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**REGULAR MEETING OF THE PALMYRA TOWN BOARD**

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The regular meeting of the Town Board, Town of Palmyra, scheduled to be held on Thursday, August 22, 2002, at the Palmyra Town Hall, 1180 Canandaigua Road, Palmyra, NY, was called to order at 8:00 PM by Town Supervisor David C. Lyon.

**CALL TO ORDER**

Supervisor Lyon led those present in the Pledge of Allegiance to the Flag.

**PLEDGE OF ALLEGIANCE**

Upon roll call, the following board members were present:

**ROLL CALL**

- Town Supervisor - David C. Lyon
- Town Board Members - David Nussbaumer
- Lynne Green
- Michael Lambrix
- James Welch

**Supervisor David Lyon announced a Planned Development District application had been received and Lyon then deferred to Robert Grier:**

Code Enforcement Officer Robert Grier stated an application for a Planned Development District had been received on August 7, 2002. Grier stated the application was subject to SEQR review and the first step in this process was to name a lead agency. Because the Town of Palmyra would be the only affected party they should be named lead agency.

**Motion** by David Nussbaumer to appoint the Town as Lead Agency in this action for a Planned Development District.

**Second:** Michael Lambrix

**Carried:** Unanimously

**MTN – DECLARE TOWN LEAD AGENCY PLANNED DEV DISTRICT**

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**RECESSED TO PUBLIC HEARING AT 8:05 PM**

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**RECESS TO PUBLIC HEARING**

**PUBLIC HEARING  
PLANNED DEVELOPMENT DISTRICT**

**PUBLIC HRG – PLANNED DEVELOPMENT DISTRICT – CALL TO ORDER**

The Public Hearing scheduled to be held on Thursday, August 22, 2002 at Palmyra Town Hall, Palmyra, New York to consider the Planned Development District was called to order at 8:05 PM by Town Supervisor David Lyon.

Those present at this public hearing:

Town Board Members: David C. Lyon, Supervisor  
David Nussbaumer, Councilmember  
Lynne Green, Councilmember  
Michael Lambrix, Councilmember  
James Welch, Councilmember

Also present at this public hearing:

Petra Anderson; 1185 Canandaigua Rd., Palmyra  
Dave Banks; 108 Rausler Rd., Farmington (home); 800 E. Main St.,  
Palmyra (work)  
Nelson F. Cook, 1998 Maple Ave., Palmyra  
Tracey Curry, Courier-Journal  
Al Davis; 340 W. Foster St., Palmyra  
Norma Davis; 340 W. Foster St., Palmyra  
Richard & Daniela Dzinbal; 1145 Canandaigua Rd., Palmyra  
Davis & Rose Frederiksen; 1020 Canandaigua Rd., Palmyra  
Herta Freling; 921 & 913 Canandaigua Rd., Palmyra  
Robert A. Grier, Code Enforcement Officer  
Michelle Hall; 360 W. Foster St., Palmyra  
Brion S. Havert; 895 Canandaigua Rd., Palmyra  
Jeanette Havert; 885 & 895 Canandaigua Rd., Palmyra  
Al Hunt; 1171 Canandaigua Rd., Palmyra  
David Koeberle; 997 Canandaigua Rd., Palmyra  
Gary LaBerge; 1743 Maple Ave., Palmyra  
Sylvia Lyon, Palmyra  
Lester Mahnke; 363 Prospect Dr., Palmyra  
David Pietuce; 351 East St., Pittsford  
Ken Schade; 1233 Canandaigua Rd., Palmyra  
Gary Stemp; 436 W. Main St., Palmyra  
Douglas Thompson; 237b Birdsall Parkway, Palmyra  
Sharleen & Angelo Tremfer, Jr.; 1152 Canandaigua Rd., Palmyra  
Wayne Wright; 235 Birdsall Parkway, Palmyra  
Kevin Yager; 2800 Jagger Rd., Palmyra

**PUBLIC HRG  
- PLANNED  
DEVELOPME  
NT DISTRICT  
- READING  
OF LEGAL  
NOTICE**

Councilmember David Nussbaumer opened the Public Hearing by reading the Legal Notice regarding the Planned Development District which was to consider the adoption of a Planned Development District designation for two parcels on Canandaigua Road pursuant to The Town of Palmyra Zoning Code Section 3.4. A Planned Development District is one which does not appear on the initial zoning map but which may be created to improve the economic or aesthetic environment of the township.

( START OF LEGAL NOTICE )

The first property is Tax Parcel 64110-00-629999, reputedly owned by Randy Hayes and bounded on the North by property reputedly owned by David Koeberle, Tax Parcel 34111-00-615049; on the West by property reputedly owned by the Corp. of Presiding Bishops of the Church of Jesus Christ of Latter-day Saints, Tax Parcel 64110-00-581970; on the South by property reputedly owned by Paul and Terry Fagner, Tax Parcel 64110-00-631959; and on the East by Canandaigua Road (NYS Route 21).

The second property is Tax Parcel 64110-00-672985, reputedly owned by Gary LaBerge and bounded on the North by property reputedly owned by Raymond and Ann Leno, Tax Parcel 64111-00-698041; on the West by Canandaigua Road (NYS Route 21); on the South by property reputedly owned by Gary LaBerge, Tax Parcel 64110-00-680917; and on the East by property reputedly owned by Clifford Mertz, Tax Parcel 64110-00-820921.

The Town Board will at said time and place hear all persons in support of the above application or any objections thereto. Persons may appear in person or by attorney or agent. The application is on file at the Town Clerk's Office, 1180 Canandaigua Road, and is available for review Monday through Friday, 9:00 AM – 5:00 PM.

By Order of the Town Board  
Dated: July 27, 2002  
Catherine C. Contant, Town Clerk

( E N D O F L E G A L N O T I C E )

The Town Board heard all persons in support and in opposition of the application for the Planned Development District. The following letter was received by the Palmyra Town Board from town residents Ann and Ray Leno pertaining to the Planned Development District. It was read by Deputy Town Clerk Elizabeth A. Lewis during the Public Hearing. It read as follows:

**PUBLIC HRG  
– PLANNED  
DEVELOPME  
NT DISTRICT  
– READING  
OF LENO  
LETTER**

( S T A R T L E T T E R )

RE: Rezoning and development of Gary LaBerge and Randy Hayes properties.

We are unable to attend the meeting on August 22, 2002 regarding the above properties as we will be out of town. The LaBerge property borders ours on the south and the Hayes property is across Route 21 from us.

We do not object to the rezoning of these properties for commercial use if the owners are going to develop the properties

for light commercial use and not heavy industrial use. We understand Mr. Hayes is proposing a hotel on the property across Route 21 from us. We further understand Mr. LaBerge is proposing two general-use buildings, not heavy industrial use buildings. We do not want any factories (large or small), strip malls or any business that would compromise the residential/agricultural setting of the neighborhood. Mr. LaBerge has assured us his buildings would be built toward the southern end of his property for small business use and that he will implement a neighbor-friendly design, use berms, trees, shrubs, and tasteful landscaping to separate the buildings from our property and view. We hope that Mr. Hayes also intends to build his hotel keeping in mind the same concerns. We hope he will consider the landscaping and building design used by the Mormon Temple and Mormon Church on Temple Drive when building the hotel.

If we understand the proposed use of the LaBerge and Hayes properties correctly, we agree to the rezoning and development of said properties. If our information is not correct, we would appreciate receiving correct information and postponing the meeting until we can be present.

Thank you in advance for your cooperation in this matter.

Sincerely,

Ann and Ray Leno  
994 Canandaigua Road  
Palmyra, New York

( E N D L E T T E R )

**PUBLIC HRG  
- PLANNED  
DEVELOPME  
NT DISTRICT  
- PUBLIC  
COMMENT**

Comments were heard by approximately 13 separate individuals. Responses to those individuals were made by Supervisor David Lyon, Councilman David Nussbaumer, Code Enforcement Officer Robert Grier, and Highway Superintendent Nelson Cook.

The overriding public comment concerned proper drainage of the property to be developed. Comments made by most felt their properties were already suffering from drainage problems and that new development on Temple Road had intensified these problems. Public comment concerned additional development in the Canandaigua Road area and how it would exacerbate the existing drainage problems on their properties.

Public comment included the distribution of photographs showing drainage problems on private properties.

Drainage problems were also noted by village residents on Foster St., Jackson St., Prospect Dr. and Birdsall Parkway.

Supervisor Lyon and Highway Superintendent Cook acknowledged there had been drainage problems consistently in the past and at different properties some solutions had been attempted but were unsuccessful.

Supervisor Lyon and Highway Superintendent Cook commented that in the past an attempt was made to create a Drainage District in the Canandaigua Road area, however, not all property owners agreed to the district. The Town could not move forward without consensus from all property owners as the town requires an easement from all property owners to access their property to maintain the Drainage District.

Highway Superintendent Cook took an informal survey of the public in attendance to see who would be agreeable to a Canandaigua Road Area Drainage District, including easements for the Town to access the drainage areas.

Cook suggested the show of hands of those willing to grant the Town an easement to the property and whether or not they would be willing to “kick in a nickel/\$1,000 to help themselves and help all areas.”

Supervisor Lyon asked that all residents living on the west side of Canandaigua Road show hands if they were interested in a Drainage District. It was settled that all those in attendance living on the west side of Canandaigua Road were interested in a Drainage District.

Supervisor Lyon said that to create a Drainage District a petition would need to be submitted to the Palmyra Town Board, signed by all the residents in the Drainage District area who favored the District. Lyon also stated a developer might need to be involved and that the Town may have funds to assist in this project or be able to assist in obtaining necessary funds.

Comment was raised by Mr. Stemp stating, “Now we’re talking taxpayer dollars if Nelson [Cook] gets involved.”

Highway Superintendent Cook commented that “lots could be done,” including retention ponds that would back up to Ms. Hall’s property and the Community Center.

Mr. Al Hunt said Cook’s work didn’t help his land at all.

Cook stated the culverts across from Campbell Park are wide open. "We need dams along the way to flow water at a gentle pace. Retention ponds would help them."

Mrs. Havert questioned Cook about where the drainage typically ends. Mr. Cook responded that the Eire Canal is the last point of the drainage. It runs almost parallel and just west of Park Drive. Cook also stated that pipes would probably need to be downsized and that it would be best to leave ditches open.

Gary LaBerge spoke to the Board and to the public. LaBerge also distributed copies of preliminary plans of a proposed motel to be located in the Planned Development District to those in attendance for their perusal. LaBerge fielded questions from the public.

**PUBLIC HRG  
- PLANNED  
DEVELOPME  
NT DISTRICT**

**-  
LABERGE—  
PRELIM.  
MOTEL  
PLANS**

**PUBLIC  
HEARING  
CLOSED**

Supervisor Lyon closed the Public Hearing at 9:07 p.m. and requested a five-minute break.

**BACK TO  
ORDER**

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**RETURN TO ADJOURNED REGULAR TOWN BOARD MEETING**

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The adjourned meeting of the Town Board, Town of Palmyra, was returned to order at 9:19 PM by Town Supervisor David C. Lyon.

**COMMUNICATIONS**

**COMMUNI-  
CATIONS**

A thank-you letter from Palmyra Historian Beth Hoad to Palmyra Kings Daughters Free Library was read. The Library donated to the Town of Palmyra three books: *PALMYRA AND VICINITY* by Thomas L. Cook, *WAYNE COUNTY DIRECTORY-1867-8*, and *PALMYRA WAYNE COUNTY, NEW YORK*, compiled by the Woman's Society of the Western Presbyterian Church. The books are located in the Historian's office at 1180 Canandaigua Road and are to be used by the Historian. The books will not be loaned.

**REPORTS OF STANDING COMMITTEES**

**Tourism and Development Committee – Lynne Green, Chair**

1. Councilmember Lynne Green announced that she and Councilmember David Nussbaumer attended the Rochester-Genesee Regional Transportation meeting last week regarding better public transportation service to people in

**TOURISM &  
DEVELOPME  
UPDATE**

Wayne County. Councilmember Green stated there were "many good ideas."

- 2. Councilmember Green acknowledged all racks and tables were in place in the Information Center which now contained brochures from all over the area.

**Highway Committee – Michael Lambrix, Chair**

- 1. Comment was heard by Highway Superintendent Nelson Cook that due to a retirement and resignation a recommendation was made to hire Steven Kemp as a permanent full-time employee.

**HIGHWAY  
UPDATE**

**Motion** by Mike Lambrix to approve the hiring of Steven Kemp as a permanent full-time employee at \$12.50/hr, retroactive to July 2002.

**MTN – NEW  
HIRE –  
HIGHWAY  
DEPT**

**Second:** David Nussbaumer **Carried:** Unanimously

- 2. A request was made by Highway Superintendent Nelson Cook for reimbursement of expenses in Monticello, New York from September 23 through September 27.

**MTN –  
PAYMENT OF  
EXPENSES –  
HWY SUPT**

**Motion** by Mike Lambrix to approve payment of expenses to Superintendent Nelson Cook for a fall conference in Monticello, New York from September 23 through September 27 at a cost not to exceed \$550.00.

**Second:** Lynne Green **Carried:** Unanimously

- 3. Councilmember Michael Lambrix read a Resolution regarding the DOT (Department of Transportation) Undertaking and work permits on state highways. The Resolution states in full:

**DOT  
UNDERTAKING**

( START OF RESOLUTION )

WHEREAS, the State of New York has offered the Town of Palmyra an opportunity to obtain highway work permits without furnishing a certificate of insurance and a performance bond each time the Town needs to work on or adjacent to a state highway, and

**DOT  
UNDERTAKING  
-RESOLUTION**

WHEREAS, it is in the best interest of the Town to supply an undertaking to the State of New York to facilitate the obtaining of work permits.

NOW, THEREFORE, be it resolved that the Town of Palmyra does hereby approve an undertaking in the attached form

to be executed and filed with the Department of Transportation of the State of New York, and

BE IT FURTHER RESOLVED that said undertaking be executed by the Supervisor and/or his designee, the Town Highway Superintendent, and that a copy of the filed undertaking with a copy of the receipt that it has been received and accepted by the State Department of Transportation to be filed with these minutes and in the appropriate Town records.

( E N D O F R E S O L U T I O N )

**MTN - DOT  
UNDERTAKING**

**Motion** by Mike Lambrix to approve the DOT Undertaking and the Resolution.

**Second:** David Nussbaumer

**Carried:** Unanimously

The Undertaking states as follows with a copy of the resolution and the Undertaking found in these minutes:

( S T A R T O F U N D E R T A K I N G )

UNDERTAKING (MUNICIPALITY) IN CONNECTION WITH HIGHWAY WORK PERMITS ISSUED BY THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION

WHEREAS, the undersigned Town of Palmyra (Municipality) from time to time receives permits from the Department of Transportation of the State of New York (hereinafter referred to as the "Department") allowing Town of Palmyra (Municipality) to temporarily obstruct, install, construct, maintain, operate or replace any facilities within the bounds of a State highway right-of-way pursuant to Sections 52, 103, 203, 249 and/or 250 of the Highway Law; and

WHEREAS, the Department requires that the municipality file an undertaking to secure the Town of Palmyra (Municipality) faithful performance within the terms of any such permit and also to indemnify the Sate of New York (hereinafter referred to as the "State") and others with respect to all operations under such permits by the Town of Palmyra.

NOW THEREFORE, the Town of Palmyra hereby undertakes, to and with the State and the Department, that:

1. The Town of Palmyra will well, truly and faithfully comply with and perform all the terms and conditions of each such permit on its part to be kept and performed, and abide by and comply with all such conditions, rules and regulations as may be,



from time to time, promulgated by the Commissioner of Transportation of the State of New York (hereinafter referred to as the "Commissioner"), according to the true intent and meaning of such permits, rules and regulations.

2. The Town of Palmyra will, at its own expense, promptly complete the work allowed under each permit and within a reasonable time restore State property damaged by its work to substantially the same or equivalent condition as existed before such work was begun; and in the event that the Town of Palmyra fails to so restore damaged State property within what the Commissioner deems to be a reasonable time, the Commissioner, after giving written notice to the Municipality, may restore the property to substantially the same or equivalent condition as existed before the Municipality began the work and require the municipality to reimburse the State for any and all costs incurred by the State in such restoration;

3. The Town of Palmyra will indemnify, hold harmless and defend and protect the State of New York, the Commissioner and the Department, their officials, officers, agents and employees against and pay any and all amounts, damages and costs and judgments which may or shall be recovered against said State, or its officers, or agents, or which such State may be called upon to pay to any person or corporation by reason of damages arising or growing out of operations pursuant to said permits or the agents or servants, or the improper performance pursuant to the conditions of said permits by the Municipality, its agents or servants.

4. The Town of Palmyra which is self-insured, will pay any and all damages, costs, including but not limited to attorney's fees, and judgments recovered against the State, the Commissioner of Transportation, the Department of Transportation and their officials, officers and employees in connection with work allowed by a permit or from use of a permit by the Town of Palmyra or by any person acting by, through or for the Town of Palmyra (Municipality), including omission and supervisory acts of any of the entities or persons named above;

5. It is understood that this undertaking is one of indemnity only and is not to be construed as imposing on Town of Palmyra an obligation to pay claims for which there would not otherwise be a remedy in law against the State of New York.

6. Any payments required by the foregoing will be guaranteed by the full faith and credit of Town of Palmyra or its districts, as applicable, and will be paid out of current budgeted funds, or if insufficient, from its liability and casualty reserve fund or

from the proceeds of bonds which current laws permit the Town of Palmyra (Municipality), to issue to pay claims against it.

IN WITNESS WHEREOF, the Town of Palmyra has caused this instrument to be signed by \_\_\_\_\_ or his designee authorized by resolution of its \_\_\_\_\_, a copy of which is annexed hereto.

DATE: \_\_\_\_\_ NYS DEPARTMENT OF TRANSPORTATION

DATE: \_\_\_\_\_ TOWN OF PALMYRA (DAVID C. LYON)

(Copy of Resolution attached)

( E N D O F U N D E R T A K I N G )

**Planning Committee – James Welch, Chair**

**MTN –  
DECLARE  
LEAD  
AGENCY**

1. Councilmember James Welch deferred to Code Enforcement Officer Robert Grier who requested the Town of Palmyra be the Lead Agency for the new Master Plan.

**Motion** by James Welch to declare the Town of Palmyra as Lead Agency for the new Master Plan.

**Second:** David Nussbaumer

**Carried:** Unanimously

2. Code Enforcement Officer Robert Grier reported one model has been set up in Canalside Estates and two more will be set up. Grier also reported that the Health Department has granted permits for ten (10) units to be set up.
3. Grier reported that the application for the Master Plan had been received on August 7, 2002

**Zoning Committee – David Nussbaumer, Chair**

**CEO UPDATE**

**CEO Update**

1. Mr. Grier’s monthly report for August has been received for filing in the Town Clerk’s Office, and distributed to the Board members.
2. Drainage concerns that were brought up during the Public Hearing were discussed and no decision about the creation of a Water Drainage District was made at that time. The Planning Board will be included in further discussions.

**Motion** by David Nussbaumer to declare a “maybe” for the required SEQR action to be taken at this time by the Town Board in reference to the Planned Development District. (A “maybe” can be declared, as opposed to a yes or no, when more information is needed.)

**MTN – PDD  
SEQR**

**Second:** Michael Lambrix

**Carried:** Unanimously

**AGENDA ITEMS**

1. Assessor’s Monthly Report  
Received and on file in the Town Clerk’s Office.

2. Approval – Mobile Home Park Permit Applications  
Applications and fees were received and inspections were successfully completed by the Palmyra Health Officer, Dr. Malcolm Riggs. Applicants were (fees are shown in parenthesis):

- Pine Tree Park, 9298 Rt. 31, Palmyra, NY (\$40.00)
- Valley View Mobile Manor, 3657 S. Townline Rd., Palmyra, NY (\$270.00)
- Trolley Road Park, 3841 Trolley Rd., Palmyra, NY (\$215.00)
- Maple Creek Mobile Home Park, 1688 Marion Rd., Palmyra (\$135.00)
- Marquart Village, Inc., 2880-2881 Macedon Center Rd., Palmyra, NY (\$475.00)
- 

**Motion** by Michael Lambrix to approve mobile home park permit applications.

**MTN –  
MOBILE  
HOME PARK  
APPROVAL**

**Second:** David Nussbaumer

**Carried:** Unanimously

3. Agreement – K & D Disposal

The Agreement with K & D Disposal reads as follows:

( S T A R T A G R E E M E N T )

AGREEMENT  
K & D DISPOSAL TRANSFER STATION

AGREEMENT made this 15<sup>th</sup> day of August, 2002 by and between the Town of Palmyra, a municipal corporation with offices located at 1180 Canandaigua Road, Town of Palmyra, County of Wayne, State of New York and K & D Disposal, Inc., with offices

located at 816 Garnsey Road, Palmyra, Wayne County, State of New York.

WITNESSETH:

WHEREAS, K & D Disposal, Inc., owns and operates a waste management system for hauling trash and rubbish, and

WHEREAS, K & D Disposal, Inc. has requested the use of a portion of the Town's property adjacent to the Town Barns for use as a transfer station, and

WHEREAS, the residents of the Town of Palmyra benefit from such a transfer station by way of utilizing the services of K & D Disposal, Inc. for those residents and residents of other towns for disposal of residential trash who cannot afford regular garbage or who do not accumulate enough trash or rubbish for regular garbage pickup or who wish to dispose of bulk items, and

WHEREAS, the Town would benefit from these items not otherwise being improperly disposed of about the Town, and

WHEREAS, the Town of Palmyra believes it to be in the best interest of its residents to allow the use of its property for a transfer station pursuant to the terms contained herein.

NOW THEREFORE, in consideration of the premises and the mutual promises and undertakings hereinafter set forth, and for other good and valuable consideration, the parties agree as follows:

1. The Town shall permit K & D Disposal, Inc. to utilize a designated portion of the Town's property located adjacent to the Town Barns for a transfer station to be utilized by K & D Disposal, Inc. on Saturdays between 8:00 AM and 12:00 PM
2. K & D Disposal, Inc. will operate this site in a professional manner and will not allow any debris or rubbish to accumulate on the site or allow waste to blow or overflow onto adjacent properties.
3. K & D Disposal, Inc. will provide proof of liability insurance naming the Town of Palmyra as an additional insured with the policy of insurance for general liability with coverage of not less than \$1,000,000.
4. K & D Disposal, Inc. will comply with all State, Federal and Local requirements for the operation of said transfer station.

- 5. K & D Disposal, Inc. will insure that the site used will be free pollution and hazardous materials.
- 6. K & D Disposal, Inc., will indemnify and hold the Town of Palmyra harmless from any and all injuries or damages that may arise out of the operation of the transfer station on Town property.
- 7. In consideration for this agreement, K & D Disposal, Inc. shall provide rubbish and trash pickup for the Town of Palmyra offices, Village of Palmyra, including but not limited to the Highway Barns at no charge to the Town for the term of this agreement, including supplying a dumpster at the Town Barns.
- 8. This agreement may be terminated upon thirty days written notice by either party.
- 9. The terms of this agreement shall be for two years commencing the 29<sup>th</sup> day of June 2002.
- 10. K & D Disposal, Inc. agrees that the transfer station will be operated as set forth in the rules attached hereto as Schedule "A" and made a part hereof.
- 11. This agreement is non-transferable by conveyance or by operation of law and non-assignable. Any change in the agreement or the rules will be subject to approval of the Town of Palmyra. This agreement is personal in nature and is being entered into based on the residence and reputation of the current operators of K & D Disposal, Inc., Kevin and Dawn Wright, and the fact that they reside in the Town of Palmyra.

Dated: August 14, 2002

TOWN OF PALMYRA

\_\_\_\_\_  
by David Lyon, Supervisor

Dated: \_\_\_\_\_, 2002

K & D Disposal

\_\_\_\_\_  
by Kevin Wright, President

SCHEDULE A

RULES FOR OPERATION OF TRANSFER STATION AT A DESIGNATED LOCATION ON PART OF THE TOWN COMPLEX

1. The transfer station will be available only for residents of the Town or Village of Palmyra and for resident of other towns in Wayne and Ontario County desiring to drop off non-hazardous residential waste.
2. The transfer station shall be open each Saturday morning during the term of this agreement from 8 AM to 12 PM. During those hours an attendant will be provided by the operator of the transfer station.
3. The transfer station site and adjacent area. If the use of the transfer station shall overflow on the adjacent area, will be cleaned up before leaving the site each Saturday morning.
4. A container will be provided once a month during the hours of operation from May to November for bulk material and non-freon appliances. The price will be \$.10 per pound for their disposal.
5. A certified scale will be provided so that all items can be weighed.
6. The rate for items and/or refuse, rubbish, garbage, tire and junk shall be \$.10 per pound. The sum will be paid by the person who deliver the items to the transfer station. Any appliance containing freon will incur an additional charge of \$30.
7. Any and all hazardous materials, refuse, rubbish, garbage, tires, etc. will be removed from the premises and properly disposed of immediately after the close of the transfer station on Saturday mornings.
8. Care will be taken to insure that the site will not become polluted or a nuisance.

( E N D O F A G R E E M E N T )

**MTN – AGR  
WITH K & D  
DISPOSAL**

**Motion** by David Nussbaumer to accept the signed agreement with K & D Disposal for a time period of two years, retroactive to June 29, 2002 with a price per pound increase from \$.08/lb to \$.10/lb.

**Second:** Michael Lambrix

**Carried:** Unanimously

**MTN – SET  
PUBLIC  
HEARING  
DATE – T.  
YOUNG**

4. Public Hearing – Special Use Permit - Terri Young

**Motion** by David Nussbaumer to set a Public Hearing on September 26, 2002 at 8:00 p.m. at the Palmyra Town Hall at 1180 Canandaigua Rd. to hear public comment for Terri Young to open a barber shop at her home on Shilling Rd.

**Second:** Michael Lambrix

**Carried:** Unanimously

5. Agreement – LDS Water Easement

**Motion** by Michael Lambrix to approve agreement between Town of Palmyra and Wayne County Water and Sewer Authority for a

**MTN – AGR  
WITH  
WCWSA  
WATERMAIN  
EASEMENT**

developer to install a water line for fire protection with the Town getting an easement. A copy of the Water Main Easement and the Bill of Sale is attached to these minutes and states:

( S T A R T O F E A S E M E N T )

WATER MAIN EASEMENT

This Indenture of Easement made the \_\_\_\_ day of \_\_\_\_\_, 2002 by CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A Utah corporation sole with an office located at 50 East North Temple Street, Salt Lake City, Utah 84102 Grantor and property owner, and the TOWN OF PALMYRA, a municipal-benefit corporation with an office located at 1180 Canandaigua Road, Town of Palmyra, Wayne County, New York, Grantee and easement recipient.

WITNESSETH, that the Grantor in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, its successors and assigns, a non-exclusive easement twenty (20) feet in width (10 feet on either side of the water main) over, through and under a portion of Grantor's real property located in Wayne County, State of New York, more particularly depicted on the annexed print entitled "WATER MAIN EASEMENT TO THE TOWN OF PALMYRA, WAYNE COUNTY, NEW YORK" attached hereto and incorporated herein as Exhibit "A" (The "Easement Property", to construct, reconstruct, operate, inspect, maintain and improve a sub-surface water main, with fixtures and appurtenances (collectively, the "water main") together with free ingress and egress to the easement Property across the adjacent property owned by Grantor, and together with a temporary construction easement twenty (20) feet in width on the exterior boundary of the Easement Property for the storage and pile of dirt material and fill and the use and presence of machinery, workers and equipment during the period of any work or maintenance of the water main. Grantee shall have the right to remove any trees, shrubs and other obstructions located within the Easement Property that interfere with the use and/or maintenance of the water main.

The Grantor agrees to allow the Grantee and his agent, reasonable access over the premises of the grantor for the purpose of laying, constructing, operating, maintaining, pumping, altering, repairing and replacing the water main. The Grantee, at its sole cost and expense, shall maintain and repair the water main.

The Grantor covenants and agrees that no building or structure shall be constructed within the Easement Property by Grantor, and Grantor shall not allow such construction, except by

Grantee as may be necessary for the purposes of this easement which will in any way interfere with complete access by the Grantee, its successors, assigns, employees and agents to lay, construct, inspect, operate, pump out, maintain, alter, repair, remove, or replace the water main.

The Grantor expressly agrees that any and all disturbance to the surface of lands of the Grantor during future repairs and maintenance of said water main will be repaired by the Grantor.

The Grantee shall indemnify the Grantor for liability for injuries to or death of persons directly arising out of the construction, laying, installation, operation, maintenance, repair or replacement of such watermain, where such injury, death, loss or damage is caused by the negligence of grantee, or Grantee's officers, employees or agents. The Grantee shall be only liable for damage to the property of the Grantor for gross negligence by the Grantee, its officers, employees or agents. For example, damage caused by a pipe leaking, undiscovered, will not be considered as a result of gross negligence.

The easement shall terminate in the event the Grantor shall fail to fulfill any obligations of the Grantor stated herein after 30 days notice of the failure to perform certain obligations and the subsequent failure to fulfill the obligations. This agreement may also be terminated by either party on one year's notice to the other party and a copy of the notice of termination to the New York State Department of Health. The easement shall automatically terminate in the event the Grantee or any of its successors in interest abandons the watermain within the easement area, for a continuous period of one (1) year. The clause shall be self-operative and no further instrument shall be required to be delivered to terminate the easement if the triggering event occurs. In the event of termination, the Grantee shall convey the water main to the Grantor via a Bill of Sale for no cost.

It is further understood that it is the intent of the parties that this covenant shall be binding on the successors and assigns of both the Grantor and the Grantee and the said covenant shall run with the land.

IN WITNESS WHEREOF, the Grantor has duly executed this grant and easement the day and year first above written.

CORPORATION OF THE PRESIDING BISHOP OF  
THE CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, a Utah corporation sole



By: \_\_\_\_\_, Authorized Agent

STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

On this \_\_\_\_ day of \_\_\_\_\_, 2002, personally appeared before me \_\_\_\_\_, personally known to me to be the Authorized Agent of the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah Corporation Sole, who acknowledged to me that he signed the foregoing instrument as Authorized Agent for said Corporation, that the seal impressed on the within instrument is the seal of said corporation, and the said \_\_\_\_\_ acknowledged to me that the said Corporation executed the same.

\_\_\_\_\_  
Notary Public for Utah

Commission expires: \_\_\_\_\_

( END OF EASEMENT )

( START OF BILL OF SALE )

Bill of Sale

KNOW ALL MEN BY THESE PRESENTS:

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, (the "Seller"), does hereby grant, bargain, transfer, sell, assign, convey and deliver to the TOWN OF PALMYRA (the "Buyer"), free and clear of any and all liens, encumbrances, charges or claims, all right, title and interest in and to a sub-surface water main, with associated fixtures and appurtenances (the "water main") located over, through and under a portion of Seller's real proper in Wayne County, State of New York, more particularly depicted on the annexed print entitle "WATER MAIN EASEMENT TO THE TOWN OF PALMYRA,

WAYNE COUNTY, NEW YORK”, attached hereto and incorporated herein as Exhibit “A”.

Executed this \_\_\_\_\_ day of August, 2002.

SELLER:

Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole

By: \_\_\_\_\_  
Its: Authorized Agent

( END OF BILL OF SALE )

**Second:** David Nussbaumer

**Carried:** Unanimously

6. Budget Workshop

Supervisor David Lyon stated a budget workshop for the Town would be held on Thursday, September 12, 2002 at 7:00 p.m. at 1180 Canandaigua Rd. Councilmember David Nussbaumer commented he would be unable to attend because of vacation plans.

7. West Nile Virus

Supervisor David Lyon reported West Nile Virus has been found in an oriole on Rte. 31 in East Palmyra. The virus has also been found in the Town of Arcadia. Wayne County Public Health notified the Town of Palmyra on August 21, 2002.

8. September 11<sup>th</sup> Remembrance

MTN –  
SEPT. 11  
REMEMBR  
ANCE

**Motion** by Supervisor David Lyon for all citizens to remember those who gave their lives on September 11, 2001 and to “encourage all citizens of Palmyra to display their flags,” on September 11, 2002.

**Second:** David Nussbaumer

**Carried:** Unanimously

9. Renewal of Newport Alliance Drug and Alcohol Program

MTN – AGR  
NEWPORT  
ALLIANCE

**Motion** made by Michael Lambrix to renew the Newport Alliance Drug and Alcohol Program which will allow testing of Town employees who hold CDL licenses.

The Agreement between Newport Alliance and the Town of Palmyra states:

( START OF NEWPORT ALLIANCE AGREE –  
MENT )

AGREEMENT

This Agreement is made between THE NEWPORT ALLIANCE, which is the Occupational Health Division of Newport Hospital, hereinafter referred to as “NEWPORT” and Town of Palmyra hereinafter referred to as “CLIENT”.

NEWPORT will act as a Third Party Administrator for the CLIENT and will review results and provide a medical review function consistent with all regulatory requirements.

NEWPORT’s Medical Review Officer will be a physician certified by a HHS-approved MRO Certification Program. The CLIENT will be notified within 24 hours of occurrence if NEWPORT’s MRO either loses certification or terminates contract with NEWPORT.

**1. Responsibilities of NEWPORT**

- All required reports and record keeping (results, semi-annual reports, employee files)
- Random testing program administration (random draw, notification, tracking, compliance)
- All blind sample testing required under Federal DOT rules
- Supervisor training and certification package
- Covered employee program information and educational materials
- Substance Abuse Professional (SAP) referral services
- Medical Review Officer review of results
- Preparation of signed MRO reports on final results of drug screens sent to the appropriate party as determined by CLIENT
- Verify release of information for non DOT tests to comply with state-specific laws regarding the release of medical information
- All costs relative to the collection process
- All costs relative to the laboratory analysis of the primary specimen
- Toll-free support and regulation compliance

**2. Compensation**

CLIENT will compensate NEWPORT at the rate of:

**\$48.00** per drug test and **\$28.00** per alcohol test done at the collection site.

**\$62.00** per drug test and **\$57.00** per alcohol test done at client site.

Payment will be due net 45 days.

**3. Miscellaneous Costs**

CLIENT is responsible for the following costs when services are performed:

- No Show Fee . . . . . \$20
- Testing of the split specimen. . . . \$150
- Litigation Package. . . . . \$150
- MRO Expert Witness Testimony..\$250 hr plus travel expenses
- MRO Phone Consult/Testimony. . . \$75 hr

**4. Compliance**

**Client** agrees to comply with all DOT federal regulations pertaining to their operating administration. Client is aware that all employees must have a pre-employment test (or meet the exception) prior to performing safety-sensitive functions and agree to provide documentation of this.

**5. Custody and Control Forms**

Client agrees to send all employees to the collector with a Custody and Control form. Use of the wrong form can result in the cancellation of a test and is the responsibility of the employer.

**6. Term**

This Agreement will remain in effect for one year of CLIENT's signature. Either party may terminate this Agreement without cause by providing the other with a 30-day written notice.

**7. Licenses/Certifications**

Both NEWPORT and the CLIENT each covenant to the other that throughout the term of this Agreement, they and their employees and independent contractors shall obtain and maintain in full force and effect at all times, any and all licenses, permits, certifications and approvals necessary to provide the services required of it hereunder.

**8. Insurance**

Each party agrees to obtain and maintain in full force and effect, during the terms of this Agreement, insurance with such coverage and limitations of liability as is reasonable and prudent under the circumstances for its business, as the case may be. At a minimum, such insurance shall consist of a professional liability policy in the amount of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

#### **9. Indemnity**

Each party agrees to indemnify and hold harmless the other from and against all liabilities, actions and causes of action relating to the administration of a drug and alcohol testing program. This includes claims damages, injury, loss, cost and expense, including reasonable attorney's fees which such other party may incur as a result of the formers actions and/or negligence, including omissions, or breach of this Agreement. This indemnification shall survive any termination or expiration of the Agreement. Notwithstanding anything else to the contrary set forth in the Agreement, the CLIENT and NEWPORT shall assume no liability for any services rendered by the other for any act of the other's duties hereunder or the other's breach of this Agreement.

#### **10. Confidentiality**

In connection with the conduct of business of either party, each party agrees that it shall maintain the confidentiality of all patient health care information in accordance with all applicable federal and state laws and regulations.

To the extent, and so long as, required by law and not otherwise, NEWPORT does hereby assure the CLIENT that NEWPORT will appropriately safeguard protected health information made available to or obtained by NEWPORT pursuant to this Agreement. In

implementation of such assurance and without limiting the obligations of NEWPORT, otherwise set forth in this Agreement or imposed by applicable law, NEWPORT, hereby agrees to comply with applicable requirements of law relating to protected health information and with respect to any task or other activity NEWPORT performs on behalf of the CLIENT, to the extent the CLIENT would be required to comply with such requirements.

In addition, both parties will be privy to the other's information regarding client and business practices. Both parties are aware that this information is valuable and the release of such information could cause the other party harm and therefore both

parties agree to maintain a high level of professionalism and confidence in the treatment of such information.

**11. Independent Contractors**

The CLIENT and NEWPORT agree that, in performing their respective duties hereunder, each party is acting at all times and performing as an independent contractor with respect to the other and acting with independence and several liability. Nothing herein shall be construed to create in law or in fact an employer-employee, principle-agent partnership, corporate or joint venture relationship between the CLIENT and NEWPORT.

**12. Nondiscrimination**

NEWPORT will comply with all requirements of the Civil Rights Act of 1965, as amended, regarding nondiscrimination in employment and provision of services with respect to race, religion, sex, age, creed, disability or national origin.

\_\_\_\_\_  
Todd A. Cipriani, Vice President  
Professional Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
TOWN OF PALMYRA

\_\_\_\_\_  
Date

( END OF NEWPORT ALLIANCE AGREE -  
MENT )

**Second:** Lynne Green

**Carried:** Unanimously

MTN -  
APPROVE  
ABSTRACT  
41

**Motion** made by David Nussbaumer to approve payment of vouchers and claims as shown on Abstract 41 as follows:

Voucher #'s	Total
3070 - 3156	\$172,988.33

**Second:** Michael Lambrix

**Carried:** Unanimously

MTN -  
ADJOURN

**Motion** by Michael Lambrix to adjourn this meeting of the Town Board at 9:39 PM.

**Second:** David Nussbaumer

**Carried:** Unanimously

Respectfully submitted,

Elizabeth A. Lewis  
Deputy Town Clerk