

## HOST COMMUNITIES

### STANDING COMMITTEE MEETING

Tuesday, April 1, 2008 – 12 Noon

Niagara County Department of Economic Development

6311 Inducon Corporate Drive

Sanborn, New York 14132

#### Representatives Present:

Angelo Massaro, Esq.  
Thomas O'Donnell, Esq.  
Donald Rappold, Interim Superintendent  
Rob Daly, Special Advisor, Relicensing  
William L. Ross, Chairman, NC Legislature  
Scott Hapeman, Esq., Counsel  
Fred M. Newlin, Supervisor  
Steven Richards, Supervisor

Niagara Falls City School District  
City of Niagara Falls  
Lewiston-Porter School Dist  
New York Power Authority  
Niagara County  
Niagara Wheatfield School District  
Town of Lewiston  
Town of Niagara

#### Guests:

Robert Laub  
Warren Kahn, Esq.  
Tom Burgasser, Esq.  
Camie McGraw, Engineer, CRA  
Robert Fluskey, Esq.  
Michael Risman, Esq.

Lewiston Porter School District  
Lewiston Porter School District  
Niagara County  
Town of Niagara  
Town of Lewiston  
Town of Niagara

#### Staff Present:

Charles Miller, President  
John Baird, Treasurer  
Mary Melloni, Recording Secretary  
Stan Widger, Esq., NPC Counsel, Nixon Peabody  
Samuel M. Ferraro, Executive Director/Commissioner - Niagara County Center for  
Economic Development

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#### **1.0 Call to Order**

Vice Chairman Newlin called the Host Communities Standing Committee meeting to order at 12:25 p.m.

#### **2.0 Roll Call**

Ms. Melloni called the roll; a quorum was established.

#### **3.0 Pledge of Allegiance**

Vice Chairman Newlin led the pledge of Allegiance.

#### **4.0 Approval of Meeting Minutes**

##### **4.1 March 20, 2008**

Minutes will be approved at the next Host Community Standing Committee meeting.

## 5.0 Town of Niagara – Veteran’s Memorial Park Phase III

Supervisor Steve Richards introduced Camie McGraw, an engineer from CRA Associates, to present the revisions to his project as requested by the Committee.

Ms. McGraw stated that one of the issues was that the original application stated that the Town of Niagara had no waterfront, but it was clarified that the reservoir is considered the Town’s waterfront; therefore, the statement was changed to say that the reservoir being the waterfront limits the recreational development that is possible along the waterfront. Ms. McGraw stated that the next item was connectivity; she explained that they talked a lot about future regional trail systems and what was added to the application is that the project will only cover the first portion of the funding that is available and they see future funding going to development of trail systems, as well as possibly working with the other municipalities in the area to connect to other trails in the region.

Mr. Newlin stated that he spoke with Supervisor Richards and he is in agreement with Supervisor Richards’ successful attempts to address those issues. There were no further comments from the Committee members. Supervisor Richards stated that he is hoping to have his project approved today since this is the same project they have been working on for ten years, the Greenway Commission has submitted a letter of approval, and the interest rates are favorable at this time.

***Mr. Rappold made a motion to approve the Town of Niagara Project as presented today; seconded by Mr. Ross.***

Mr. Daly stated that it was his understanding that first the protocols would be finalized and then the Committee would address the project. Supervisor Newlin stated that the problem with that is that most of the bodies of each of the entities have not met in time to deliberate upon the last version of the protocols. Mr. Widger stated that he circulated a version that contains alternative language that should be discussed today.

Supervisor Newlin asked that each of the entities make sure they have the correct version of the protocol to bring back to their respective bodies. Mr. Daly asked if they are at a point where members of the committee are going to recommend adoption to their boards/councils; he wants to be sure the members are going to recommend the protocol for approval. Mr. Massaro stated that depends upon whether there are any further changes. He asked Mr. Daly if he has any objection to acting on the Town of Niagara project prior to approving the protocol. Mr. Daly stated that he wants to know that the protocols are going to be recommended by the Committee, because several months ago when NYPA offered going forward without protocols the Committee turned it down. Supervisor Newlin stated that it was acted upon at the last meeting when it was agreed the protocols would go back to their respective bodies for approval. Mr. Massaro stated that he would hate to hold up the Town of Niagara’s project and asked if this could be approved without it being precedent-setting; in other words, not consider any other projects until there is a vote on the protocols. Supervisor Newlin stated he feels they should move ahead with the motion due to the fact that interest rates could be affected and the building season is upon us. Mr. Daly asked if they could discuss the two comments they have prior to voting on the Town’s project. Supervisor Richards stated he would prefer the Committee vote on his project; the protocols are on his agenda for the April 15<sup>th</sup> meeting. Supervisor Newlin stated that he is in favor with proceeding with a vote on the project.

**5.0 Town of Niagara – Veteran’s Memorial Park Phase III (Continued...)**

***A roll call vote was taken.***

Town of Lewiston	Yes
Lewiston Porter	Yes
City of Niagara Falls	Yes
Niagara-Wheatfield	Yes
Niagara County	Yes
New York Power Authority	Yes
Niagara Falls Schools	Yes

***Motion passed 7 - 0.***

**6.0 Greenway Update**

**6.1 Greenway Commission Meeting Minutes of March 18, 2008**

Mr. Ferraro stated that his staff continues to attend the Greenway Commission meetings, as evidenced by the attached minutes provided for the Committee’s review and information.

**7.0 Other Matters**

**Standing Committee Protocol**

Supervisor Newlin referred to Page 3, under Meetings, indicating that it did not mention how meetings should be called. ***Mr. Massaro made a motion to add, on page 4 after the last sentence, “The Chairman or any two members of the Standing Committee can call a special meeting in writing, no less than two days prior to the meeting.” Mr. Hapeman seconded the motion. Motion passed.***

Supervisor Newlin stated he would like to note when days are calendar or business days when referred to in the document. Mr. Widger noted that whenever type of days is not specified, they are considered calendar days. ***Mr. O’Donnell made a motion that a footnote would be added that states days will be calendar days unless specified as business days. Mr. Massaro seconded the motion. Motion passed.***

Mr. Fluskey noted that on Page 5, subparagraph (a), last sentence, “in court” should be added to the end of the last sentence. ***Mr. Newlin made a motion to add “in court” to the last sentence of subparagraph (a) on page 5. Mr. Massaro seconded the motion. Motion passed.***

Mr. Burgasser stated that one of his observations is that since the Committee accepted banking arrangements and procedures from the amendment of protocols, a method for changing the banking arrangements needs to be addressed (referring to Page 17, Amendment of Protocol, last sentence. Also, Mr. Burgasser stated there is a change that was conveyed via e-mail that wanted to add “further selection and funding” method. Supervisor Newlin agreed with Mr. Burgasser’s suggestion. Mr. Widger stated that the question on funding was that because you can ultimately make the funding decisions with six votes, do you want to have that subject to the same higher standards amending that provision than you have for others.

## 7.0 Other Matters

### Standing Committee Protocol (Continued...)

Mr. Massaro stated he understands Mr. Daly's e-mail, but if further funding is put on page 17 as an exception, then the way to change the further funding is as it is under the section of further funding which is consensus or then a majority vote. Mr. Daly stated that is not what he intended; he does not have a problem with further selection and funding process; he thinks that if they are going to amend that process it should be at the same level as consistency and excluded from a super majority vote. **Mr. Burgasser proposed that "banking arrangements and procedures" be taken out of page 17, making the last sentence read: "Except for matters contained in 'Consistency Determination' above, in the event that the members are unable to achieve consensus as to an amendment, the amendment may be adopted by an affirmative vote of six (6) members." Mr. Ross made a motion to accept this revision, seconded by Mr. Hapeman.**

Mr. Daly stated he believes there are principals in this that NYPA believes everyone needs to sign off on. Mr. Burgasser stated he understands that, but he also understands that NYPA advised the Committee a while ago that if they came to an agreement on consistency, that everything else would be done by a majority vote. Mr. Burgasser stated that once consistency is done, the funding vote is done by majority and then the signatures will happen. He stated that he does not think anyone has an objection to NYPA being on the checks, but that may change and there needs to be a method to change it. Mr. Daly stated that the method is that they all agree on it. Mr. Burgasser stated that NYPA should stand on their agreement that once consistency was reached everything else could be done by majority vote. Mr. Burgasser pointed out that the Committee has made other concessions. Mr. Newlin stated that the Host Community Agreement does discuss accounts and puts it within the purview of the Host Communities and NYPA is listed as a payee. Mr. Newlin read some excerpts from the Agreement to substantiate this.

Mr. Burgasser stated that another reason for suggesting this is that when he goes back to the County he wants to be able to fully recommend it, have answers and from some of the indications he has they are looking to the Host Community Agreement and wondering what is taking so long. He stated he believes those sections are going to raise questions. He has no problem with the way the procedures are set up now with NYPA signed on as long as there is the ability to change it by a super majority.

#### **A roll call vote was taken.**

Town of Lewiston	Yes
Lewiston Porter	Yes
City of Niagara Falls	Yes
Town of Niagara	Yes
Niagara-Wheatfield	Yes
Niagara County	Yes
New York Power Authority	No
Niagara Falls Schools	Yes

**Motion carries 7 - 1.**

## 7.0 Other Matters

### Standing Committee Protocol (Continued...)

Mr. Widger stated that there is a reference on Page 7 to sending written notice via registered mail to addresses of the Standing Committee. He stated an appendix needs to be added with the current mailing addresses of the Committee members. **Mr. Rappold made a motion, seconded by Mr. Richards, to add this appendix to the protocol. Motion passed.**

Mr. Widger addressed Mr. Massaro's suggestion for "Alternative Language for the Amendment Provision." Mr. Massaro's proposal was that the initial reference to an attempt to work in a cooperative manner to achieve a consensus on an amendment would be dropped and provided the revision as shown on the handout [*a copy of which will be attached hereto and made a part hereof these minutes.*] Mr. Massaro stated this was his suggestion – no consensus, just an affirmative vote of six members. Mr. Daly asked if there was an issue with trying to reach consensus and then going to a vote.

Mr. Fluskey asked if there was any concern, by striking that clause, that they run afoul of the Host Community Agreement. Supervisor Newlin stated it says in 7.3, 3<sup>rd</sup> paragraph of the HC Agreement, "*parties agree that the HC Committee shall work in a cooperative manner and shall make a concerted effort in all decisions.*" Mr. Massaro stated there are certain areas that do not require that. Mr. Burgasser agreed that after consistency everything is to be a majority vote. Mr. Massaro stated he does feel amendments should be a super majority.

Mr. Widger stated that he thinks it is fair to read the HC Settlement Agreement as an overlay to all of this so that by the language of that agreement they are suppose to try to achieve consensus, even if it is not stated. Therefore, in certain things if it is an important enough issue, if you have not made an effort to achieve consensus it is arguable that you have not complied with the settlement agreement.

Mr. Massaro stated that he will withdraw his objection and NYPA now has consensus on amendment for banking as well as everything else and that is how he perceives it.

Mr. Widger explained that the language as it appears with banking removed will mean that the consistency determination will go through the motions of trying to achieve consensus, and if consensus is not achieved, that has been left in limbo. It was agreed that if the Committee was not going to reach an agreement on specific ways to amend consistency, it was going to be left to whatever it would be under the HC Settlement Agreement.

Mr. Daly stated he is not sure how NYPA will react to how the Amendment of Protocol section has been changed today, particularly with respect to the banking arrangements, given that the banking arrangements that are in there were a proposal given to NYPA, not by NYPA. He feels that is something that will not sit well with NYPA. Mr. Fluskey asked Mr. Daly which principals in that section NYPA would be concerned about. Mr. Daly stated that there are no problems with changing the bank; but there were four or five points of the conceptualized agreement that were talked about (separate funds, signatory by NYPA, etc.).

## 7.0 Other Matters

### **Standing Committee Protocol (Continued...)**

Supervisor Newlin asked that when Mr. Daly receives some direction that he notify the membership.

***Mr. Burgasser referred to page 8, line 8 should read "... particular interpretation of the HC Settlement Agreement as it pertains to 'concerted effort to reach consensus'... as this is the terminology in the HC Agreement. Mr. Ross made a motion to accept this revision.***

Mr. Burgasser was asked to read the portion of the document he is referring to, with changes (noted in red ) from Page 8 of the protocol:

*"The members expressly acknowledge that this section on "Consistency Determination" represents a carefully balanced compromise of strongly held differing positions and, accordingly, is in the nature of a settlement agreed to by and among the members to permit funding of projects to proceed expeditiously without any member necessarily acquiescing in or endorsing any particular interpretation of the HC Settlement Agreement as it pertains to "concerted effort to achieve consensus." The members further agree that the "Consistency Determination" mechanism herein shall have no precedential value in connection with any action brought with respect to the subject matter of this Protocol and, in any such action, issues regarding "concerted effort to achieve consensus" shall be considered de novo."*

And this is what the Court will determine. This revision is to make the language consistent throughout the document.

***Mr. Rappold seconded the motion to accept this revision as stated. Motion passed.***

Mr. Burgasser referred to page 14, Implementation of Project (Disbursement of Funds and Monitoring). The change indicated below in red:

*"On or before the payment dates specified in the HC Settlement Agreement, the Power Authority shall deposit \$3 million into the Greenway Recreation/Tourism Fund, as established by resolution of the Standing Committee **and approved by the Host Communities.**"*

***Mr. Ross made a motion, seconded by Mr. Hapeman, to approve the revision as stated. Motion passed.***

***Mr. Massaro made a motion that the protocols with changes as recommended today are the protocols that each voting member will present to their respective boards/councils. Mr. Ross seconded the motion. [Mr. Widger will get a final copy to the members as soon as possible.]***

Mr. Fluskey asked what if, in discussing the protocol as changed with the attorney for the Town, and as a result of the discussion he raises a concern, then it cannot be recommended as changed. This is a concern of his. Mr. Massaro stated that if there is a request for making a change, you still have met the requirement of recommending it.

***Motion passed.***

## 7.0 Other Matters

### **Standing Committee Protocol (Continued...)**

Mr. O'Donnell stated that the City of Niagara Falls will have two projects to present to the Committee in the near future.

***Mr. Ross made a motion, seconded by Mr. O'Donnell, to establish HSBC as the bank for the Standing Committee, pending an opinion from the Comptroller's Office regarding signatories, and to set it up pursuant to the banking arrangements and procedures in the format of the protocols as revised at today's meeting, to be revisited in 8 months. Mr. O'Donnell seconded the motion. Motion passed.***

## 8.0 Next HCSC Meeting:

**Date: Wednesday, April 30, 2008  
Time: 12 Noon**

**The NPC meeting will follow.**

## 9.0 Adjournment

Mr. Ross made a motion, seconded by Mr. O'Donnell to adjourn the meeting. Meeting was adjourned at 1:43 p.m.

Respectfully submitted,

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Mary P. Melloni  
Recording Secretary