

TOWN BOARD MEETING

The Regular Meeting of the Town Board of the Town of Cortlandville was held at the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, with Supervisor Tupper presiding.

Members present:

Supervisor, Richard C. Tupper
Councilman, Theodore V. Testa
Councilman, Ronal L. Rocco
Councilman, John C. Proud
Councilman, Gregory K. Leach
Town Clerk, Karen Q. Snyder, RMC

Others present were: Town Attorney, John Folmer; Highway Sup't. Carl Bush; Town Planning Board Member, Nick Renzi; Town Zoning Board of Appeals Member, David Alexander; Barb Leach; County Legislator, Susan Briggs; Mike Barylski; Jim Reeners; Mike Reeners; Nancy and Richard Kroot; Beth Holland; Loren Holland; Amy and Jeff Bauer; Karen Hempson; Julie Hempson; Pamela Stark; Sharyl Overhiser; Eric Marquardt; Ha Svereika; News Reporters: Eric Mulvihill from WXHC, Catherine Wilde from the *Cortland Standard*, and Sharon Stevans for Channel 2, Access TV.

Supervisor Tupper called the meeting to order.

Councilman Rocco apologized to Attorney Folmer for the argument that took place at the last Town Board Meeting with regard to the Town's draft Wind Energy Facilities Ordinance and comments to be made by the Town Planning Board. Councilman Rocco explained the misunderstanding and stated that he respected Attorney Folmer.

Councilman Leach made a motion, seconded by Councilman Proud, to receive and file the Cortlandville Planning Board Minutes of January 29, 2013. All voting aye, the motion was carried.

Councilman Leach made a motion, seconded by Councilman Proud, to approve the Draft Town Board Minutes January 2, 2013. All voting aye, the motion was carried.

With respect to the payment of the bills, Councilman Proud noted that there was a large bill to be paid out of the water fund due to a major water break near Gutches Lumber on McLean Road. He explained that the repair cost half of the budgeted amount for 2013, which could put the Town in a position later on in the year in which they would need to come up with additional funds.

Supervisor Tupper stated there was a major break that occurred 17 ft. down in the ground; water could not be pumped out fast enough to do the repairs. They did manage to get enough of the repairs done to slow down the damage.

RESOLUTION #52 AUTHORIZE PAYMENT OF VOUCHERS – FEBRUARY

Motion by Councilman Rocco
Seconded by Councilman Leach
VOTES: ALL AYE ADOPTED

BE IT RESOLVED, the vouchers submitted have been audited and shall be paid as follows:

Funds A, B, DA, DB	Voucher #116-160:	
	General Fund A	\$ 55,293.84
	General Fund B	\$ 4,526.61
	Highway Fund DA	\$ 0.00
	Highway Fund DB	\$ 34,820.61
Funds CD1, CD3, CD4	Voucher #2-2:	
	BMills Rehab CD1	\$ 0.00
	Town Wide Rehab CD3	\$ 5,116.94
	Business Devl CD4	\$ 0.00

Fund CD2	Voucher #	
	Senior Rehab CD2	\$ 0.00
Fund HC, SS, SW	Voucher #45-67	
	NYS Rt 13 Sewer Rehab HC	\$ 5,689.71
	Sewer SS	\$108,387.75
	Water SW	\$ 12,192.54
Funds SF, TA, TE	Voucher #4-6	
	C'Ville Fire District SF	\$ 0.00
	Trust & Agency TA	\$ 33,362.15
	Expendable Trust TE	\$ 0.00

Supervisor Tupper offered privilege of the floor to Jim Reeners.

Jim Reeners, representing Cornerstone Properties Cortland III, LLC, recalled that he explained his project at the last Town Board Meeting. He stated that after consulting with Planning & Zoning Officer Weber and Attorney Folmer, he decided that rather than attempting to change the parcels from R-1 to R-3, he would rather create a new zoning district R-4. He explained that all of the parcels contiguous to the eastern boundary of the parcels were B-2; a jump of four zoning districts with no buffer zone. Mr. Reeners proposed a new zoning district R-4 that would "provide greater density but none of the potential non-private living uses that are currently allowed in all other residential districts." He stated it would allow the Town to create areas within the Town that would be protected from what some may consider nuisance uses.

Mr. Reeners read aloud the permitted uses within an R-1 district (which can be found in the Town Code.) Eliminating the public utilities, he stated there were over 40 different combinations of uses that could be in any residential district, R-1, R-2, or R-3. The difference between the districts was the density.

Mr. Reeners stated that even though he would be operating under the 1995 HUD Law which allows him to restrict age in the community to 55 or older, he could still face every single one of the things he read to the Board. He stated that what he was trying to create was a space that was solely a living community; where you don't have to be concerned that your neighbor would do any of the things that he read aloud.

Mr. Reeners stated he was requesting an R-4 district that was designed similar to the R-3 district in density. However the uses in the district would only be: single family homes; two-family homes; multiple dwellings; attached garages, single story sheds of less than 100 sq. ft. of similar design and décor as the primary structure; private swimming pools; gardens; private parks; street lights; utility lines, poles and facilities; water runoff retention areas. Mr. Reeners stated that while the residential development that he was proposing would conform to the new zoning district, there were other areas and many types of residential developments that would also conform. Mr. Reeners provided the Board with information on the proposed R-4 district.

Supervisor Tupper offered privilege of the floor to Karen Hempson.

Karen Hempson, resident of Westmore Lane, stated she was representing the neighbors of the property that Mr. Reeners was proposing to develop (tax map #86.09-01-21.000 and #86.09-01-22.200). She explained that when the neighbors circulated the petition, which she presented to Town Clerk Snyder, Mr. Reeners was proposing a zone change from R-1 to R-3; he was now proposing a new R-4 district. Mrs. Hempson read the petition aloud.

The residents of Westmore Lane, Quail Ridge, and Kinney Gulf Road requested the Board continue to support and preserve the R-1 zoning status of the said property. The residents located on Westmore Lane and Kinney Gulf Road had the understanding that their neighborhoods would remain residential, and that the undeveloped field would be developed as an R-1 parcel. The residents would continue to fully endorse a residentially developed neighborhood expansion consistent with an R-1 zoning, preserving the character of the neighborhood. The neighbors protested any proposals to change the zoning.

Mrs. Hempson stated that the neighbors met with Mr. Reeners to proactively review the proposed development and evaluated the proposed zone change's potential impact on the neighborhood. The residents objected to the zone change based on the sizes of the structures, the population density proposed, the potential water run-off and drainage issues, and the overall negative impact of the neighborhood.

Mrs. Hempson recapped Mr. Reeners plans for his proposed R-3 zone change, and stated that his plans and the population density would forever change the character of their residential

neighborhood. She stated that they learned from Mr. Reeners that if the project fails they would be left with a rezoned parcel and no control over the future development of the land. A zoning change would give the current parcel owner the right to build and develop anything within the zoning regulation. Mrs. Hempson stated that Mr. Reeners' request was about economics; more population density was needed to make the project economically viable. She stated that Mr. Reeners told the residents that he could not guarantee that the development could be exclusively a senior housing project.

Mrs. Hempson stated that the residents do not object to senior housing; do not object to development as R-1; and do not refute the need for more affordable housing. The residents do object to a zoning change; reject the proposed population density; object to the destruction of the nature of the residential neighborhood; and object to any and all variances that negatively impact or forever change the nature of the neighborhood.

The residents of the neighborhood felt that the past and future proposals to change the zoning of the parcel upsets the zoning promise of which the residents based their decision of where they chose to live and raise their families. The residents of the Westmore Lane neighborhood requested the R-1 zone be maintained.

Mrs. Hempson stated that since the petition was signed by the residents, the request was changed to a non-existent R-4 district. Mrs. Hempson stated that she looked up the definition of "spot zoning" which she stated was precisely what Mr. Reeners was proposing. According to legaldictionaries.com, "Spot zoning is the granting to a particular parcel of land a classification concerning its use that differs from the classification of other land in the immediate area. Spot zoning is invalid because it amounts to arbitrary, capricious, and unreasonable treatment of a limited area within a particular district and is therefore a deviation from a comprehensive plan. ..." Mrs. Hempson urged Attorney Folmer to look into the matter.

The monthly report of the Town Justice for the month of January 2013 was on the table for review and is filed in the Town Clerk's office.

Under communications, Supervisor Tupper stated that the Board and Highway Sup't. were invited to attend an Erosion & Sediment Control Class to be held at the NYS Grange Headquarters Building in Cortland on March 7, 2013, from 8:00 a.m.-12:00 p.m.

Supervisor Tupper apprised the Board he received a thank you note from the Board of Directors of the Lime Hollow Center for Environment & Culture thanking the Town for its contribution, which makes it possible for 5th grade field trips and 6th grade camperships.

Under new business, Town Clerk Snyder requested the Board receive and file the petition submitted by Karen Hempson on behalf of the residents of Westmore Lane, Quail Ridge and Kinney Gulf Road, with regard to the proposed zone change.

Councilman Proud made a motion, seconded by Councilman Leach, to receive and file the petition submitted by Karen Hempson on behalf of the residents of Westmore Lane, Quail Ridge and Kinney Gulf Road, submitted February 20, 2013, objecting to the proposed zone change request of James and Michael Reeners for tax map parcel #86.09-01-21.000 and #86.09-01-22.200. All voting aye, the motion was carried.

Town Clerk Snyder apprised the Board she was in receipt of the liquor license renewal application for the Cortland Country Club, and requested the Board receive and file the notice.

Councilman Proud made a motion, seconded by Councilman Testa, to receive and file the Renewal Application Notice Form from Gary S. Wilcox, ABC Officer and Secretary of Board of Governors to the Cortland Country Club, dated February 19, 2013, regarding the renewal of the liquor license for Cortland Country Club located at 4514 Route 281 in the Town of Cortlandville. All voting aye, the motion was carried.

Town Clerk Snyder reminded the Board that in the past the National Safety Council utilized the Town Hall for defensive driving approximately one Saturday a month. The defensive driving course was hosted and trained by Chuck Paul, who has since retired. The National Safety Council has another individual named Theresa Howell who is interested in utilizing the Town Hall one Saturday per month, and two evening classes per month. Town Clerk Snyder was in contact with Mrs. Howell who was hoping for Town Board approval to utilize the building similar to Mr. Paul who did so for 25 years. Discounts would be offered to town residents, senior citizens, and town employees.

Councilman Testa questioned whether Justice Casullo was notified. Town Clerk Snyder indicated that she apprised one of his Court Clerks, but had not had the chance to discuss the matter with him. She explained that Mrs. Howell was interested in utilizing one of the Court's conference rooms.

Councilman Proud questioned whether Mrs. Howell was trained and certified, and a representative of the National Safety Council. Town Clerk Snyder indicated that she was.

Councilman Leach questioned what the Town's responsibility was for after hour activities. Supervisor Tupper explained that Mrs. Howell would have access to the building and would be given a security code.

RESOLUTION #53 AUTHORIZE USE OF THE RAYMOND G. THORPE
MUNICIPAL BUILDING FOR THE DEFENSIVE DRIVING
COURSE FOR THE YEAR 2013

Motion by Councilman Proud
Seconded by Councilman Rocco
VOTES: ALL AYE ADOPTED

BE IT RESOLVED, that the National Safety Council is hereby authorized to use the Raymond G. Thorpe Municipal Building to conduct their Defensive Driving Course for the year 2013 per the submitted schedule, and subject to the availability of the municipal building.

Attorney Folmer reported:

Demolition of Unsafe Building – Route 13 Partners, LLC:

Attorney Folmer reported on the demolition of the former Golden Skillet. Pursuant to the resolution adopted at the last Town Board Meeting, the contract for the demolition of the building was awarded to John Bergeron who was the lowest of the three bids received. Mr. Bergeron signed a contractual obligation. The first step was that he had to apply for a permit from the State of New York, which he did. Mr. Bergeron thought he would have that permit from the State by next week. According to Attorney Folmer, National Grid has to remove its meters before the demolition could take place. National Grid indicated they would be available next week to remove the meters. Mr. Bergeron was given 30-days to demolish the building. The Town made the preliminary arrangements for the air quality testing that has to be done as the demolition occurs.

Councilman Rocco questioned whether there were any fees, fines, or levies placed on the owner of the property for not being able to get the job done in a timely manner. Attorney Folmer indicated that the Town was entitled to collect their costs plus an additional amount as provided in the Town's ordinance. He was not sure what the Town would do to collect something from National Grid unless and until they prevented the Town from completing the work in the contractual period of 30-days.

Councilman Leach questioned whether the underground tanks were included in the demolition. Attorney Folmer indicated that the building would be removed to a slab, that the underground tanks would be removed and the pits that they are in would be filled. The grass must also be mowed.

Under new business there was discussion regarding the Zone Change request of James and Michael Reeners for a proposed new Zoning District (R-4) for property located at the end of Commons Ave., tax map #86.09-01-21.000 and #86.09-01-22.200. Councilman Rocco suggested the matter be turned over to Attorney Folmer for his advice.

Attorney Folmer noted that the item on the agenda asked for the matter to be forwarded to the Town and County Planning Boards for their review and recommendations. Attorney Folmer suggested that what the Board should be forwarding to the planning boards was the draft

text of a proposed local law; not merely the proposed definition of a zone. The Board should be considering those definitions before drafting a local law to be submitted to the County. Attorney Folmer suggested the Board not forward the material that they had to either of the planning boards; the transmittal would be premature.

Attorney Folmer reminded the Board that in 2002 a comprehensive plan was developed for the Town. Either by default or design, the area being discussed was zoned R-1 and has remained that way ever since. He stated that the proposal that the Board had from Mr. Reeners troubled him as it could easily be considered to be an exercise in spot zoning. Attorney Folmer stated that he takes his definitions from the Court of Appeals who has said that the process of spot zoning is: “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners. Spot zoning is the very antithesis of planned zoning.”

Attorney Folmer recalled that in 1999 the Town attempted to rezone some parcels of land on Route 13 near Lorings Crossing at the request of Suit-Kote. The Town tried to rezone the land from a Business zone to an Industrial zone, both of which existed under the zoning code. The Board adopted a local law to do that, and an Article 78 Proceeding was brought against the Town claiming that it was spot zoning. While the local court affirmed and upheld the enactment of the local law, the Appellate Division in the 3rd Department reversed the determination, found that what the Board had done was spot zoning, and annulled the local law. In that instance 13.75 acres were involved as opposed to the 20 acres being discussed now; size was not the determining factor. Attorney Folmer stated that the effect on the neighbors is one of the factors to be considered. In the case to which Attorney Folmer referenced, the Yellow Lantern Campground claimed that the zone change would have a detrimental effect on the operation of the campground. The claim was speculative in nature and was not detailed, yet the Court indicated that was a factor the Board should have considered in making that determination.

Another determination of spot zoning was whether or not what was being proposed was consistent with a comprehensive plan. As Attorney Folmer indicated, the Town’s comprehensive plan has been in existence for years, and makes the property R-1. Attorney Folmer was very concerned that the proposed request for a zone change could be considered to be spot zoning.

Attorney Folmer stated that the Board is a legislative body. Changes to the zoning code are done by enacting a local law; the Board is not required to enact every local law proposed. A question was raised as to whether the Board could be subject to an Article 78 proceeding for failure to consider or adopting a local law. Attorney Folmer indicated that Section 7803 of the CPLR which defines the Article 78 proceeding, provides specifically that the only questions that may be raised in a proceeding are, and the only one that applies, “whether the body or officers failed to perform a duty enjoined upon it by law.” Attorney Folmer stated that the Board is not required to adopt any local law; it is the Board’s discretion.

At this point, Attorney Folmer requested more time to research the matter. Supervisor Tupper suggested the Board table the matter until the next Town Board Meeting.

RESOLUTION #54	TABLE ACTION ON PROPOSED ZONE CHANGE REQUEST FROM R-1 TO A NEW PROPOSED “RESIDENTIAL R-4 DISTRICT” SUBMITTED BY JAMES AND MICHAEL REENERS
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Motion by Councilman Proud
Seconded by Councilman Rocco
VOTES: ALL AYE ADOPTED

BE IT RESOLVED, the Town Board does hereby table action on the proposed Zone Change request submitted by James and Michael Reeners for property located off of Kinney Gulf Road, tax map #86.09-01-21.000, and Route 281, tax map #86.09-01-22.200, from R-1 to a new proposed “Residential R-4 District”, to the March 6, 2013 Town Board Meeting.

Councilman Rocco questioned the status of the joint effort between the Town of Cortlandville, Village of Homer, and the City for a comprehensive plan. Supervisor Tupper explained that the Town, Village, and City entered into an agreement with Thoma Development Consultants to conduct a study of the Route 11 corridor from Wheeler Avenue to the Village of Homer line, with the idea that the corridor is an entranceway to the Village and the City. The corridor study would focus on how the area could be cleaned up and whether or not any grants were available to do so.

Councilman Rocco also questioned what was going on with the clean-up effort on Route 11 near Natoli's Market. Councilman Proud explained that the clean-up was for coal gasification.

There was discussion regarding the Town Sewer District Improvement Project application for the USDA Rural Development funding. Supervisor Tupper explained that the Town applied through the Environmental Facilities Corporation (EFC) for funding for the Route 13 Sewer Project, which was submitted by February 1st. The Town would also be applying to the USDA Rural Development for funding, which had a March 1st deadline. The Town was applying for grant funds from the USDA and a 0% interest rate from EFC. Supervisor Tupper explained that the Town did not yet have an answer from EFC. The Town was advised by its engineering firm and from Fiscal Advisors that to apply to both EFC and the USDA was a risk worth taking. Supervisor Tupper requested authorization to submit the application to the USDA for funding for the Route 13 Sewer Project. He explained that the resolution was the last part of the application for funding. Town Clerk Snyder indicated that she would certify the resolution and submit it to Fiscal Advisors who was overseeing the USDA application.

RESOLUTION #55 AUTHORIZING THE SUBMISSION OF AN APPLICATION
FOR USDA RURAL DEVELOPMENT FUNDING
REGARDING THE TOWN OF CORTLANDVILLE ROUTE 13
SEWER DISTRICT IMPROVEMENT PROJECT

Motion by Councilman Leach

Seconded by Councilman Proud

ROLL CALL VOTE:

Supervisor Tupper Aye

Councilman Testa Aye

Councilman Proud Aye

Councilman Leach Aye

Councilman Rocco Aye

MOTION CARRIED

WHEREAS, the Town of Cortlandville has worked diligently on development of a project to improve the infrastructure of its sewer district, and

WHEREAS, the Town of Cortlandville has adopted a bond resolution authorizing the issue of up to \$4,227,000 in serial bonds to finance the proposed project, and

WHEREAS, all necessary materials have been assembled to complete an application to USDA Rural Development to secure funding from that agency, now therefore

BE IT RESOLVED, the Town Board of the Town of Cortlandville that:

1. The Town Board directs that an application shall be prepared and submitted for USDA Rural Development funding.
2. The Town Board anticipates receipt and disbursement of any such funding as it is able according to environmental review, regulatory, financial and other requirements of municipal infrastructure projects.
3. One (1) certified copy of this Resolution shall be prepared and sent to the Cortland, New York office of the USDA Rural Development agency.
4. The Town Supervisor is hereby authorized to sign any and all documents as appropriate to the application.
5. This resolution shall take effect immediately.

RESOLUTION #56 AUTHORIZE SUPERVISOR TO SIGN AGREEMENT WITH
CIASCHI, DIETERSHAGEN, LITTLE, MICKELSON &
COMPANY, LLP TO CONDUCT AN AUDIT OF THE 2012
TOWN ACCOUNTING RECORDS

Motion by Councilman Testa
Seconded by Councilman Proud
VOTES: ALL AYE ADOPTED

BE IT RESOLVED, the Town Board does hereby authorize and direct the Supervisor to sign the agreement with Ciaschi, Dietershagen, Little, Mickelson & Company, LLP to conduct an audit of the 2012 Town accounting records, for an amount not to exceed \$11,000.00 and \$4,300.00 for a single audit if warranted.

RESOLUTION #57 REFER AQUIFER PROTECTION PERMIT APPLICATION
SUBMITTED BY BYRNE DAIRY, INC. FOR PROPERTY
LOCATED ON FINGER LAKES EAST DRIVE TO THE TOWN
AND COUNTY PLANNING BOARDS FOR REVIEW AND
RECOMMENDATIONS

Motion by Councilman Leach
Seconded by Councilman Proud
VOTES: ALL AYE ADOPTED

BE IT RESOLVED, the Aquifer Protection Permit application submitted by Byrne Dairy, Inc. for a dairy product manufacturing facility for property located on Finger Lakes East Drive, owned by the Cortland County Industrial Development Agency, tax map #105.00-03-15.000, 16, 17, 18, 19, 20, 21, 24, 25, 26, and 27, shall be forwarded to the Town and County Planning Boards for review and recommendations.

Councilman Rocco stated he would like to get a report from the DEC with regard to the bog located on the site. Supervisor Tupper indicated that since the site already went through a SEQR review to create a shovel-ready site, an extensive SEQR review would not be necessary. Attorney Folmer stated that the preservation of the bog was already taken into consideration; Byrne Dairy was already working with Lime Hollow Nature Center regarding its preservation. Planning Board Member, Nick Renzi indicated that there was a buffer around the site. Councilman Rocco stated that he spoke with someone “in the know” who indicated there was a lot of unfinished business with the DEC, and wanted to bring the information to the Board’s attention.

Supervisor Tupper mentioned that the Board had been talking about updating the Town’s 2002 Land Use and Aquifer Protection Plan. The Town received two proposals from Clough Harbour & Associates and Thoma Development Consultants to update the corridor study. He explained that the Board was asking that the study put more emphasis on residential development because the Town has a shortage of approved residential building lots in the Town. The study would look at the Town’s water and sewer lines, and topography to see where more residential development could be placed within the Town. As Councilman Testa has said in the past, and according to the new census, the population of the Town is the fastest growing in Cortland County.

Supervisor Tupper explained that Clough Harbour & Associates would be conducting the new study as they did in the past. The Board was in receipt of a copy of the scope of services including the cost. A “community committee” would also be involved in the study similar to the original 2002 study, which included people such as Councilman Proud, Planning Board Member Renzi, and local developers such as David Yaman, to discuss what people wanted for the future of the Town.

Planning Board Member Renzi requested a copy of the scope of work, which Supervisor Tupper would provide.

RESOLUTION #58 ACCEPT SCOPE OF SERVICES SUBMITTED BY CLOUGH
HARBOUR & ASSOCIATES (CHA) TO PREPARE AN
UPDATE TO THE TOWN OF CORTLANDVILLE'S
LAND USE & AQUIFER PROTECTION PLAN

Motion by Councilman Proud
Seconded by Councilman Testa
VOTES: ALL AYE ADOPTED

BE IT RESOLVED, the Town Board does hereby accept the Scope of Services submitted by Clough Harbour & Associates (CHA) to prepare an update to the Town of Cortlandville's Land Use & Aquifer Protection Plan completed in 2002, which was prepared in response to community concerns about future development in the Town.

No further comments or discussion were heard.

Councilman Proud made a motion, seconded by Councilman Leach, to adjourn the Regular Meeting. All voting aye, the motion was carried.

The meeting was adjourned at 5:55 p.m.

Respectfully submitted,

Karen Q. Snyder, RMC
Town Clerk
Town of Cortlandville

*Note:

The draft version of this meeting was submitted to the Town Board for their review on March 28, 2013.
The draft version of this meeting was approved as written at the Town Board meeting of April 3, 2013.