating now. It says that trucks will be no larger than what existed in 1996. The agreement does not say what truck sizes were in existence at the point. We want to insure that Modern is paying the correct tipping fees. So much of this must come from the direction of the Town Board which has the authority to request certain information from Modern. Since Modern has again steadfastly refused to renegotiate the agreement it is incumbent upon the Town Board litigation or no litigation pending to make sure that Modern is abiding by the agreement that presently exists. We had asked Modern various questions and we ask the Town Board at this point if the Board has formally requested that Modern answer the questions in writing regarding tonnage, alternative daily cover and certain

questions that we had on non reusable recycling. Mr. Newlin has requested this information and today has not received any response.

We would further recommend that Mr. Newlin again request this information that is vital to the continuation of any reasonable efforts by our committee and that such sanctions be they punitive or legal should be imposed for any failure by Modern to comply providing that such sanctions are identified in the HCA.

Newlin: Earlier this summer I did ask and e-mailed those questions to Mr. Smith. I have not heard from him. I think the Board had supposed that Modern would be coming back to us with another contract to negotiate or a new proposal. We recently found out last month that Modern was not interested in pursuing a new contract.

Palmer said we did not get that word directly but we heard that they were no longer interested in pursuing any negotiations in regard to the HCA. That is fine with me. I still think and I think Mr. DiMarco you will agree with me that any change to the HCA that would benefit the Town of Lewiston would be welcomed to listen too. You stipulated in your report those things which were mentioned tonight aren't things that we can even do without renegotiation. Some of them are though.

Newlin: We hoped that the possible renegotiation was going on to provide a venue to work out some of these things out and it doesn't seem to be happening. I think we have to push some of these issues like why is there a discrepancy in the amount of tonnage, tipping, remuneration for ADC, Canadian waste etc. I would be prepared to move these 6 recommendations and send out a certified letter tomorrow asking those questions.

Bax: The fact is that a lot of these questions haven't been answered already is the contract doesn't account for it. We should be remunerated for ADC and the concerns of those who came out at the initial meeting spawned the committee you are chairing. The committee is doing a great job at deciphering the short falls of the agreement and the problem that we have is when we have no communication is that there is no way to make what exists and live with on a daily day to day basis any better. I think reaching out to Modern is still a viable option and valuable thing for the Town to endeavor. Any reciprocal benefit that we can get.....Modern is still in our backyards and many employees are Lewiston residents. It is a nuance relationship with the current law suit and I want to commend you for your actions and I hope that Modern will come to the table to allow you to complete the task that you have been given.

V. DiMarco: We look forward to Modern coming to the table and commencing some type of reasonable discussions with Mr. Smith. You can't negotiate with the person who refuses to negotiate. For our committee to be viable we need the continued support of this Board. The same type of support that has been given to us from the onset and is appreciated. The work of our committee is the most frustrating and without your support the committee would have disbanded a long time ago. We need it in the future and thank you on behalf of our committee.

**Newlin MOVED that the Supervisor be authorized to send a certified letter to Modern outlining the 6 points that the CAC identified (see letter). Seconded by Bax.**

Johnson asked Mr. Leone if that would jeopardize our situation of being put on notice for a lawsuit.

Leone: No, I don't think so.

**On the Motion, carried 4-0.**

Newlin: This piece of land that Modern has found these barrels of toxic waste on was owned by the federal government before the Town of Lewiston owned it.

Leone: I believe that is correct. The federal government owned this land and turned it over to the Town in the early 1960's. The Town operated it for a while as a

garbage dump. We entered into an agreement with Modern to lease the facility with an option for Modern to acquire the property. Modern exercised the option and acquired the property. Without getting into detail as to how, when, who put this waste into the property I don't know.

Newlin: Toxic waste is certainly not something any Town should have been accepting back in the 1970's.

Leone: 50's, 60's, 70's, 80's.... no time and I can't imagine the Town accepting it.

Bax asked what was the federal government's use of the property at the time.

Leone: I do remember seeing a deed and believe it was acquired by the Town perhaps in the early 60's. The deed would not tell us what the use was.

Newlin: It was made clear to me that either the Town was either going to work on a new agreement with Modern or they were going to sue us on these barrels that were found. I didn't like negotiating with a "gun to my head" like that and though some people may criticize the use of lawyers and attorneys, let's face it sometimes that is the only defense you have. We live in a society of laws that for better or worse that is where our disputes ecological, personal or otherwise are sorted out. Without quality legal defense you are going to have to roll over every time somebody tries to come at you with a lawsuit and the Town of Lewiston should draw a line here. That should be an issue separate and apart completely from the negotiations of any future agreement with the Modern Corp.

I mentioned to the Board before that there has been a long time desire to try and get bathrooms at the Sanborn Farm Museum. There have been outreach programs for the schools, wine trail, tourists etc. at the farm. It is only reasonable to hope that we can get a restroom that can service the people. I want to commend the SAHS for the idea of a mobile comfort station which eliminates the problem of dealing with bedrock two feet below the soil. Blasting for sewers is very costly. Unless there are any objections, I would like to mover forward with funding this program tonight.

Gary Townsend of 5682 Townline Road, President of SAHS. With respect to the farm museum and how much we have accomplished in a few short years. With the help of the Town Board who have stood behind us 100% in our projects we now need help with having restrooms put there. We have looked at several avenues such as grant money, Greenway monies for sewers with no success. With the influx of children and tours we have looked into the trailer units which are ADA approved. This unit will serve our needs. Perhaps later with grant money we maybe able to connect to sewers on West Street and be part of L.S.S.I.A. We do appreciate the support that we have gotten from the Board.

Newlin: You have an idea of creating a façade for this unit to make it less commercial looking.

Gary Townsend said their plans will blend in with the existing buildings at the farm. We also with respect to economic development have put out 40,000 card racks in WNY and are working the Sanborn Business Assoc. etc.

**Newlin MOVED to expend by way of a grant to the Sanborn Area Historical Society \$31,000 from the Power Authority's Capital Fund for the purchase of a convenience station as outlined in the proposal submitted to this Board. Seconded by Bax and carried 4-0.**

Perry Court Issue:

Newlin: Mr. Palmer brought up the issue of whether it is private or public land. We have contracted before with an independent surveyor.

Palmer: I really would like to get the facts before we do anything. I would like to speak to all of the residents and the Highway Supt. I want to get the facts and

determine where we are and see if we can come to some sort of resolution that is satisfactory to the residents of Lewiston especially in light of perhaps some of the more compassionate circumstances we might be facing here.

Newlin asked if you (Mr. Palmer) would be satisfied with the Town Assessor's Office ascertaining whether it is public or private land. (\*Note: Assessor Virtuosos is at school this week) I wouldn't propose spending money on this when we can do it in house. If the issue is about money because someone didn't pay \$8.00 per foot then why would we spend money to determine that.

JOHNSON:

Fire Bureau:

Regarding the fire hydrant at 2799 Ridge Road, the Fire Bureau did not have a problem moving it. Mr. Masters would you notify Mr. Nablo regarding moving it. It does not affect them either way.

Defibrulators:

I have a quote for 4 units at a cost of \$9000. They would be installed at the Senior Center, Town Hall, Library and the Highway Garage. I would definitely like to include the Sanborn Library. I will work with Mr. Rotella with the Supervisor's permission regarding a homeland security grant through the Governor's office. We have put in for a \$10,000 grant.

Palmer said we talked of this last year and grant money or no grant money we should pursue this. Can we have this placed in the budget?

Johnson asked for consideration of keeping \$12,000 set aside in the budget for these items.

Swann Road Property/Safety Issue

Masters said that the property had been set afire with permission of the homeowner with the assistance of the fire company. They are working on this issue with the liability company.

Ransomville Fire Co. Contract:

Johnson said he would confer with Atty. Leone on this contract that expires at the end of this year.

Police Building Contract:

Newlin said we are ready to sign the contract pending one minor change.

Koryl stated that the change has already occurred and ready for signatures.

Assessment Review Board Appointment:

**Johnson MOVED for the reappointment of Paul Bencal to the Assessment Review Board with the term from 10/1/09 to 9/30/14. Seconded by Palmer and carried 4-0.**

Newlin: Per Mr. Edwards request the pavilion at the Sanborn Fire Co. grounds is in need of repairs. He received a quote for less than \$5000 from Niagara Construction. We will attempt to have this done ASAP.

**Newlin MOVED to allocate from the NYPA Capital Fund an amount not to exceed \$5000 \*for repairs to the pavilion at the Sanborn Fire Co. grounds by Niagara Construction. Seconded by Palmer and carried 4-0. \*Item is not in the Recreation Dept. Projects.**

BAX: Nothing at this time.

PALMER: Nothing at this time.

**Bax MOVED to adjourn at 8:50 p.m. Seconded by Johnson and carried 4-0.**

Respectfully Submitted and Transcribed by:

Carol J. Brandon  
Town Clerk