

REGULAR TOWN BOARD MEETING

April 14, 2010

PLEDGE OF ALLEGIANCE:

I. CALL TO ORDER: (7:00 P.M.)

Board Members Present

Gay H. Lenhard, Supervisor
Thomas J. Cole, Councilman
David F. Feeney, Councilman
Thomas J. Uschold, Councilman

Board Members Absent

Malcolm E. Perry, Councilman

Others Present

Lynn A. Bianchi, Town Clerk
Daniel Schum, Town Attorney
David Widger, Highway Superintendent
Frank Rakoski, ABNER
1 Participation in Government student

Purpose of the Meeting

To audit claims, act on monthly reports and remittances, and to transact such other business which may legally come before said meeting.

II. APPROVAL OF THE MINUTES:

Resolution #111-4/10

Introduced by Councilman Uschold
Seconded by Councilman Cole

BE IT RESOLVED, that the minutes of the Regular Meetings of March 2010, there being no errors or omissions, stand approved as submitted.

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March 10, 2010:

Vote of the Board:

Ayes: Cole, Lenhard, Uschold

Nays: None

Abstain: Feeney

Absent: Perry

March 24, 2010:

Vote of the Board:

Ayes: Cole, Feeney, Uschold

Nays: None

Abstain: Lenhard

Absent: Perry

III. PRIVILEGE OF THE FLOOR:

None

IV. REPORTS AND REMITTANCES FROM TOWN OFFICERS:

Resolution #112-4/10

Introduced by Councilman Uschold

Seconded by Councilman Cole

BE IT RESOLVED, that the Reports and Remittances from Town Officers in detail for the month of March 2010, showing receipts and disbursements as submitted by the Town Clerk, be accepted as read, monies and fees to be acknowledged by the Supervisor and copies of the same filed with the Town Clerk.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

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Nays: None
Absent: Perry

V. TOWN AUDITS:

Resolution #113-4/10

Introduced by Councilman Cole
Seconded by Councilman Feeney

BE IT RESOLVED, that the General Fund, Part-Town Fund, Highway Fund, Drainage Fund, Lighting District Funds and Sewer District Funds being vouchered and submitted for audit, chargeable to the respective funds be approved:

General Fund	\$ 99,142.36
Part-Town Fund	26,921.50
Highway Fund	38,744.49
Capital	55.00
Sewer Funds	223.29
Lighting	15,058.97
Water	335.63
Drainage	<u>612.34</u>
TOTAL.....	\$181,093.58

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold
Nays: None
Absent: Perry

VI. CORRESPONDENCE RECEIVED AND FILED:

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1. Letter from Andrew Cuomo, State of New York Office of the Attorney General, to Supervisor Lenhard, thanking her for facilitating recent Charities Bureau presentation by Asst. Attorney General Audrey Cooper.
2. Copy of letter to Jo Anne Antonacci from Supervisor Lenhard on being selected as the next BOCES 2 District Superintendent.

VII. REPORTS FROM TOWN OFFICERS:

Gay H. Lenhard, Supervisor

1. We are going to be receiving a \$25,000 grant from the U.S. Department of Agriculture to formulate a farmland protection plan. John Steinmetz applied for it, but we do have to match some of this money.
2. The Library sign is up underneath the Town of Ogden Community Center sign. It looks very nice. The Library has agreed to split the cost with us.
3. We had a “Biggest Loser” contest in the Town of Ogden. We had seven winners with the top person losing 27 pounds. It was very successful with 167 total pounds lost by 18 people. We were fortunate to get some gift cards from local people, so it was all contributions. It was instituted by the employees, and I am very proud of them. **Councilman Uschold:** Is this going to reduce our health care premiums? **Supervisor Lenhard:** The more we get healthy, the lower our premiums will become, eventually.
4. I want to report that Jack Crooks received an award from the Finger Lakes Building Officials Association for which he has been President the last 5 or 6 years. I was invited to attend the award banquet. He has done a wonderful job in that position, and they are very sad to see him go. He certainly deserved that very special award.
5. I went to a lunch meeting for the builders in our community to meet Bob Prince from the Town of Parma, who will be doing the building inspections for all of our new buildings. This was Jack Crooks idea, and it was very productive.

Thomas J. Cole, Councilman

No report.

David F. Feeney, Councilman

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1. The Towns of Rush and Perinton will also receive the farmland protection plan grant. There are several things we have to do to qualify for this grant. The main thing is to get the farmers involved by coming to our meetings and helping us along with some of our decisions. The time frame for that happens to be during the busiest time for a farmer. John Steinmetz is going to talk to John Brennan who helped us get this grant from the state, and see if we can't extend the time frame so the farmers can be involved in the process. After he meets with John, he will come back to me and we will meet with Gay and get back on board with the open space plan. **Supervisor Lenhard:** This is a great opportunity for us. The money will pay John Steinmetz and help us get through this process. **Councilman Feeney:** With advice from some of the farmers, it will be a good thing.

Malcolm E. Perry, Councilman

Absent.

Thomas J. Uschold, Councilman

No report.

David H. Widger, Highway Superintendent

1. Today we sent out cards to residents living on the roads that we are going to be working on. This lets them know when we are going to start and a brief description of the process. We start on Vroom Road, north of Chambers, with drainage work. Then we start projects on Chambers Street, west of Vroom Road to Washington Street, Matthew Circle over into Stoney Pointe Subdivision.
2. Everything is on hold now with the County until we get a state budget. All of our projects come through the CHIPS Program. The projects are all set, but we are waiting for the money to come through so they can give us the contracts to move forward. They are hoping to have one by June.
3. We have been cleaning out some of the creeks.

Councilman Feeney: Dave's crew did some drainage work this past fall at the end of the tract I live on. The drainage work was a success.

Lynn A. Bianchi, Town Clerk

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1. Today Supervisor Lenhard and I attended the Chamber of Commerce meeting. There was a presentation from the Superintendent of Schools, Bonnie Seaburn, and Mike Crumb on the school budget. The good news is no increase.

Daniel G. Schum, Town Attorney

1. I am working with the Parks Director on finalizing the parks usage agreement. I met with Peter O'Brien, Supervisor Lenhard and a gentleman from Spencerport Youth Baseball. We resolved the differences and a revised agreement was given to the Parks Department today. I commend our Parks Department Director for putting those things in place so we don't get caught short.

Supervisor Lenhard: Dan, I appreciate your help with this, and we could not have done it without you. We need to make sure that these sports groups who use the park free of charge, understand that they need to cover themselves so that we are not liable. He walked out with a different perspective. It worked out very well.

Councilman Cole: Does this agreement cover all four of those? **Dan Schum:** Yes, he has the same agreement. **Supervisor Lenhard:** This is the first President of a group who came and had issues with the agreement. The others have not started yet, but I expect one of them will come in soon, but we have done our homework.

VIII. UNFINISHED BUSINESS:

None

IX. NEW BUSINESS:

Resolution #114-4/10

Introduced by Councilman Uschold
Seconded by Councilman Cole

WHEREAS, L.L. Huff Co., Inc., with a place of business at 4108 Canal Road, Spencerport, NY 14559, has applied to the Ogden Town Board to

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renew its license to excavate and remove earth, sand, gravel and similar material;
and

WHEREAS, the Town Board of the Town of Ogden has reviewed Mr. Huff's application, dated May 11, 1998, to mine one (1) acre of land for a period of one year commencing on May 14, 1998 and expiring on May 13, 1999, and is now desirous of extending this license through May 13, 2011; and

WHEREAS, Mr. Huff previously prepared and filed with the Town of Ogden an Environmental Assessment Form as required by the State Environmental Quality Review Act ("SEQR") and Chapter 210 of the Code of the Town of Ogden; and

WHEREAS, Mr. Huff has informed the Town Board that he will not make any substantial or material change in the scope of operations and has requested renewal of his license to continue mining operations on the same acre of land covered by the existing permit which expires May 13, 2010; and

WHEREAS, pursuant to the New York State Department of Environmental Conservation regulations implementing SEQR at 6NYCRR Chapter 617.13(d) and Section 210-13. of the Town Code, the proposed renewal is a Type II Action deemed not to have a significant effect on the environment; and

WHEREAS, the Town Engineer has reviewed the maps, plans and the site and find the same in conformance with Chapter 76 of the Code of the Town of Ogden and conditions of the current permit.

NOW, THEREFORE BE IT RESOLVED:

SECTION I: That the Town Clerk is hereby directed and authorized to issue to L.L. Huff Co., Inc. an excavation permit for the excavation of sand and gravel from the subject premises (tax account #086.01-1-6.31), which permit shall be for a one year period, commencing on May 14, 2010 and expiring on May 13, 2011.

SECTION II: That prior to issuance of such permit, the Town Clerk shall collect a fee of \$50.00 as the permit is directed herein to be granted only for a term of one year.

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SECTION III: That all excavations conducted by the applicant shall otherwise comply with all of the terms and provisions of Chapter 76 of the Code of the Town of Ogden, including, without limitation, compliance at all times with the provisions of Section 23-5 of the Excavation Ordinance of the Town of Ogden, including but not limited to, maintaining slopes to no greater than 1 to 3 and staking all boundaries in accordance with a certified instrument survey.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Resolution #115-4/10

Introduced by Councilman Uschold

Seconded by Councilman Cole

WHEREAS, on January 8, 1992 the Town Board of the Town of Ogden (“Town Board”) authorized the Town Clerk to renew a License to Excavate and Remove Earth, Sand, Gravel and Similar Material (“License”) to L.L. Huff Co., Inc. (formerly Monarch Sand and Gravel Corporation) in Parcels A and B as identified on Monarch Sand and Gravel’s Mining Plan Map, Cross Sections Map, and Reclamation Plan, revised as of February 26, 1993 (“Mining Plan”); and

WHEREAS, on May 9, 1990 the Town Board authorized the Town Clerk to issue a three-year license to Monarch to mine Parcel C as identified on Monarch’s Mining Plan; and

WHEREAS, Monarch has completed mining and reclamation of Parcels A and B and has virtually completed operations on Parcel C; and

WHEREAS, Monarch submitted a revised Mining Plan and application to the Town Clerk on March 8, 1994, requesting permission to mine an additional 3.7 acres identified as Parcel D on Monarch’s Plan; and

WHEREAS, pursuant to the State Environmental Quality Review Act (“SEQR”) and its implementing regulations located at 6 NYCRR Part 617 and

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Section 210-13 of the Environmental Quality Review Act of the Town Code of the Town of Ogden, the Site was the subject of a coordinated SEQR review, which included 29.3 acres located in the Town of Ogden and encompassing Parcel D; and

WHEREAS, Monarch Sand and Gravel had informed the Town Board that the applicant will not make any material change in the scope of operations as mining progresses from Parcel C to Parcel D; and

WHEREAS, the Town Board has reviewed Monarch Sand and Gravel's application to the Town Clerk and the Notice of Complete Application, dated March 29, 1994, and issued by the New York State Department of Environmental Conservation in regard to Monarch Sand and Gravel's separate application to the State to mine Parcel D.

NOW, THEREFORE BE IT RESOLVED by the Town Board of the Town of Ogden, as follows:

SECTION I: That, based upon review of Monarch Sand and Gravel's application and map amendments, the Town Board of the Town of Ogden does find and determine that: (i) mining and reclamation activities at the Site have been subject to SEQR; (ii) expansion into Parcel D is a phase of activity at the Site previously subject to such SEQR review and for which this Town Board was an involved agency; and (iii) allowing mining and reclamation to occur on Parcel D is a Type II Action under SEQR.

SECTION II: That, prior to issuance of such permit, the Town Clerk is hereby directed to collect a fee of \$50.00 from the owner, L.L. Huff Co., Inc. and authorized to issue a license for the excavation of sand and gravel from Parcel D, which license shall be for a period commencing on April 15, 2010 and expiring on April 14, 2011.

SECTION III: That all activity conducted by L.L. Huff Co., Inc. on Parcel D shall comply with all the terms and conditions of Chapter 76 of the Code of the Town of Ogden and the conditions attached hereto as Attachment A.

ATTACHMENT A

CONDITIONS OF L. L. HUFF CO., INC. LICENSE APPROVAL

The following conditions are imposed with respect to the original Application of V.J. Enterprises

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(Monarch Sand and Gravel Corporation) to the Town of Ogden, dated March 8, 1994, seeking an Excavation Permit for certain premises located on 68 Pine Hill Road in the Town of Ogden (Tax Account #086.01-1-13). Failure by the new owner, L. L. Huff Co., Inc., to satisfy or to be in continual compliance with any of the conditions shall be sufficient cause to rescind the Permit.

1. To the maximum extent practicable, L. L. Huff, Inc., will excavate the working face in a stepped-type excavation to provide safety and stability of the excavation slopes in compliance with OSHA or MSA requirements where applicable.

2. That the hours of operation at the Site shall be:

Monday thru Saturday	7:00 a.m. to 6:00 p.m.
Sunday	No hours

so as to lessen the impact, or potential impact, of noise upon neighboring properties.

3. That all reclamation operations be conducted at all times in compliance with L. L. Huff's current application and the accompanying maps, drawings and narrative, and in compliance with the State of New York reclamation plan and DEC unconsolidated mining permit approval, File #8043-30-0058.

4. That, except with regard to L. L. Huff's variance with the Town of Ogden regarding reclamation on its western property boundary, the actual area of excavation, open and un-restored, at any one time, shall not exceed two (2) acres, and L. L. Huff Co., Inc. shall conduct reclamation activities concurrently with on-going excavation.

5. That L. L. Huff Co., Inc. shall, at all times, conduct the operations at the Site so as to minimize the potential effect of blowing and/or drifting sand and soil, and apply water or other substances (as approved by the Town of Ogden and/or DEC) to all haul roads, entranceways and other areas, as needed, to lessen the impact or effect of such blowing or drifting sand/soil.

6. That actual excavation shall only take place at the Site within the areas delineated upon the maps and plans as submitted to the D.E.C. with this application and at no other locations unless prior approval of the Town of Ogden is obtained.

7. That the height of stockpiles shall, when possible, not exceed the height of the immediately surrounding area, as to minimize the effect of blowing and drifting sand and soil. All topsoil and/or stockpiles shall be appropriately seeded as soon as possible.

8. That all finished slopes shall be graded to a one (1) on three (3) slope and shall be seeded within 30 days of restoration. Further, during excavation, no slope shall be left that is greater than one on three and any such slope with greater slopes shall be appropriately fenced or

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other barrier, including berming, during excavation to avoid potential injury to persons or property.

9. That all processing, washing or other handling materials excavated from the Site shall take place in the Town of Parma and no such washing, processing, screening or handling shall take place within the Town of Ogden.
10. That all vehicles exiting and entering the Site shall exit and enter from Pine Hill Road and there shall be no vehicles exiting or entering the premises from the south.
11. That no excavation shall take place within 100 feet of the designated wetlands OG-2.
12. That no other buildings or permanent equipment shall be installed upon the Site without further application to the Town of Ogden for an amendment to this permit so as to allow the same.
13. That at all times during the hours of operations a guard or attendant shall be on duty.
14. That L. L. Huff Co., Inc. shall, at all times, comply with all other conditions imposed by the D.E.C. or other permit-issuing agencies.
15. That, by the acceptance of this permit and operation under the same, L. L. Huff Co., Inc. agrees to indemnify and save the Town of Ogden harmless for all accounts, damages, costs and judgments of every name and description arising from its mining operations and reclamation of lands performed pursuant to this permit.

These conditions are imposed upon L. L. Huff Co., Inc. so as to lessen any potential change or impact upon the environment and so as to preserve the tranquil nature of the area and the health, safety and welfare of those whom the operation may effect and to provide for a plan for the orderly rehabilitation of the land to a useful condition upon completion of operations.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Resolution #116-4/10

Introduced by Councilman Cole

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Seconded by Councilman Feeney

RESOLVED, that the employment of Judith McDermott, Clerk to the Town Justice, is hereby terminated, effective April 2, 2010.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Supervisor Lenhard: To preface the next three resolutions – they all have topsoil issues. Letters from Dave Widger and Jack Crooks say that all three are OK. Resolution #119 is contingent upon the owner's approval. We thought we would have it today, but he is out of town. **Councilman Cole:** Which owner? The owner that has the dirt laying on their land or the owner of the dirt that got put on the other person's land? **Supervisor Lenhard:** DeMarco has to sign off on it. I just want to assure you that we did not need a town engineer to look at it. Dave Widger and Jack Crooks can look at it to see that there is enough soil left to finish the project. **Councilman Cole:** Is that documented? **Superintendent Widger:** We do that at the Planning Board level. We tell the engineer up front to include that in the plan - how much soil is required for the site and how much excess there will be. Gilmore's sites are all built with just extra topsoil.

Resolution #117-4/10

Introduced by Councilman Uschold

Seconded by Councilman Cole

WHEREAS, Richard P. Gilmore, 3900 Buffalo Rd., Rochester, NY, has applied for authorization to remove topsoil; and

WHEREAS, said application requests authorization to remove an area approximately 1,300 cubic yards, located at Lot 119 Alderbrook Trail.

NOW, THEREFORE BE IT RESOLVED:

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SECTION I: That the Town Board of the Town of Ogden hereby authorizes Richard Gilmore to remove an area approximately 1,300 cubic yards, located at Lot 119 Alderbrook Trail.

SECTION II: That said Topsoil Removal Permit will be issued by the Town Clerk and will be good for a period of time from March 25, 2010 through November 25, 2011.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Resolution #118-4/10

Introduced by Councilman Cole

Seconded by Councilman Uschold

WHEREAS, Richard P. Gilmore, 3900 Buffalo Rd., Rochester, NY, has applied for authorization to remove topsoil; and

WHEREAS, said application requests authorization to remove an area approximately 1,200 cubic yards, located at 3900 Buffalo Road.

NOW, THEREFORE BE IT RESOLVED:

SECTION I: That the Town Board of the Town of Ogden hereby authorizes Richard Gilmore to remove an area approximately 1,200 cubic yards, located at 3900 Buffalo Road.

SECTION II: That said Topsoil Removal Permit will be issued by the Town Clerk and will be good for a period of time from March 25, 2010 through November 25, 2011.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

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Nays: None

Absent: Perry

Resolution #119-4/10

Introduced by Councilman Uschold

Seconded by Councilman Feeney

WHEREAS, Rick Lemcke, 293 Peck Road, Hilton, NY, has applied for authorization to remove topsoil; and

WHEREAS, said application requests authorization to remove an area approximately 6,300 ± cubic yards, located at Ogden Heights Senior Apartments on Spencerport Road, contingent upon approval from the owner of said property.

NOW, THEREFORE BE IT RESOLVED:

SECTION I: That the Town Board of the Town of Ogden hereby authorizes Rick Lemcke to remove an area approximately 6,300 ± cubic yards, located at Ogden Heights Senior Apartments on Spencerport Road, contingent upon approval from the property owner.

SECTION II: That, in the event the calculated remaining topsoil is insufficient to restore disturbed areas with not less than 6” of compacted topsoil, the import of any shortfall will be the responsibility of the property owner.

SECTION III: That said Topsoil Removal Permit will be issued by the Town Clerk and will be good for a period of time from April 2010 through July 2010.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Resolution #120-4/10

April 14, 2010

Introduced by Councilman Uschold
Seconded by Councilman Cole

WHEREAS, Forest Creek Equity Corp., on behalf of Westampton Properties, LLC, did heretofore make application to rezone certain property within the Town of Ogden from R-1 Residential to RB – Restricted Business; and

WHEREAS, pursuant to a letter dated April 8, 2010, that application has been withdrawn.

NOW, THEREFORE BE IT RESOLVED:

SECTION I: That, by the adoption of this resolution, the Town Board of the Town of Ogden acknowledges the withdrawal of the application previously made by Forest Creek Equity Corp. for rezoning and, as a result of such withdrawal, the Town Board need not take any further action whatsoever with respect to such application.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold
Nays: None
Absent: Perry

X. ADJOURNMENT:

Resolution #121-4/10

Introduced by Councilman Feeney
Seconded by Councilman Cole

RESOLVED, that the Regular Meeting of the Town Board of the Town of Ogden be and hereby is adjourned to Work Session at 7:17 p.m., at which time the public was invited to attend, and hereby is adjourned at 8:00 p.m.

Vote of the Board:

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Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Resolution #122-4/10

Introduced by Councilman Feeney

Seconded by Councilman Uschold

RESOLVED, that the Regular Meeting of the Town Board of the Town of Ogden reconvened at 8:00 p.m. and moved to Executive Session, to discuss personnel and hereby is adjourned at 8:30 p.m.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Uschold

Nays: None

Absent: Perry

Respectfully submitted,

LAB/dmk

Lynn A. Bianchi, Town Clerk