

## HOST COMMUNITIES STANDING COMMITTEE MEETING MINUTES

Tuesday, February 9, 2012 – 12:00 p.m.

Niagara County Department of Economic Development

6311 Inducon Corporate Drive

Sanborn, New York 14132

### Representatives Present:

Don Rappold, Asst. Superintendent – Chairman, HCSC

Cynthia Bianco, Superintendent

Tom O'Donnell, Esq.

Rob Daly, Special Advisor, Relicensing

William L. Ross, Chairman, NC Legislature

Scott Hapeman, Esq.

Michael Risman, Esq.

Steve Reiter, Supervisor

Lewiston-Porter School District

Niagara Falls City School District

City of Niagara Falls

New York Power Authority

Niagara County

Niagara Wheatfield School District

Town of Niagara

Town of Lewiston

### Guests:

Hon. George Maziarz

Tom Prohaska

Chris Roser, Superintendent

Thomas Burgasser, Esq.

Mike Johnson

Bernie Rotella

Jackie Siegmann

Mark Scheer

Angelo Massaro, Esq.

David Godfrey, Legislator

Owen Steed

Joseph Jastrzemski

NYS Senator

Buffalo News

Lewiston-Porter School District

Niagara County

Town of Lewiston

Town of Lewiston

Town of Niagara

Niagara Gazette

Niagara Falls City School District

District 10 – NC Legislator

City of Niagara Falls

Town of Wilson

### Staff Present:

Charles W. Miller, Jr., President

Mary Melloni, Recording Secretary

John M. Baird, Treasurer, NPC

Stan Widger, Esq., NPC Counsel, Nixon Peabody (via teleconference)

Samuel M. Ferraro, Executive Director/Commissioner - Niagara County Center for Economic Development

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### **1.0 Call to Order**

Chairman Rappold called the Host Communities Standing Committee meeting to order at 12:00 p.m. Chairman asked for a motion to amend the agenda to add Senator George Maziarz. He explained that Senator Maziarz was slated to speak at the Niagara Power Coalition meeting; however, due to scheduling conflicts he will address the HCSC Committee. **Mr. Reiter made a motion to amend the agenda as stated, seconded by Ms. Bianco. Motion passed.**

### **2.0 Roll Call**

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

### **3.0 Pledge of Allegiance**

Chairman Rappold led the Pledge of Allegiance.

**Senator George Maziarz**

Senator Maziarz expressed appreciation for allowing him to speak; although he originally wanted to address the NPC, this membership is the same with the exception of NYPA.

Senator explained that in June of 2012 it will be seven years since the Relicensing Agreement was signed with the New York State Power Authority (NYPA). In 7 years, millions of dollars have flowed into the Community from three separate areas--low-cost power, the community payments and the Greenway dollars. He is aware that every three years there has to be an audit of the Greenway funds and that recently the members have taken some action to do this. However, he is requesting that the NPC include in this audit, in an RFP by an outside auditor, an audit of the power that has been divided and of the community payments. He feels that the people of Niagara County should know how the entities have done with the millions of dollars that have come into the community. The best use of hydropower is the creation of jobs--the 7 entities receive 25 megawatts of hydropower every year. He explained that the Audit should not just be a financial audit; but should also be a performance audit, i.e. what have the people of Niagara County received for all of the community payments and particularly the 25 megawatts of power. He would like a performance audit of the organization itself...particularly when it comes to professional services and legal fees. He stated that large law firms such as Harris Beach, Hodgson Russ and Nixon Peabody have earned millions of dollars from this process and he would like to know what the return is on that expenditure for the people of Niagara County and whether we need to continue to spend millions of dollars on legal fees. Senator stated he would like the audit not only to address the expenditures by the NPC, but by the State entities that receive money from this too – i.e. State parks. The State parks should be held to the same standards as the audit for the NPC. He stated again that most important are the number of jobs created as a result of this 7-year process.

Mr. Burgasser asked if this should include any of the land transfers that transpired. Mr. Daly stated that he will provide a report on this to the Senator.

Chairman Ross stated that it is specifically stated in the HCSC Protocols that there has to be an audit every three years of the projects. He explained that there is a committee formed to put together an RFP for this audit and a list of auditors. He understands that the Senator is asking that the audit also include the 25 megawatts of power and the community fund money. Senator stated he is aware of the fact that the audit of the projects is required, however, he would like an audit of all three and not just a financial audit, but a performance audit to determine how many jobs have been created and what has been gained by all the millions of dollars in legal fees. He also wants to know what State Parks has done. He wants to know that 7 years later that the State Park experience in Niagara County is much better than what it was, i.e. that the grass is being cut every week along Robert Moses Parkway.

Senator Maziarz stated he will forward a formal letter outlining his request.

#### 4.0 HCSC Meeting Minutes of October 4, 2011

*Mr. Ross made a motion, seconded by Mr. O'Donnell, to approve the minutes of the October 4, 2011 meeting. Motion passed.*

#### 5.0 Project Presentations

##### 5.1 Niagara County

##### 5.1.1 Town of Wilson Walkway & Bicycle Trail to Harbor and Greenwood Veterans Monument

*This project was approved by the Niagara County Legislature on December 20, 2011 for funding in the amount of \$90,350 and determined consistent by the Greenway Commission on January 17, 2012.*

Mr. Burgasser indicated that this is a Niagara County sponsored project and he has had conversations with the Town of Wilson regarding a couple of items that were called to his attention on this project. Mr. Burgasser explained that when the Niagara County ad hoc committee has projects come before requesting sponsorship, they request that there are at least estimates for costs or even contracts submitted with it to verify or give an idea of what the pricing of the project might be. In this particular case, where there is bidding, that would be required once they are granted receipt of the money.

Supervisor Jastremski explained that there is currently a dangerous situation along Park Avenue on the shore drive that takes you from the Seaway Trail (Route 18) along Lake Ontario back to the Harbor in two different areas. There are three yacht clubs, two restaurants and two boat yards operating in that area. There is also a veteran's memorial that was recently constructed within the last five years with private funds. This also ties in with Greenwood Cemetery. The purpose of the project is to tie the walk trail to the Greenwood Cemetery and back to the harbor in two different areas. Eventually, in the second phase of the project, tie the walkway back over to the State Park. Supervisor explained that many transient boaters come into their harbor for different events and they will walk along that pathway into the Village. In the Spring and early Fall school teachers will take their students on walking trips to the veteran's memorial and the cemetery and this path will eliminate the danger of these students walking in the roadway.

Mr. Widger stated that the project meets the procedural requirements.

## 5.0 Project Presentations

### 5.1 Niagara County

#### 5.1.1 Town of Wilson Walkway & Bicycle Trail to Harbor and Greenwood Veterans Monument (Continued...)

***Mr. Ross made a motion, seconded by Ms. Bianco, to approve the Town of Wilson Walkway & Bicycle Trail to Harbor and Greenwood Veterans Monument project for funding.***

“WHEREAS, the **County of Niagara**, on behalf of the **Town of Wilson**, has applied to the Host Communities Standing Committee to approve funding in the amount of **\$90,350.00** for the **Town of Wilson Walkway & Bicycle Trail to Harbor and Greenwood Veterans Monument**; and WHEREAS, this project was submitted to the Niagara River Greenway Commission for consultation. WHEREAS, the Host Communities Standing Committee finds the project to be consistent with the Greenway Plan. NOW THEREFORE BE IT RESOLVED, by the Host Communities Standing Committee that the funding in the amount of **\$90,350.00** for the **Town of Wilson Walkway & Bicycle Trail to Harbor and Greenwood Veterans Monument** is approved; and BE IT FURTHER RESOLVED, that a certified copy of this resolution is to be forwarded to HSBC Bank.”

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

<i>Town of Lewiston</i>	<u><i>Yes</i></u>
<i>Town of Niagara</i>	<u><i>Yes</i></u>
<i>Lewiston Porter</i>	<u><i>Yes</i></u>
<i>City of Niagara Falls</i>	<u><i>Yes</i></u>
<i>Niagara-Wheatfield</i>	<u><i>Yes</i></u>
<i>Niagara County</i>	<u><i>Yes</i></u>
<i>New York Power Authority</i>	<u><i>Yes</i></u>
<i>Niagara Falls Schools</i>	<u><i>Yes</i></u>

***The resolution was thereupon duly adopted.***

### 5.2 Town of Lewiston

#### 5.2.1 Joseph Davis State Park Phase I Capital Improvement

*This project was approved by the Town of Lewiston on November 14, 2011 for funding in the amount of \$5,700,000 - \$450,000/year and determined consistent by the Greenway Commission on January 17, 2012.*

Supervisor Reiter displayed pictures of the park, including the pier, walking bridge across a pond, children’s fishing program. He explained that the Town of Lewiston is very active in developing a program and plans for the development of this park. The park sits on the lower Niagara River, off the Robert Moses Parkway, making up 57 acres of beautiful property. There is 1200 feet of river frontage. The first phase is to renovate the old pool buildings to be used for an exhibition area, possible concert area, farmer’s market, etc. There is controlled

## 5.0 Project Presentations

### 5.2 Town of Lewiston

#### 5.2.1 Joseph Davis State Park Phase I Capital Improvement (Continued...)

access and plenty of parking. They are working with Audubon who will become a tenant. They have formed a land development corporation in order to develop the park. The different entities who utilize the park will be treated as tenants in order to share the cost of the upkeep of the park. The park has been neglected and it can become a jewel for the Lewiston area.

Mr. Ross questioned the 10-year renewal clause with New York State. Mr. Reiter stated that the State realizes that in order to go for funding they will have to renegotiate the lease and they are working with the Town. Mr. Reiter stated that if this does not work out, they will not be able to bond the project.

Mr. Widger stated that all the procedural criteria has been met for this project.

***Mr. Ross made a motion, seconded by Ms. Bianco, to approve the funding for the Joseph Davis State Park Phase I Capital Improvement project.***

“WHEREAS, the **Town of Lewiston**, has applied to the Host Communities Standing Committee to approve funding in the amount of **\$5,700,000 or \$450,000 per year** for the **Joseph Davis State Park Phase I Capital Improvement Project**; and WHEREAS, this project was submitted to the Niagara River Greenway Commission for consultation. WHEREAS, the Host Communities Standing Committee finds the project to be consistent with the Greenway Plan. NOW THEREFORE BE IT RESOLVED, by the Host Communities Standing Committee that the funding in the amount of **\$5,700,000 or \$450,000 per year** for the **Joseph Davis State Park Phase I Capital Improvement Project** is approved; and BE IT FURTHER RESOLVED, that a certified copy of this resolution is forwarded to HSBC Bank.”

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

<i>Town of Lewiston</i>	<u><i>Yes</i></u>
<i>Town of Niagara</i>	<u><i>Yes</i></u>
<i>Lewiston Porter</i>	<u><i>Yes</i></u>
<i>City of Niagara Falls</i>	<u><i>Yes</i></u>
<i>Niagara-Wheatfield</i>	<u><i>Yes</i></u>
<i>Niagara County</i>	<u><i>Yes</i></u>
<i>New York Power Authority</i>	<u><i>Yes</i></u>
<i>Niagara Falls Schools</i>	<u><i>Yes</i></u>

***The resolution was thereupon duly adopted.***

## 5.0 Project Presentations

### 5.2 Town of Lewiston

#### 5.2.2 Artpark's Summer Program

*This project was approved by the Town of Lewiston for funding in the amount of \$45,000 on July 19, 2011 previously determined consistent by the Niagara River Greenway Commission on July 20, 2010; Consensus not reached by HCSC on October 4, 2011.*

Mr. Rotella explained that the Town of Lewiston received a letter from Mr. Daly and a response was prepared *[a copy of which will be attached hereto these minutes and made a part hereof]*.

Mr. Widger explained that when a project is brought back for a second meeting, the protocols state the following:

*"At the second of the two aforementioned meetings of the HC Committee, the members who do not believe that a project is consistent shall then, if they have not already done so, articulate their reasons orally or in writing. (Every effort should be made to provide the reasons at least one (1) week prior to the second meeting.) Proponents of the project at issue shall have a like opportunity to respond to such statement of reasons. Following such statements and responses, each member of the HC Committee shall state such member's position on the issue of consistency of the proposed project. If "consensus" is still not achieved, then and in such event, the following procedures shall apply: The HC Committee shall vote and if a minimum of five (5) members of the HC Committee shall determine that a project is consistent with the Greenway Plan, then the proposed project shall be deemed consistent with the Greenway Plan and shall be eligible for selection and funding."*

Mr. Widger stated that the project meets the procedural criteria and all the parameters of the requirements have been met by both parties.

Mr. Burgasser asked Mr. Reiter to expand on how this project advances the economic revitalization of the Niagara River Greenway within Niagara County. Mr. Reiter explained that Artpark was a neglected park until the Artpark Company redeveloped and became very active in promoting the facility. There are not only big concerts at the park, but cultural events and children's activities to enhance the region, including fishing walks, fishing piers, trails that lead to the river. Land has been reclaimed that provides perching areas for eagles. There are trails through the woods and festivals are held throughout the summer that brings people into the Village. Artpark is also the head of two different trails that go along the Gorge that would not be accessible without Artpark. The \$45,000 is going for programs—not administrative.

## 5.0 Project Presentations

### 5.2 Town of Lewiston

#### 5.2.2 Artpark's Summer Program (Continued...)

Mr. Daly stated the response received from the Town of Lewiston to his objections does not address the concern with respect to the Settlement agreement and the operations and maintenance concern that he voiced – it completely ignores it. Therefore, he does not see how the response from the Town has addressed the concerns that NYPA addressed in its letter. Mr. Rotella stated that he feels the answer they put together was appropriate. Mr. Daly disagreed.

Mr. Daly explained that back in 2010 this project came before the committee as a “one time” request, and they were given the word of the Supervisor that it would be a “one time” request. It was supported because it was exactly that. Coming back again establishes an operations issue. Since this pre-exists the August 31, 2007 date in the Settlement agreement, the funds are prohibited from being applied to the project and the response from the Town did not address that at all.

Mr. Widger stated that at the last discussion it was determined that the Town has the ability to fund on an annual basis, however, the fact that some aspects of this program existed prior to 2007 does not preclude funding of ongoing, annual contributions if the Town has the ability to say yes. Mr. Widger stated he does not interpret this as a pre-existing obligation because it has the ability to be done on an annual basis. Mr. Daly stated that since most municipalities fund everything on an annual basis, then nothing would apply to that clause and that would be directly against the principal and spirit of the settlement. Therefore, Mr. Daly stated he would disagree with that interpretation and still not be able to support this project. Mr. Widger stated that Mr. Daly is omitting the fact that the project still has to be consistent with the other criteria and not everything that the Town funds on an annual basis can meet the Greenway criteria.

***Ms. Bianco made a motion, seconded by Mr. Ross, to approve the resolution.***

“WHEREAS, the Town of Lewiston has applied to the Host Communities Standing Committee for funding in the amount of **\$45,000.00** for **Artpark's Summer Programs Support** Project; and WHEREAS, this project was submitted to the Niagara River Greenway Commission for consultation. WHEREAS, on February 9, 2012, the Host Communities Standing Committee finds the project to be consistent with the Greenway Plan. NOW THEREFORE BE IT RESOLVED, by the Host Communities Standing Committee that the funding in the amount of **\$45,000.00** for **Artpark's Summer Programs Support Project** is approved; and BE IT FURTHER RESOLVED, that a certified copy of this resolution is forwarded to HSBC Bank.”

## 5.0 Project Presentations

### 5.2 Town of Lewiston

#### 5.2.2 Artpark's Summer Program (Continued...)

*A roll call vote was taken.*

<i>Town of Lewiston</i>	<u><i>Yes</i></u>
<i>Town of Niagara</i>	<u><i>Yes</i></u>
<i>Lewiston Porter</i>	<u><i>Yes</i></u>
<i>City of Niagara Falls</i>	<u><i>Yes</i></u>
<i>Niagara-Wheatfield</i>	<u><i>Yes</i></u>
<i>Niagara County</i>	<u><i>Yes</i></u>
<i>New York Power Authority</i>	<u><i>No</i></u>
<i>Niagara Falls Schools</i>	<u><i>Yes</i></u>

*The resolution was thereupon duly adopted.*

## 6.0 Ad Hoc Committee Report (Ross, Daly, Dumphrey)

### 6.1 Draft HCSC Audit Scope

Mr. Ross explained that the Committee met on several occasions to discuss the Audit for the projects under the Greenway funds as described and outlined by the protocols. They have put together a list of firms that will receive an RFP. He stated that the Senator brought up the fact that not only does he believe that the Greenway projects should be audited, but also the Community funds and the megawatts of power. Therefore, it needs to be decided if the group is considering two separate audits or consolidation of all three areas?

Mr. Daly stated that with respect to the Greenway committee the audit is in process and should move forward for the Greenway committee. With respect to any other funds, i.e. community fund and power allocations, that would be more of a questions for the Niagara Power Coalition. Mr. Daly stated that he does not think Greenway funds can be used in support of an audit of the Community funds or power allocation.

Mr. Widger stated that the scope of the audit will be paid for by the HCSC and therefore should be limited to what is outlined in the protocols. It would be difficult to go beyond that scope and pay for it from the Greenway funds.

Mr. Widger stated that payment for the HCSC audit would come first from interest, and then if necessary from the individual entities.

## **6.0 Ad Hoc Committee Report (Ross, Daly, Dumphrey)**

### **6.1 Draft HCSC Audit Scope (Continued...)**

Mr. Ross stated asked if the members are satisfied with the scope of the RFP. Mr. Burgasser asked if they were just financial accounting firms on the RFP list. Mr. Daly stated some firms have done proposals for NYPA beyond only a financial audit. Mr. Burgasser pointed out that the protocols state this should be a “program and financial audit.” He also questioned at what point the audit would end. Mr. Daly stated that it was his thought that the audit would go up to the point that the money leaves the HCSC account and goes to the individual entity. Internal audits would take over after that.

Mr. Massaro stated that it is important to know that the entities have expended the dollars in accordance with the plan presented, and some of the entities have not had any internal expenditure. He stated that the auditor should then be pro-rated on an hourly basis on how much time is spent at each entity.

Mr. O’Donnell stated that in his view all 7 entities have shared equally in all expenses and that what Mr. Massaro proposes is a complete reversal of what the group has done from day one. Mr. Massaro explained that it is an issue of how far the audit goes.

A question was raised as to whether the auditors could accept individual audits from the entities since each entity has their own independent auditor. Mr. Widger stated that the protocol does not spell out what type of audit it has to be in terms of independent or otherwise. It gives the HCSC the right to either withhold enough funds to fund an audit or whatever they require to administer. There is a lot of latitude in this area. It is up to the group whether they will rely on audits that have been previously done and provided by the individual program sponsors or even the projects itself, or a separate audit.

Mr. Daly stated that he does not have an issue accepting independent audits of the members; he is not looking to duplicate efforts. Members who have independent audits that can sign off on the process that the member takes to do things would be okay.

Mr. Daly stated that he will accept that the draft scope is too general and will try to identify those issues. It was pointed out that the draft is a template that will be reviewed by Counsel.

Mr. Ross stated that these issues will be discussed by his committee and a new draft will be presented at the next meeting. Mr. Daly stated he is open to adding to the list of firms.

**7.0 Informational Materials**

**7.1 HCSC Project Status Report**

These were provided as informational only.

**7.2 NRC Meeting Minutes – *Informational only.***

**7.2.1 September 21, 2011 – Re: 9/20/11 Meetings**

**7.2.2 September 24, 2011 – Re: 9/23/11 NRC Workshop**

**7.2.3 November 16, 2011 – Re: 11/15/11 Meetings**

**7.2.4 January 23, 2011 – Re: 1/17/12 Meetings**

**5.0 Next HCSC Meeting: Tuesday, April 3, 2012 (if needed)**

**6.0 Adjournment**

Mr. Reiter made a motion, seconded by Mr. Daly, to adjourn the meeting. Meeting adjourned at 1:45 p.m.

Respectfully submitted,

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Mary P. Melloni  
Recording Secretary