

Town of Newfield Regular Board Meeting Minutes  
March 11, 2010

The Regular Meeting of the Newfield Town Board was called to order by Supervisor Driscoll at 7:00PM. Present: CP James, CP Laughlin, CP Hart, CP Dolge and Supervisor Driscoll. Also present: Highway Superintendent Kevin Berggren, Water/Sewer Supervisor Rob Brewer, Code Enforcer Harry Wright, Code Enforcer Tony Petito, County Legislator Dave McKenna and Town Attorney Russell Maines.

The meeting was opened with the Pledge of Allegiance led by Supervisor Driscoll.

Motion was made by CP Dolge to approve the Regular Minutes from the Feb. 11, 2010 meeting. Motion was seconded by CP Hart. All approved.

PRIVILEGE OF THE FLOOR – There were no comments from the floor.

CP Hart stated that he had a residence contact him with concerns about some logging that was taking place on Rowell Hill Rd. Cornell is logging some of their land and the logging trucks are leaving big ruts in the road. Highway Superintendent Berggren stated that he didn't see a real problem except near the Johnson property and the trucks rutted the road up. CP Hart asked if he looked up near Dan Frank's house and Superintendent Berggren stated that the road was fixed a couple of years ago. CP Hart asked who is responsible to fix the road. Supervisor Driscoll stated he would look into that issue.

#### NEW BUSINESS

Motion was made by CP Dolge to approve the Town Clerk and the Deputy Town Clerk to attend the Annual NYS Town Clerk's Conference April 26-28 in Saratoga Springs. Motion was seconded by CP Hart. All approved.

Supervisor Driscoll gave the Board Members the 2009 Year End Financial Statement. Supervisor Driscoll stated the audit has begun, the field work was done last week. Brenda received journal entries already from the audit and what you are getting tonight is un-audited year end statements by department. On the last sheet in smaller print there are adjustments that Brenda will be putting over the next week. When adjustments are made you will get year end statement with the adjustments included. Everything is coming along well.

Supervisor Driscoll reviewed the Agenda for the Work Session to be held on March 25th at 7PM. It will include:

1. Draft of Town Strategic Plan Format
2. Personnel Policy for Elected, Appointed and Hired Employees
3. Discussion of Draft Road Use Ordinance
4. Hours logged regarding ERS requirement
5. Presentation by John Andersson, Engineer on the Meadowbrook Project.

#### OLD BUSINESS

Supervisor Driscoll stated that the Board had a request from Mr. Ernest Bury to repeal the Stop Work Order issued by Code Enforcer Officer Harry Wright. Mr. Bury gave a brief outline of his history in Newfield. His focus has been building affordable energy efficient houses and built the first one in 1963 and sold for \$18,000.00. He has been unable to continue building until the new water system came in. As that came in he was able to start on what he calls Phase 2 building on Shelter Valley Rd. by getting a building permit and proceeded with the construction of a cape house with a garage with a cottage over it. The foundations were built and the walls for the basement were installed before the end of the year the modular showed. He was proceeding along with the building permit and all of a sudden he ran into a problem when he called a Ms. Hahn up in Syracuse and asked for information about a storm water prevention pond. For some reason she got pretty excited about it and told me I was in violation for some unknown reason. He had been working with Mr. Wright and he had been out several times to inspect the property and Mr. Bury thought everything was above board. Ms. Hahn had Mr. Wright put a Stop Work Order on the property. So the modulars have been sitting out in the driveway since then. Mr. Bury felt that Stormwater Pollution is very complicated and he has 3 or 4 different interpretations of it and evidently the thing that caused a lot of problems because I had a landing pad for the modulars. Because he wanted to build the landing pads up to specifications he asked the Highway Dept. to come out and the contractor put in the driveway/landing pad and that seemed to cause people to think he was putting in a full

fledge development. So the Code is that he is allowed to develop up to 5 acres before he needs a Stormwater Plan, which he felt he was well under that. He is not really sure why the Stop Work Order was put on. He had the building permit and was less than 5 acres and seemed to have to do with the landing pad which was built to highway specs, he felt he was well within the criteria. In the meantime he was communicating with Code Enforcer Harry Wright and he asked me to have a Stormwater Pollution Prevention Plan drawn up which Mr. Bury had an engineer do. Mr. Bury had 2 copies of a plan which he showed to the Board. It showed the existing Shelter Valley development, the little place where he put the landing, and the location of the pond. He stated that there was no development shown on this plan it is just a hypothetical which I didn't realize that would land him into trouble so to speak. He is trying to sort it out as to why he can not put the modulars on their foundation.

CP Hart asked how many modulars there were. Mr. Bury stated it was a cape – 1 home and then on the garage there is cottage on top of the it.

Mr. Bury continued that Mr. Wright suggested he come to the Town Board and appeal the Stop Work Order.

CP Hart asked if in time he was planning to put more homes on these lots. Mr. Bury stated that he is working on developing 4 lots. Some time in the future there is speculation that he could possibly put in more but at this time it is just speculation. He has not filed Notice of Intent. Without a Notice of Intent Mr. Bury didn't think he could put in more houses in the short term.

Supervisor Driscoll asked for clarification from the Code Enforcer. He asked if the Notice of Intent was something that is require prior to. Mr. Wright stated yes.

Mr. Bury continued stating that regarding the lots he has given one lot to Habitat and the other lot is being developed for affordable housing through the Tompkins County Planning Dept. They will give him a decision on that by the end of the month.

CP Hart asked Mr. Bury if had received the permits for his septic through the Health Dept. Mr. Bury stated yes. Is there enough property there for a septic system in the future if he were to ever develop that land? Mr. Bury stated that would be done by Engineer.

Supervisor Driscoll asked Mr. Bury if the document is the Stormwater Protection Proposal. Mr. Bury stated yes. He asked if Mr. Wright or Cindy Schulte, Stormwater Management Officer had seen this. Mr. Bury stated no, he had been out of town for the past 6 weeks. Mr. Wright stated that the plan would need to be submitted to the Tompkins County Soil & Water for review.

Supervisor Driscoll asked Mr. Bury if his intention for this land to be developed over time. Mr. Bury stated yes.

CP Dolge stated he would like to hear from Code Enforcer Harry Wright to see why he issued the Stop Work Order.

Mr. Wright stated he would give the Board a history: On May 6, 2008 Mr. Bury submitted a plot plan showing 20 lots with a road and a retention pond on ¼ acre lots. It almost didn't count as large common plan because the Health Dept. wouldn't approve ¼ acre lots in that density, with all needing private septic systems. So that went away. On Nov. 18, 2008 Mr. Wright received a letter from Mr. Bury talking about the 20 lot sub-division and is re-evaluating and now looking to develop 3 lots and putting in a farm pond. He had reduced his thinking of a larger common plot but he still showed a retention pond, the road crossed out with a topic on the top called Future Potential Residential Development. Eventually he came in with a permit application he had a plot plan showing 1 lot, no road, no retention pond. Mr. Wright stated that on the day he received the building permit he came to the Board and told them that Mr. Bury has applied for a building permit to build 2 structures on a ½ acre lot. Mr. Bury told him he had a permit from the Health Dept. Mr. Wright wanted to point out that he went from the larger plan to a smaller plan to one lot. It doesn't look like he is going with the larger development any longer he can not predict that he is going to change his mind. He wasn't able to issue a building permit because Mr. Bury wanted to be the General Contractor and he doesn't have Workers Comp. Mr. Wright explained to him that he

would need to know who is going to do what phases of work on this project. Mr. Wright can issue several permits, one for each contractor, therefore he can be the boss but unless Mr. Bury is planning to buy a Workers Comp policy that will cover everyone, he can not be the General Contractor. Around Nov. 20<sup>th</sup> he received the septic permit from the Health Dept. and Anytime Excavation was the contractor with a Workers Comp. policy to do the excavating and install the foundations. That is the only building permit that was issued. Mr. Wright stated that they were satisfied that he had grown from a larger common plan of development to this single property 2 unit house and cottage. They had no larger common plan. Then one day Anytime Excavation called him and told him they were getting ready to start the road. Mr. Wright asked what road and how long is this road. He was told 800 feet. I told him that he should coach Mr. Bury that a road is not something he should talk about right now. If you have 3 lots bordering Shelter Valley Road all with road frontage people begin to wonder why do you need a road? So unknown to me Mr. Bury called Kevin Berggren to come down and look at the road because he would be using the beginning portion of the road to put his modulars on fix the cranes so they have a solid foundation. That didn't trouble him but later he got a call from Ellen Hahn, Stormwater Specialist for DEC, stating that Mr. Bury was in violation, he has called and wanted to know about a building permits, is talking about road and that represents a larger common plan of development. Immediately his mind went back to the first plan and Ms. Hahn stated he needed to go and immediately put a Stop Work Order on that project. He asked Ms. Hahn to send him something. Mr. Wright pointed out that if you go by the common plan of development and you try to slide in a bigger the DEC does not take that long to catch up on it and the fines are more severe. If you submit a plan that is approved for development once it is found out that you have a larger plan of development, he stated he was a little confused on the lots he had given away and asked Mr. Bury if they were part of the plan he had submitted tonight. Mr. Bury stated that they were on Shelter Valley Rd. Mr. Wright stated that these are part of a larger common plan of development it doesn't matter who owns them they are on that parcel and are part of it.

CP Hart asked if Mr. Bury finished his house on this parcel and in 6 months decided that he did want to build another house and then he built that one and 6 months after that he wants to build another house. Mr. Wright stated all of sudden you are phasing the development. Ellen Hahn from DEC says that if you are going to disturb more than 1 acre or more for just a single house then you must submit a Stormwater Erosion and Sediment Control Plan and show the Town and DEC how you are going to manage the stormwater during the course of that disturbance. If your larger common plan shows that you are going to disturb 5 or more acres then you have a full Stormwater Pollution Plan you would need an engineer to do that. You can not say I am going stay under 1 acre and then surprise you later. Mr. Wright felt that what tripped the trigger is typically you will not see a retention pond on a stormwater site anywhere unless the full intention is going to disturb more than 5 acres. They do not typically put a pond on a lot for a project under 5 acres. When that conversation took place with Ellen Hahn he asked her if we issued a variance and lifted the Stop Work Order without this larger common plan of development would the Town be in violation of our own local law. Ms. Hahn stated absolutely. Mr. Wright called the Engineer and asked him if there was a larger common plan and he stated absolutely. There are plans for more than one house. The Engineer asked what Mr. Bury could do to get the Stop Work Order lifted. Mr. Wright stated that he should get his plan on the table – get it approved – put the Stormwater apprentice in it. This could be very difficult.

Atty. Maines stated he would like to make sure that the Board is very clear on a couple of things. Procedurally, Mr. Wright is wrong. Your code talks about land development activity and it says construction activity including clearing, grading and excavating soil disturbance etc. of equal to or greater than an acre or activities disturbing of less than 1 acre full land area that is part of a larger common plan of development or sale. It is not how much land he is disturbing is not really the issue, if you are looking at the whole definition you have to look at what his intentions were was it part of a large plan or scheme or not. The other thing he wanted to make sure the Board is clear about as Mr. Driscoll pointed out, you are here as and appellant body which means the question before the Board is was Mr. Wright's decision at the time it was made, with the evidence that he had at that time correct. He urged the Board not to take into consideration any plans that came up afterwards. That would have to be presented at the lower level.

Cindy Schulte, Stormwater Management Officer, stated that when you are developing land there are 2 levels of review: 1. If you are 1 lot 1 acre you file a Notice of Intent and you can do a best management practice type of plan for the lot. This is what the majority of the builders in Newfield

do on a single home lot. They look at the State Manual and they move forward with very reasonable and acceptable standards. The next trigger is the 5 acres disturbance, which if you remember the subdivision on Millard Hill. They have to dig the pond first and they had to get it approved and the infrastructure has to be in place. So when DEC can not get a clear developmental plan there are always going to go the most aggressive route because they do not want to have 5 single plans or forcible plans and hit the 5 acre threshold. That is a whole different expense and engineering. So if it is just one lot and one plan Soil and Water could be handling this without a lot of engineering. Going up to now with a 800 foot road things like that add to the disturbance and sale of the other lots is apparently is also part of the larger parcel because they do not know what those development plans are and much like the division on Shaffer Rd. you can have lots of different owners on that mother parcel but you must have a common plan of development. Which is the larger Stormwater Erosion and Sediment Control Plan. 5 acre type review.

Supervisor Driscoll asked Mr. Wright if he issued a sub-division of a work permit. Mr. Wright said yes because he didn't know who the set crews were or the rest of the contractors and if they have Worker's Comp. Supervisor Driscoll asked what is the distinction of a work permit in this sub-division that permitted the excavation work to take place. Mr. Wright stated that if Mr. Bury had a Worker's Comp policy. You have 1 permit to construct the house and all the activity in it. The Worker's Comp Board says that if you have this type of a situation, every permit must have a General Contractor and that General Contractor must supply Worker's Comp or all are exempt contractor are in partnership LLC. You can issue multiple permits and the excavation comes first. Anytime Excavating has a Worker's Comp. The only work permit issued were for the excavating only. Supervisor Driscoll asked if that work was done and Mr. Wright stated the foundations were up. Supervisor Driscoll asked if there had been any work permits issued beyond that point. Mr. Wright stated that is correct. Mr. Wright stated with a Stop Work Order there can be no activity on the property until this is corrected.

CP Hart asked if they could let Mr. Bury finish his first house and state no permits are to be issued further forward. Atty. Maines stated that the Board can not grant exceptions to the law. CP Hart asked if the Board says Mr. Wright was correct to issue the Stop Work Order based on Ellen Hahn saying you should issue the Stop Work Order. If Mr. Bury were to say I changed my mind and I am not going to go forward and then we can say he can complete this project since you're not doing a master development and he could put the house on the foundation. Then in the future he wanted to build more lots and came forward with the master plan.

Cindy Schulte, Stormwater Management Officer, stated that the administrative end of it is that Notice of Intent and clarification of the project starts the process and Notice of Termination ends it. So Mr. Bury has to satisfy all the conditions of the original permit under the conditions that were put forth for the Notice of Intent and that has not been done at all on this lot. A Notice of Intent has never been applied for and this required of a single family home that is going to be disturbing an acre. The Notice of Termination comes in to place and they can stay open for 5 years by the DEC discretion. If DEC has concerns because of apparent road and other plans that might happen they can leave it open for 5 years. There is no Notice of Termination until the project is completed. Ms. Schulte stated it would be nice to be able to say yes, we can cater to this one lot. We still might be able to do that if those plans for the one lot work. A Notice of Intent needs to be applied for.

Supervisor Driscoll stated that it sounds like procedurally there is still some stuff that has to take place.

Mr. Bury stated that he would like to point out that he did this under the direct supervision of Mr. Wright. There was no mention of a Notice of Intent but he thought he was complying with whatever was necessary.

Mr. Wright stated the based on what Mr. Bury submitted for the building permit was 1 lot, no road, no pond.

CP James asked if the Board was suppose to judge on whether what Mr. Wright did was proper?

Arty Maines stated by proper; Did he follow the law as it is written? Either the decision by the Code Enforcer Officer to issue a Stop Work Order was correct based on the law as it is written or it wasn't. If the Board affirms the decision Mr. Bury has a remedy and if the Board decides it was

incorrect the Stop Work Order would be lifted and Mr. Bury can go on with his project. It seems to be the question is was there sufficient evidence before Mr. Wright that Mr. Bury was involved in a project that was part of a larger plan.

CP James asked if the DEC can fine the town. Atty. Maines stated that he didn't think that was an issue at this time.

Supervisor Driscoll read a paragraph from a letter Mr. Wright had written to Mr. Bury concerning the Stop Work Order. It stated: I have determined that the road, the pond and plan of future lots are collectively a larger common plan of development and violate the Newfield Stormwater Law as well as pertinent NY State stormwater regulations. Supervisor Driscoll asked if that would be his statement and that would be what guided him in his decision. Mr. Wright said yes. That is what they are looking at.

Cindy Schulte stated that she wanted to clarify one thing, yes the town can occur a fine up to \$35,000.00 a day for being in violation of the Stormwater ordinance.

Mr. Bury stated that he wouldn't have proceeded as much as he was working of supervisor of Mr. Wright. It seems like there is an exofacto factor here. Mr. Wright explained what that supervision was. Mr. Bury stated you were out there at least 3 times and knew what he was doing and there was no question until Ms. Hahn got involved. Mr. Wright stated you called Ms. Hahn. Mr. Bury stated he called her for information. Mr. Wright read the letter he had received from Ellen Hahn regarding issuing the Stop Work Order.

Motion was made by CP Dolge that the Town Board affirm Code Enforcer Harry Wright's decision to issue a Stop Work Order. CP James seconded the motion.

Atty. Maines stated he urged the Board to finding a fact. What fact is the determination? Supervisor Driscoll stated that based on Atty. Maines comments about looking at the point of view that is contained in the email from Ellen Hahn as well as the letter dated Jan. 15, 2010 from Mr. Wright to Mr. Bury.

All approved.

Oeschner Farming Land Use – Supervisor Driscoll stated the Mr. Oeschner would like to farm the land. Till and farm for crops. A Lease Agreement could be drawn up. CP Dolge stated that he does not want to incur any more expense on the property. CP Hart stated that the land was purchased with the intention of a park and the Board shouldn't loose sight of that and that there are Vernal Pools on the property that need to be protected. CP Laughlin stated that Mr. Oeschner is not the only farmer that would like to use the land. CP James stated that she would like to see the land used until they are ready to move forward with a park. Supervisor Driscoll stated he would look into this issue further and report back to the Board next month.

Code Enforcement Officials and Stormwater Enforcement Officer Job Appointments.

Supervisor Driscoll stated that he had made a mistake and jumped ahead in the appointments of the Code Official and Stormwater Enforcement Officer. The Job Descriptions and Employment applications needed to be sent to the Tompkins County Personnel. He asked that the motions made in February be rescinded.

Motion was made by CP Hart to rescind the motion made in February for the appointments of Harry Wright and Cindy Schulte. CP Laughlin seconded the motion. All approved.

Motion was made by CP Hart to provisionally appoint Harry Wright as Code Enforcement Officer. Motion was seconded by CP Laughlin. There was no discussion. All approved.

Motion was made by CP Dolge to create the position of Stormwater Management Officer and to appoint Cindy Schulte as the Stormwater Management Officer for the Town of Newfield until 12/31/2010. Motion was seconded by CP James. All approved.

Supervisor Driscoll stated that he had put the Marcellus Shale Road Use Ordinance Work Group on the Agenda because he want of introduce this officially as business. It is not for discussion tonight it is for the Work Session on the 25<sup>th</sup>. It is a model local law and requires the Board's discussion along with the Town Attorney and Highway Superintendent Berggren.

Motion was made by CP Hart to approve the payments of the February 2010 Monthly Bills. Motion was seconded by CP Laughlin. All approved.

General Fund totaling	\$ 26,234.64
Highway Fund totaling	\$ 35,187.98
Fire Protection total	\$166,143.93
Street Lighting totaling	\$ 1,574.30
Sewer District totaling	\$ 653.49
Water District 1 totaling	\$ 3,262.84
Recreation totaling	\$ 397.83
Water District 2 totaling	\$109,038.18

## REPORTS

Supervisor – Supervisor Driscoll stated that he had been approached by town folks about whether or not the town would be interested in hosting a forum for the community to talk about Marcellus Shale and the role of government in the arrival of Marcellus Shale. This discussion has already occurred in several other towns. Supervisor Driscoll asked Don Barber, Town Supervisor for the Town of Caroline, if he would preside. He is very knowledgeable in terms of how a town should prepare and what it needs to think about. The forum will be held April 5<sup>th</sup> at the Fire Hall at 7PM.

Supervisor Driscoll stated he received an email regarding an information session regarding Marcellus Shale to be held at the Enfield Grange Hall on March 22 at 7PM. This will be a forum to learn about the process of gas drilling and the legal issues involving lease and land owner issues.

Supervisor Driscoll stated that he needed to make an appointment for the Tompkins County Recreation Partnership Committee and Christine will be our Representative and CP Hart will be the alternate. Motion was made by CP Hart to approve CP Laughlin as Newfield's Representative to the Ithaca Recreation Partnership. Motion was seconded by CP Dolge. All approved.

Highway – Highway Superintendent Kevin Berggren stated that they hope to be finished plowing snow and they have been hauling in stone to fix roads in the Spring. He would like to start working on getting the plow truck. If they order it now it will be delivered in August with 1/2 down when delivered and the balance due January 2011.

Water Dept. – Water/Sewer Supervisor stated that he is working on his annual Water Quality Report. He has also been doing winter projects like painting the well house floors. All is going okay in his department

Code Enforcement – Code Enforcer Tony Petito stated it was a pleasure to work with the Board this year. He asked the Board if they are out and about and fine property that needs his attention to please make him aware it. He reviewed with the Board the 2 local laws 1&2 that he enforcers. He voiced his concern over property owners that are plagued with people dumping on their property. If this happens and the property owner calls him he can get a permit for that person to take to the dump with no charge to the property owner. The property owner has to take it to the dump. The City of Ithaca has concerns of creating a landfill accessible only on roads in the Town of Newfield. He knows that 50% of land fills are contaminated by illegal dumping and when the City of Ithaca says that this will be just clean fill but people will dump garbage there. He is trying to get the City of Ithaca to not use the property as a land fill.

Code Enforcer Harry Wright – Mr. Wright stated that he noticed that Mr. Bury had taken his drawings, he will send him an email tomorrow, followed by a hard copy that he should really get them submitted for approval and along with his Notice of Intent.

Mr. Frandsen he thought was getting closer to start digging. He still needs to get the water system approved by NYS. It seems there is a hold up with the engineers for some corrections that need to be made. He is not sure how close he is to starting.

Recreation – CP Laughlin stated that Baseball sign-ups will begin soon.

County Legislator – County Legislator Dave McKenna stated that he attended a Marcellus Shale meeting at the Heights Theatre. They did not print a pretty picture. Compressors are huge, take up a lot of land and are very noisy. Census Forms will be mailed out. He encouraged people to fill out the forms and get them mailed back in. 4-H is going to have their annual duck race on 4/25. He will drop off some information to the Town Hall. Broad Band meeting was held and the request was denied.

Supervisor Driscoll stated he was able to attend the meeting; this particular grant activity was not going to work. \$800,000.00 is a lot of money. It was not well defined and not everyone had the same info sitting around the table. It is a complicated issue and everyone wants to bring Broad Band into the County where it doesn't exist but this was too much, too fast and too expensive.

There being no further business motion was made by CP Dolge to adjourn the meeting at 8:20PM. Motion was seconded by CP Hart. All approved.

Respectfully submitted,

Katharine Crance  
Town Clerk

March 22, 2010  
Date