

Town of Newfield Regular Board Meeting Minutes
Dec. 9, 2011

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 Trask and Supervisor Driscoll. Also Present: Atty. Edward Hooks, Highway Superintendent Kevin Berggren, Water/Sewer Supervisor Rob Brewer, Code Enforcer Tony Petito, County Legislature Dave McKenna.

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

Message from the Supervisor – Supervisor Driscoll stated that he had been advised of some changes to the Agenda tonight but he still wanted to continue with the message from the Supervisor. He stated that in June things took a change for the Town. The bookkeeper left with no notice. He brought in bookkeepers to be sure he was meeting payroll and to be sure we were in a correct position financially. Supervisor Driscoll reported to the Board and the Community the problems that were going on in his office in trying to get the finances recorded and up to date. To improve communication amongst the Board Member Supervisor Driscoll has asked the board to oversee certain departments and be a liaison between that dept. and the Board. CP Laughlin will be the liaison between the Town Clerk's Office, Judges and Supervisor Office, CP Trask; Highway Dept., Casey Powers; Recreation. CP James will chair this committee. Everyone thinks that this is a good approach to take going in to 2012.

PRIVILEGE OF THE FLOOR

Tom Gerow, Blakeslee Hill Rd. stated that he had talked with the Board a few months ago regarding a failing guardrail and also brought to the attention of the Board with truck traffic on Blakeslee Hill. He wished to thank the Highway Superintendent and the Highway Dept. for coming up and fixing the guardrail issue immediately. They did a great job. He requested that the town look into getting a weight limit on that particular road. Since he made that request he had another tractor trailer get stuck on that hair pin turn about half way up the hill.

Cindy Schulte, Burdge Hill Rd., stated she was attending tonight to show support for Zane's Eagle Scout presentation. Mrs. Schulte stated the Town has had Bookkeeping issues for a long time when she was on the Board. The Bookkeeper, at that time, and Mrs. Schulte went to Albany for a GFOA to learn how to do the books correctly. She applauded the Board for the effort they are doing and reminded them that they are a team and it sounds like they are on the right track.

Amy Heffron, Van Kirk Rd. resident and Business Owner. Spoke on the article that was in the Newfield News today and wanted everyone to know that it was full of lies. She thinks Mr. Driscoll is totally incompetent and doesn't think the town can stand any more of him being in his position and asked that he resign.

CP Hart asked to speak under Privilege of the Floor as a Newfield Resident. He stated he has respect for some of the things that Supervisor Driscoll was saying about trying to work together better and some people saying the Town Board needs to work together better but in the last 2 years he has clearly seen a trend where that wasn't the case. He has been on the Town Board 6 years prior to Richard being a Town Supervisor and he can remember numerous times he would receive a phone call from the previous Supervisor asking their opinions about stuff, switching insurance companies. What we thought. When Supervisor Driscoll got in office that bit of reaching out wasn't there. He touted himself with his financial strengths as one of his criteria. The Board has just received the Audit Report for 2010 and there was a \$32,000.00 discrepancy in cash reconciliations which basically means it is not traceable or it is not there. Our AUD Report was due in April he believes it was only submitted within the last 2 weeks. Mr. Hart discussed the process of Supervisor Driscoll hiring his Bookkeeper and some of the changes that were made, including the changing of the Worker's Comp. Ins. and having double coverage which encompassed a \$13,000.00 fine to the Town. CP Hart stated that this was the hardest year that he has seen as far as the budget goes, trying to stay under the cap and to not do the extra effort that goes into something is disappointing. When the Bookkeeper left he suggested to Supervisor Driscoll that the Town use Paychex for the payroll. To take the stress off the Town. Therefore Town payroll taxes were not paid and the government will not be sympathetic and will probably not waive the fines and fees.

CP James stated that indeed it has been very rough and has listen to CP Hart's comments at almost every Board Meeting and appreciated Cindy Schulte's comment that we are all responsible for this mess. She sits at Board meetings and hears not me, let's point a finger or they weren't here the year before. It has been very disappointing for her to hear. When they met with Duane Shoen there were some problems prior to Richard. CP Hart stated that they were nowhere near the level they were this year. It has been a difficult and the Board has not worked together and it has been disappointing to her.

CP Trask stated that what CP James said was not entirely true. The Board has worked together and they did manage to work together to get through a very difficult budget. Not any part of it made anyone happy. However, the budget being what it was being out of the way and as difficult as it was we have been chastised by people in the Community and a letter has been sent to the Board regarding are lack of being able to work together by individuals that have not attended the meetings to see what is going on. He has seen this whole thing for a year now and watched it unfold and watched it turn into something that has become somewhat unmanageable. Fortunately we have had a couple of people added to try and straighten things out and they are doing a fantastic job. He has some very serious concerns about where the Town is going to end up given the budget process they went through and the fact that the Town is going to have to pay some fines along the way and still reconcile with the Worker's Comp stuff. He wanted to point out that if they were allow to have more involvement in what has happen this year they would have. They were not allowed to nor were they told the condition of things right up to budget time when the Board started asking questions

and trying to find out where all the discrepancies were. He does not like being told that he hasn't been a fair player, he has been a very fair and he has tried to work very hard to make this whole thing come out right and every time a corner is turned we find something else that isn't right. Hopefully it will work its way out and is looking forward to smoother times in the next couple of years. The way it has gone this year has left him with a foul taste in his mouth.

Motion was made by CP Trask to approve the Minutes of the Nov. 2, 2011 Special Board Meeting, Nov. 3, 2011 Special Meeting, Nov. 9, 2011 Public Hearing and the Nov. 10, 2011 Regular Board Meeting. Motion was seconded by CP Hart. All approved.

AGENDA CHANGES

CP Trask stated he would like to add a resolution to send a letter to the State Comptroller requesting a full town audit. This will be item E under New Business

CORRESPONDENCE – None

NEW BUSINESS

Supervisor Driscoll introduced Zane Carter who wished to speak to the Board regarding his Eagle Presentation. Zane Carter is a member of the Boy Scout Troop 34 and would like to work on improving the areas around the vernal pools that were built on the Van Kirk Rd. in 2009. The first part of his project he would like to make a brochure with general information about vernal pools and species that use them. Second he would like to build a stand for the sign that was made by the Upper Susquehanna Coalition. Third he would like to build benches and put them near the pools and a small path to the pools so people can find them.

After his presentation motion was made by CP James to approve and support Zane Carter's Eagle Scout project by improving the Newfield Vernal Pools as he has described. Motion was seconded by all Board Members. Motion carried

A presentation was made by Dwight Mengel, representing the City Van. He explained the services of the City Van pilot project that was presented to the Town in late 2010. The City Van has been operating through Ithaca Dispatch, a local cab company, since the beginning of March of 2010, it will end at the end of December 2011. The main features of it were to allow people who do not have access to TCAT to be able to travel in town to center Ithaca. They have carried over 4000 trips. The cost per passenger to be less than a regular taxi fare, a regular taxi fare from Newfield to Ithaca is \$19.00 each way. The cost of the City Van Service is just over \$13.00 per trip. They will write

a report next year and be able to give the Board the details on how the pilot project came out. The Grant that was received to experiment with this new rural service is coming to an end.

A discussion arose concerning the premiums being paid by the Town for health insurance maintained by those employees of the Town not covered by a collective bargaining agreement. Currently all such employees (including the Town Clerk, Town Supervisor and Town Highway Superintendent) who elect to enroll in the Town's health insurance plan have their premiums covered 100% by the Town. Given concerns about the budget, the following resolution was offered by CP James and seconded by CP Hart.

RESOLUTION NO. 17-2011

WHEREAS the Newfield Town Board wishes to establish a new health insurance premium contribution rates for the Town Supervisor and the Town Clerk effective as of January 1, 2012.

NOW THEREFORE BE IT RESOLVED that so long as the Town Supervisor and/or Town Clerk are covered by the Town's health insurance plan (as in effect and from time-to-time amended or substituted) the Town shall contribute 75% of the health insurance premium for the Town Supervisor and the Town Clerk and the Town Supervisor and the Town Clerk shall each contribute 25% of the Town Health insurance premium.

BE IT FURTHER RESOLVED that this resolution supersedes and replaces any other resolution previously enacted or any practice formally followed by the Town pertaining to payment of premiums for the Supervisor and Clerk.

CP Hart stated that he would like to see the language changed to a full time employee 30 hours or more.

CP James stated that she would like to see the resolution that constitutes a full time employee. CP Hart asked that the language be changed to add the 30 hours for full time elected official because it is to take effect Jan. 1, 2012.

Supervisor Driscoll stated there are many resolutions in effect and all the resolutions should be looked at and examine it for consistency and come up with one resolution that takes care of it and they are not bouncing back and forth between something addressing one particular issue and another resolution addressing another.

AYES
CP James
Supervisor Driscoll

NAYS
CP Laughlin
CP Hart
CP Trask

Motion failed

CP Hart stated he would like to make a motion that an amendment be added to Resolution No. 17-2011 stating that full time Town Clerk and Town Supervisor working 30 hours per week or more be eligible.

Motion was seconded by CP Trask.

CP Laughlin stated that people working 10 hours a week should not be getting health insurance. You would not be getting it anywhere else.

RESOLUTION NO. 17-2011 will now read:

WHEREAS the Newfield Town Board wishes to establish a new health insurance premium contribution rates for the Town Supervisor and the Town Clerk effective as of January 1, 2012.

NOW THEREFORE BE IT RESOLVED that so long as the Town Supervisor and/or Town Clerk are covered by the Town's health insurance plan (as in effect and from time-to-time amended or substituted) the Town shall contribute 75% of the health insurance premium for the Town Supervisor and the Town Clerk and the Town Supervisor and the Town Clerk shall each contribute 25% of the Town Health insurance premium. Full time Town Clerk and Town Supervisor working 30 hours a week or more will be eligible for health insurance.

BE IT FURTHER RESOLVED that this resolution supersedes and replaces any other resolution previously enacted or any practice formally followed by the Town pertaining to payment of premiums for the Supervisor and Clerk.

AYES

CP Trask

CP Laughlin

CP Hart

NAYS

CP James

Supervisor Driscoll

Motion carried.

RESOLUTION NO. 18-2011

WHEREAS Kathy Crance has submitted to the Supervisor and the Town Board a letter of intent to retire from the position of Town Clerk effective December 31, 2011, and

WHEREAS Kathy has served as Town Clerk for fifteen years with exceptional ability, with dedication, excellence, a deep knowledge of the job, its requirements and ever changing regulations, and

WHEREAS Kathy has provided service with good humor and in a consistently friendly manner,

WHEREAS Kathy always made a person smile at the Clerk's counter and feeling well cared for as they left - even when Kathy was collecting their taxes and dog license fees, and

WHEREAS the Town Board the Kathy's notice to retire with a stunned silence,

NOW THEREFORE BE IT RESOLVED that it is with great sadness that we anticipate Kathy's retirement but with greater joy that we send her off to a much deserved, long and happy retirement with much love, good wishes, late nights and long sleepy mornings, more time being a homebody with Paul, lots of rabble rousing time at camp, more Mom and Grandma time, and all the travel packed into that bucket list she's been making.

BE IT FURTHER RESOLVED that Kathy is not to be a stranger to Town Hall. We'll be missing you a lot – day in and day out.

Motion was made by CP Trask to approve Resolution No. 19-2011. Motion was seconded by CP Hart.

RESOLUTION NO. 19-2011

WHEREAS the Town Board has accepted the retirement of Kathy Crance as Town Clerk, and

WHEREAS Town Board members have interviewed Deputy Town Clerk Karen Kenerson as a candidate for the position and have found her well qualified,

NOW THEREFORE BE IT RESOLVED that the Town Board hereby appoints Karen Kenerson as Town Clerk to serve in such capacity from January 1 to December 31, 2012.

AYES

CP Trask

CP James

CP Laughlin

CP Hart

Supervisor Berggren

NAYS

None

Motion carried.

A discussion was held regarding the resolution requesting a letter be sent to the State Comptroller to conduct an audit of the Town of Newfield. CP Trask read the following Resolution.

Motion was made by CP Laughlin to approve Resolution No. 20-2011. Motion was seconded by CP Hart.

RESOLUTION NO. 20-2011

WHEREAS 1) Several members of the Board of the Town of Newfield have reason to be concerned about the completeness and accuracy of certain financial records of the Town and certain actions or failures to act by the Town Supervisor and 2) The Town Board is desirous of

carrying out its fiscal, fiduciary and legal responsibilities to Newfield residents and taxpayers and to the State of New York in a thorough and prudent manner;

THEREFORE, BE IT RESOLVED AND ENACTED that the Town of Newfield adopts and directs that the attached letter, incorporated into this motion by reference, be sent immediately and without delay to the New York State Comptroller, and the New York State Attorney General officially requesting on behalf of the Town of Newfield an investigation and audit of the Town's books and finances and of the activities described in the attached letter by the State of New York to determine whether the information in the letter is accurate, to find and locate any fiscal problems or legal or ethical violations or improprieties by the Town or any of its officials, and to guide the Town in making appropriate corrections to fully comply with New York State Law.

CP Hart then read the letter that is to be attached to the Resolution.

*TOWN OF NEWFIELD
166 MAIN ST
NEWFIELD NY 14867*

PHONE: 607-564-9981

FAX: 607-564-7329

December 8, 2011

*Office of the State Comptroller
110 State Street Albany, NY
12236*

Dear Comptroller DiNapoli:

The following letter is being sent to you by the Newfield Town Board and per its directive, as duly authorized by resolution of that Board, adopted by majority vote. This letter conforms to that resolution and constitutes an official request by the Board for an investigation and audit of the Town's financial actions and data for the period 2011 through the date of completion of the investigation and audit. The circumstances giving rise to that resolution are detailed below.

Due to a series of issues surrounding the financial records of the Town of Newfield and the activities of Town Supervisor Richard Driscoll, the Town Board via the members listed below (a majority of the Town Board) requests that your office perform an official investigation. There is great concern about the accuracy of the financial records and that multiple financial obligations are not being met. Town Board members do take their fiduciary responsibilities seriously and have concerns that the Town's financial activities may not have been in proper order. Newfield Supervisor Richard Driscoll has repeatedly stated that he is the Town's Chief Financial Officer. As such, he has direct responsibility for paying federal and state payroll taxes on a timely basis. Over and above that, as the Town Supervisor, he has overall responsibility for all

town activities and financial activities in particular. On information and belief, the undersigned Board members have reason to believe the following has occurred:

1. The "941" quarterly tax report for the calendar quarter April through June 2011 was not filed until November 2011.

2. Withholding taxes for the calendar quarter July through September 2011 were not paid after each payroll, as is required. The delinquent taxes and the "941" for that period were not paid or filed until November 2011.

3. Filing the "941"s and reporting withholding tax payments are long standing and repetitive activities of which supervisor Driscoll was aware. Because of this, the Town anticipates it will be charged significant interest and penalties by the IRS.

4. Tax payments are made by electronic funds transfer. We believe that Supervisor Driscoll may have given the password for this activity to the town's bookkeeper, an unauthorized signatory for such transfers, thus putting the town's finances at risk of theft and breaching his fiduciary obligations to safeguard town funds from invasion. We ask you to investigate this issue.

5. In addition, employee withholdings were done in the wrong amounts on numerous occasions. We have reason to believe this occurred because Supervisor Driscoll did not pay the computer company's fees on a timely basis and, therefore, the Town did not receive the appropriate updates to the computerized payroll system.

6. Early in 2011, without the knowledge or consent of the Town Board, Supervisor Richard Driscoll changed carrier for the town's Workers Compensation insurance. The Town Board did not know of or approve this change and it was not publicly and competitively bid. This subsequently led to a penalty payment of approximately \$6,500. In addition, the change was poorly executed and the town had double coverage for a period of time, which cost the Town of Newfield an additional \$7,000, approximately. After discovering this, the Town Board reversed the Supervisor's decision.

We have reason to believe that the Town's attorney advised the Supervisor that past practice has been for him to take this type of issue before the Town Board. It appears that bypassing the Board may have been intentional. We ask that this be investigated.

7. The financial records of the Town of Newfield were in such disarray that a consultant had to be hired to "clean up the books". Supervisor Driscoll is responsible for maintaining the financial records in good

order and took upon himself to do so. The consultant's work has taken several months and is not yet complete, costing the Town of Newfield significant fees.

8. Several deadlines for preparation of the 2012 budget have been missed and a majority of the Town Board are concerned that the 2012 proposed budget is inaccurate and inadequate. There is doubt that Supervisor Driscoll ever filed the "Tentative Budget" with the Town Clerk, in September, as required by law.

9. The "Annual Update Document" (AUD) for 2010 has not been filed with New York State, as required. This is a responsibility of Supervisor Driscoll to file on a timely basis.

10. The Town Board has not been furnished with adequate, timely, and accurate financial reports in order to carry out its duties. Members of the Board are greatly concerned about the actual and unknown financial condition of the town. For example, because of the lack of reporting, the Board did not discover until the current budget preparation cycle that a transfer of \$10,000 from Contingency Funds to the Highway Fund previously directed by the Board by resolution and vote was not done; this transfer was authorized in January. The failure to complete a major transfer such as this raises concerns about what other financial activities have not been performed and whether the Supervisor is failing to carry out directives of the Board, either intentionally or by negligence.

On a separate matter, an issue unrelated to Newfield but reflective of our concern over Supervisor Driscoll's activities has to do with Unemployment Benefits. At two Newfield Town Board public meetings, Supervisor Richard Driscoll has stated that he is receiving New York State Unemployment Benefits.

A. Since he is receiving a salary as well as paid medical insurance as payment for being Town Supervisor, this is in violation of regulations and law. He knows or should know that a paid elected official, even a part time one, is ineligible for Unemployment benefits. (Cass v Commissioner of Labor, 296 A.D. 2d 759). The Town Board does not have access to the Supervisor's unemployment insurance application, but believes that declarations given under penalty of perjury should be investigated to see if false claims were made or if public monies have been received to which he is not entitled.


B. If he claims to be unaware of "Cass", it should also be noted that he has openly stated that he reports only one day per week as worked to unemployment, while he is observed working 4 or 5 days in most weeks on Town business.

Given the number and magnitude of these issues, the Newfield Town Board officially requests that your department expedite an investigation and audit of the Town of Newfield finances and practices.

Thank you for your attention to this matter.

Jeffrey Hart
Cc: Roy Trask Christine Laughlin JoAnne James

The Attorney General
The Capitol
Albany, NY 12224-0341



Senator Thomas O'Mara
Suite 301 333 East Water St.
Elmira NY 14901

CP Driscoll asked for comments and discussion on the Resolution and the attached letter.

CP James stated that the letter and resolution were handed to her tonight when she walked in. She thought the intention was to be sent as a whole. When the Board left their meeting with Auditor on Monday evening they had decided as a Board, as a unit, including Richard that they were going to ask the State Comptroller to send in a State Auditor to help reconcile some of these issues. She finds the letter to be inflammatory and once again finger pointing. She also surmised drafted by 3 councilmembers which her mind makes her think it was a public meeting by definition. Which she had no knowledge. She thinks this is just an example again of certain motives .

CP Hart stated there was never a meeting with CP Laughlin or CP Trask over this issue.

CP Driscoll asked that everyone please keep to the topic.

Atty. Hooks reminded the Board that there was a motion pending on whether or not the resolution should or should not be adopted.

CP James stated that she just wanted to make it clear that she does support bringing in the Comptroller and that was the intention of the Board and she was going to make sure that they do it. She was not in agreement with the letter.

Supervisor Driscoll stated that he was in complete favor of doing complete audit by the Comptroller. The auditor had taken his investigation of the \$30,000.00 to the fullest investigation that his level of scrutiny could take it. At that point they had a discussion of the next step. To which he said there is always going to be a lingering doubt about \$30,000 which we don't understand that has been investigated. Duane

Shoen said he could not be sure to make a decision on whether or not this was a fraud. Mr. Shoen felt it was poor bookkeeping, sloppy bookkeeping. The letter was given to him by CP Trask before the meeting. He is not in favor of the letter because it contains material misstatements in terms of dates and sequence. If there is going to be an investigation he would hope that they could get together and talk specifically amongst themselves about the correct information and situation. He would prefer to work together to put a document together and a request for a full investigation and audit by the Comptroller that is accurate in terms of their needs. He is not voting in favor of the document and this approach but he is in favor of an audit.

CP Hart stated that his concern was that this was something that might not make it to the next Board Meeting and they needed to do something about it now. Now they are being scrutinized about it. He then called for the vote.

CP Trask stated he had something to say. The discussion that was held on Monday night, it was never mentioned that the State Comptroller become involved in this process until the very end when CP Trask asked the question of the Auditor. If he felt there was any fraudulent activity in regards to the \$32,000.00 reconciliation. The Auditor stated he could not be certain there was any fraudulent activity. That was when the discussion started to have the comptroller come. The Comptroller was never discussed again and there was no agreement made between any one it was just a discussion and if there was truly an interest in having the comptroller come and do an investigation it would have been on the Agenda already. That didn't happen and it wasn't even up for discussion so he made it happen and that is how it got here.

Casey Powers stated she was at the meeting with the Auditor. There were several things that were said. One was the Auditor he did not think it was fraudulent but he could not be absolutely positive. He could not find, after looking very carefully, for a fraudulent act. The Town Board did discuss taking this to the State Comptroller. The letter had not been discussed.

AYES

CP Laughlin

CP Hart

CP Trask

NAYS

CP James

Supervisor Driscoll

Motion carried.

OLD BUSINESS

CP Laughlin stated that an employee stopped in before the meeting and asked if Supervisor Driscoll had taken care of the Worker's Compensation being re-submitted from last April. Supervisor Driscoll stated he is waiting for a call back from the Binghamton Office.

Motion was made by CP James to approve the payment of the December, 2011 monthly bills. Motion was seconded by CP Laughlin.

General Fund totaling	\$13,519.17
Recreation Fund totaling	\$ 1,768.67
Highway Fund totaling	\$18,932.64
Street Light Fund totaling	\$ 939.73
Sewer Fund totaling	\$ 876.96
Water District 1 totaling	\$ 1,852.80
Water District II totaling	\$ 285.47

Motion carried.

REPORTS

Highway Superintendent – Highway Superintendent stated that in order to be able to include some roads in the road assessment for CHIPS he needed the Board to approve the roads. They had been approved previously but their names were not mentioned. The roads are Eleanor Way, Sydney Terrace and Short Lane.

Motion was made by CP James to approve the adding of Eleanor Way, Sydney Terrace and Short Lane to the inventory list of Town roads. Motion was seconded by CP Laughlin. Motion carried.

Recreation – Dustin James, Recreation Director reported that Basketball is up and running. A shoot-A-Thon was held and it looks like a total of approximately \$2000.00 was raised. He is working on an end of the year slide show to present to the Board.

Code Enforcement – Code Enforcer Tony Petito reported on the cases he is working on and an address he has concerns about.

Code Enforcer Harry Wright was attending a Fracking presentation at the Newfield Fire Hall. He left with the Board Members a summary of the Building Permits issued through 12/8/11.

County Legislature – County Legislature Dave McKenna reported the Legislators approved the grant for the work on the Covered Bridge. Depot Road is now open. Shelter Valley has some issues with the creek and debris. He will be attending a meeting in the morning concerning this issue.

There being no further business motion was made by CP Trask to adjourn the meeting at 9:55PM. Motion was seconded by CP James. Motion carried.

Respectfully submitted,

Katharine Crance
Town Clerk

Dec. 14, 2011
Date