



Town of Hermon

Public Safety Meeting Room

August 6, 2020

Town Council Meeting

7:00 PM

MINUTES

Council Meetings may be viewed live online and are archived after the meeting
has taken place – check hermon.net for link.

ALL ITEMS ARE SUBJECT TO APPROPRIATE COUNCIL ACTION

I. CALL TO ORDER BY CHAIRPERSON

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Members Present: John Snyder III, Douglas “Doug” Sinclair Sr., Ronald “Ron” Murphy, Anthony “Tony” Reynolds, Charles Lever IV and G. Stephen “Steve” Watson

Members Absent: Steven “Steve” Thomas - excused

Others Present: Town Manager Howard Kroll, Town Clerk Kristen Cushman, Ed Bearor Town Attorney, Ron Bouchard, Adam Leach and Jon Whitten Jr. from CES

IV. REVIEW CONSENT CALENDAR: REGULAR BUSINESS, APPOINTMENTS, SIGNATURES, And APPROVAL OF MINUTES:

SIGNATURES. –APPROVE Quitclaim deed for RE # 1602 M/L 048-019-000

MINUTES. –APPROVE

WARRANTS. –SIGN

RESOLVES. –SIGN

Councilor Snyder moved to approve the Consent Calendar as presented. Councilor Murphy seconded the motion. Motion passes 6-0.

Councilor Snyder made a motion to excuse Steve Thomas from council meeting. Councilor Murphy seconded the motion. Motion was accepted unless doubted.



- V. NEWS, PRESENTATIONS AND RECOGNITIONS:
- VI. PUBLIC ITEMS OR COMMENTS: *(Items Not Already on Agenda)*
- VII. PUBLIC HEARINGS:
- VIII. COMMITTEE REPORTS:
- IX. SCHEDULED AGENDA ITEMS:

A. OLD BUSINESS:

B. NEW BUSINESS:

R20-21-03 Appoint Town Manager to MMA LPC

Councilor Snyder moved to approve R20-21-03. Councilor Murphy seconded the motion. The motion was accepted. Motion passes 6-0.

C. WORKSHOPS:

CES- Stone Farm/Stoneybrook review

Manager Kroll gave an overview of the time line until this evening as follows:

Stone Farm Subdivision Time Line

December 2nd, 2016 – Gary M Pomeroy Logging INC requested Map 33 Lot 6 have a zone change from Agricultural and Forestry to Residential A

January 12th, 2017 – Town Council approved the zone change request for Map 33 Lot 6

April 18th, 2017 – Gary Pomeroy Logging, INC submitted 14 lot subdivision plans to Planning Board and was granted approval.

June 22nd, 2017 - DEP approved the Storm water Management system prepared by Kiser & Kiser Engineering and Development Consulting for the 14 lot subdivision.



August 23rd, 2018 - Subdivision road was completed and the Town's engineer submitted a final report stating the subdivision was constructed in accordance with the approved plan.

Sept. 27th, 2018- Stone Farm Drive, Harvest Lane and Orchard Drive were accepted by the Town Council as public roads- PHASE I.

October 15th, 2019- Stone Farm Drive (phase II), Hawthorne Drive and Chestnut Drive were accepted by the Town Council as public roads- PHASE II.

December 16th, 2019- Town Council directed Town Manager to enlist the services of Fessenden Engineering Services to perform a hydrology study on the Stone Farm subdivision and the impacts on abutting properties located on Stoneybrook Drive.

May 14th, 2020- Town Council approves the hiring of CES Engineering to perform engineering design system for a potential drainage system off of Harvest Lane onto 2 private properties.

Jon Whitten Jr. Civil Engineer from CES: Jon worked with Arnie Fessenden on his initial study of the area and determined there is a significant amount of water that comes down the hill and into the backyards of Mr. Bouchard and Mr. Leach. Looking at the possible sources for the water and ways to move the water away from the resident's property without negatively impacting anyone else. It was found to be two basic sources 1. Rain water 2. A change in the ground water elevation in that area. The real reason for this we are not sure. The thought is that the new wells that were drilled penetrated a pressurized ground water pocket underneath the hill and the ground water is pushing up through now. As it comes up it's pushing down the native soils of the hill and making an outlet in the back of the two resident's property. From the study, the ground is saturated with ground water and when you add rain water on top of it, it has no place to go and flows over the top and through the yards and makes it way down to Stoneybrook Way. The Town did some drainage ditch/culvert improvements on Stoneybrook Way last summer. That did help the section of road to accept the amount of water. If we intercept the ground water and the rain water at the backyards of the Leach and Bouchard properties and push it to the outside of the properties that would help bring the condition back to what it was prior to the wells basically changing the ground water elevation.

Mr. Whitten showed the council and audience the plan on the map. The town has rights in the wooded buffer and common ground as shown on the map on the Stone Farm/Stoneybrook Way. The obvious way to capture the water is along the property line in an effort to keep the cost down as much as possible was to keep the construction on the Stoneybrook side. This will limit tree clearing which will reduce the cost and any modifications to DEP permits. The other thing was to use old technology, a French drain. This would be to put a pipe 6' in the ground surrounded by stone which would allow an avenue for ground water and rain water to go in the top. Additionally the crossings were studied and because it was not introducing any more water but just changing the path of the



water we are not jeopardizing the capacity of the culverts. A proposed 6” drain at the bottom with crushed stone to the top between 5’ and 6’ deep and 3’ wide. Mr. Bouchard asked CES to level out his backyard during this process. Mr. Bouchard has a 3’ berm with a ditch on the back side in his backyard to stop the surface water from coming off the hill and down into his backyard. Some of this material will be taken out and redistributed on the lot with minor grading so the rain water will go to either side of the property. The expected result of this is to free up the natural soil and support loads like a parked car or lawn tractor. It’s never cheap to build drainage but this low tech procedure will work and be a reasonable cost for the result.

Doug Sinclair: Is this a result of the new development?

Jon Witten Jr: The short answer is yes. A large portion of the negative impact is the ground water elevation changed. When phase I was put in Harvest Lane and Orchard Drive were constructed. The water flowed along Harvest Lane then into the properties. When the culverts were put in for Orchard Drive water then flowed east and west of these properties. The land owners said there was no significant difference in the water coming through their properties. It’s strange to me as an engineer if you cut the water in half that you are not going to see a pretty significant difference in the flow of water. So with that said and the other descriptions of water bubbling up through the ground and not being intercepted by up hill ditches. To myself and Arnie Fessenden suggested under ground water was pushing up in that area. The more and more we looked at it we feel this is the majority of the problem. Which is a somewhat unintended/unexpected difference and impact of the development.

Doug Sinclair: When the deeds were done, is some of the property listed as wet lands?

John Witten Jr: There are mapped wet lands on the side of Leach and Bouchard properties. The wetland channels go up into the Stone Farm subdivision and through it. Certainly not the whole property.

John Snyder: What happens to the formally owned Stevens property? We probably did not ask you to design that and they are not sitting here. This question is more for Ed BearorWhat is stopping this from happening all the way up the road? Did the town do anything wrong when we approved all of this for the Stone Farm subdivision? Did all the engineering get done correctly? Is there something we did not catch? Should this be on the taxpayers of Hermon?

Ed Bearor: The issue is if you are going to spend money it has to be for public purpose. A year ago when we began looking into this and I became involved. One of the questions we asked was the development built according to the plans that were presented and approved by the planning board? It was my understanding, at that time, it was built as proposed. I have looked over the report from Mr. Whitten and Arnie Fessenden. I believe they confirmed the engineering information provided to the planning board and DEP was accurate. To summarize what I have heard: The notion of this artesian well affect bringing the ground water up was anything that would have been anticipated in developing plans in a subdivision. A developer for a subdivision has to demonstrate there is adequate water for



drinking. After a few wells were drilled there was adequate water with an artesian affect. As I understand it water is bubbling out of the ground from the wells that have been drilled. From my standpoint listening carefully to what Mr. Whitten said there has to be some public benefit. A public benefit or a problem the town needs to solve for the publics benefit. We have accepted the roads in the subdivision a few years ago and roads in phase II last fall. When you are accepting road you are accepting easements. You are taking on the responsibility for the drainage along the subdivision roads. If the town wishes to do so, I think legally we have the authority to do so. You need to be solving a public problem not a private problem between lot owners. As to the questions regarding the former Stevens property I don't feel I am the person to answer this question. I don't know if this plan will damage her property or not. It does not sound like it will impact it more if we do this but it may not solve her problems. My take away from this tonight is you would have legal grounds if you choose to do so to expend money and secondly if we are going to do that given what I have heard for a description of this project I am going to have to assume we are not going to be able to walk away and forget about it. It will probably require some maintenance over time. It would behoove us to have easements over both of these properties if we are going to do this work. Because we are going to do the work but be responsible for maintaining in the future just like the rest of the ditches in the subdivisions.

Doug Sinclair: The town has spent a considerable amount of money on these engineering reports and etc. When does this start falling into a civil matter instead of a town matter?

Ed Bearor: I think it could have been a civil matter all along. I think the town is one of the parties concerned about this because we have accepted the roads and the ditches. Unfortunately there is too much water flowing through these ditches impacting these properties. So for better or worse when we accepted these roads we accepted responsibility.

John Snyder: So the developer has no responsibility on this?

Ed Bearor: I think at this point in time, no. Maybe a year or two ago the developer may have had some responsibility. I don't feel the developer is free of responsibility. I think it was an unintended consequence of the development. My point is we as a community have accepted the road and ditches that carry the storm water along the road. You never have to accept a road. Someone could build you I-95 and you don't have to accept the road. Most towns do and you are responsible for it. I think we can assume this responsibility. Do I think we would be responsible to these landowners if we don't do anything, no probably not.

Doug Sinclair: Mr. Bouchard has a well that runs 24/7. Why didn't DEP catch the problem?

John Snyder: The whole hill pumps water out of it. I live on Evergreen and my well pumps water out of it. I had to put a french drain in to divert the water away from my property.



Ed Bearor: The engineering information provided to our planning board appeared accurate and the way of controlling the water is part of the plans is as it was built. The plans met the standards. I think it's an unfortunate situation. But I don't think it's one that reflects any sort of short coming in terms of the engineering that was done or the planning boards review. So as your attorney, I am telling you probably have the legal right to try to fix this if you want to, its not like you are spending money to resolve an individual's problem. It does impart a public problem because it's a public road and ditches are emptying onto some ones land and we don't have a legal right to be doing so.

Adam Leach: We made the attempt in September 2019 to hold the developer accountable. We took an aggressive step asking the council to not approve the acceptance of phase II and III roads until the conditions caused by phase I was taken care of. At that meeting it was determined a new meeting would be set for two weeks to discuss it more. There was no research done in those two weeks. That was before the developer had closed on the sale of the lots behind us. Something could have been done before without interrupting landowners. We wanted the mitigation to happen on the Stone Farm side of the tree buffer.

John Snyder: We have gone from the wettest year we have ever had to the driest year.

Adam Leach: I mowed my lawn completely for the first time July 9th, 2020. That is how long it took the dry conditions to dry up the lawn. Phase I of Stone Farms falls just under the size of the development in terms of the requirements for DEP. There are three conditions in the DEP process and the one part that was not required for Stone Farm was flooding. Storm run off was limited to construction of the road and any water displaced by the road.

Doug Sinclair: I recall that meeting and I remember the developer stated he would step up to the plate if something was wrong.

Adam Leach: Mr. McCluskey stated we can't hold up the development and we want to help folks on Stoneybrook Way.

Ron Bouchard: Want to add, during winter time, if this ditch freezes over I'm going to be a dead duck. I'm worried about that. I would like my driveway condition wrapped into this because it's falling apart.

Doug Sinclair: This all within the last two years?

Ron Bouchard: Yup

Doug Sinclair: I don't believe it. I was in you dooryard 3 or 4 years ago and it was broken up pretty serious.

Ron Bouchard: You have not been in my dooryard before this all happened, Doug. I have pictures if you would like to see.



Howard Kroll: We are at a crossroads for next steps. Engineer has done a good job with meeting with both the property owners and keeping us informed. Mr. Bearor is here to answer any legal questions you might have. Jon would all this construction be done on private property? We would need legal assistance for easements to cross a resident's property.

Jon Whitten Jr: Yes.

Tony Reynolds: I know Steve Thomas wants to be in on the discussion if we are going to spend any money or what direction we are going to go. I don't feel we should do it tonight in a workshop but have it on the agenda for the next meeting we have. Water was running over Stone Farm and we have since diverted the water but it is our responsibility to make sure no water is running across the road. Has this been alleviated Howard?

Howard Kroll: The town has done work in the Stone Farm, phase I before phase II was accepted to divert that water from Orchard down the cul-de-sac that abuts Mr. Leach and Mr. Bouchard. As Mr. Witten pointed out this evening this was a great attempt but did not solve the issue that they are dealing with off Harvest. I don't think it made much of an impact of what they are dealing with.

Tony Reynolds: One thing I am concerned with is (no hate mail please, planning board does a great job)...The wells I visited in Stoneybrook were all flowing over so if someone had the foresight to double check. Knowing up the hill was going to be as bad as down below. I am not blaming anybody because they do a great job. That is still somewhat the town's responsibility. We allow a subdivision to come in and we miss something. I don't think people could look into the future to know we missed something. I think it's partially the town's responsibility.

John Snyder: My concern is hopefully this will take care of their problem but should we go after an easement for all the properties along the subdivision? Then put some kind of control all the way down the side?

Jon Whitten Jr: In the initial study we analyzed the plans that were for the Stone Farm division and what was available for Stoneybrook. And with taken testimony from town staff and land owners the problem that seemed to be in front of us was this particular area. I think it's this particular area because it's aligned with the roadway and a natural avenue for the ground water to be coming up in that area. I feel if it was more of a problem we would have heard from other landowners. I have not walked the entire line between Stone Farm and Stoneybrook.

John Snyder: Would be better if we did something on the other side of their property?

Jon Whitten Jr: It was a direct benefit to the property owners involved and the best solution for the town's part, since we were hired by the town. If the town required it we could put the system in the woods. It's complicated because it's in a wooded buffer and amending a site location permit to do that. This may require some storm water treatment and the details of the trench itself which all drives the cost up. I don't know the impact on the other properties.



Howard Kroll: CES was only hired to look at the two properties involved not all of Stone Farm. I have not heard from any other property owners who have complained of excess water like what Mr. Bouchard and Mr. Leach have.

Jon Whitten Jr: Would like to add the flows that are coming up from the ground at the well sources, all the wells on the hill...you have 1 ½ “ pipe flowing straight out. All of this is becoming surface run off because it’s coming above the ground. The developer/town has done a good job in ditching that surface run off to appropriate places. I do not believe the artesian well water that is coming to the surface is contributing to the problem on the Leach and Bouchard properties. I think it’s the water running underneath the ground and naturally...it’s daylight point. You could have 100 wells above them spouting water above the ground. As soon as its above the ground it’s surface water and goes into ditches etc.

John Snyder: So the natural point the water coming out of the ground is behind these two homes to find natural daylight?

Jon Whitten Jr: Exactly. Arnie Fessenden came up with that theory in his work with the study. This is what I have alluded to in my initial presentation with the bubbling up behind the burms in their backyards.

Tony Reynolds: Nate Wicklow diverted water into a fire pond and water was going down into another resident’s property (first house on the left). That has since been changed and diverted away from the pond. Might have something to do with Jon Snyder’s first question awhile ago?

Ed Bearor: I understood the problem to be the surface water running through the ditches in the subdivision up above these gentlemen’s homes and it was more than could be anticipated. If I am not mistaken you just said that it is not it? That it’s an underground ground water issue not a surface water issue? Before you answer it could affect if it’s a town issue or not.

Jon Whitten Jr: My understanding of the Fessenden geo technical services was we are on a relatively steep hillside. It appears form Arnie’s research and limited investigation into area the wells very in depth and very in yield along this hillside. Examples 325’ deep with 6 gallons per minute, 140’ deep with 20 gallons per minute. The overall situation is there is a large underground pocket of pressurized ground water under the hill. Some or all of these wells have started to puncture holes in the pressurized pocket. That pressurized water is allowed to come up into upper elevations of the ground and as it comes up it is going to start flowing down the hill. That can produce an artificially raised ground water level. Ground water is going to daylight to the surface when it can. The thought is that in a natural condition, pre subdivision, possibly before Stoneybrook and even Annis Road that the bog at the bottom of the hill was the place it daylighted. So now the thought is the water is percolating at an elevation of approximately 175’ and the bog is about 50 to 70’ lower elevation. I am not suggesting Stone Farm raised the water elevation by 50 to 70’. The theory of Arnie Fessenden is the ground water is contributing to the problem. This is because of the saturated ground.



When the rain water/surface water gets added to the equation there is no place for it to go. It has no avenue to be infiltrated into the ground. It's increasing the volume of water going along the top of the surface over the predevelopment condition. It's a combination of the two. We did not find a condition where there was a small culvert and a lot of water coming at it going over the top. We did not find this for a surface condition.

Ed Bearor: If you dug a 1' ditch on the property line, they would still have a problem?

Jon Whitten Jr: Yes.

John Snyder: So the water is moving through the whole soil and finding daylight? So the water instead of coming 50' down at the bog it's coming at their backyards?

Jon Whitten Jr: Yes, that is my understanding of what is going on.

Adam Leach: I have a 16" burm and I am not getting water over the burm. The water will saturate into the ground and the burm is doing its job. Anywhere from 6', 8' or even 20' below the burm water is coming up through the ground. The burm was put in 13 to 14 years ago and never have had a problem over the years.

Ron Bouchard: My burm was put in 2005. The spring after I bought my house and I have never had water in my backyard. The ground out back was all saturated when it was in tree growth. The burm has done its job until this year.

Ed Bearor: (making sure the council understands Mr. Bearor's opinion on this) We don't have any exposure for liability.

Not encouraging you to bring a lawsuit but a lawsuit against the town will not be affective (looking at Mr. Bouchard and Mr. Leach).

(Back to addressing the council) We are not going to be liable for the problems that exist right now. With that being said, you do have an opportunity, should you choose to take it, there is probably enough I have heard here tonight to suggest there is problem that could be described as a public issue. At first I thought our ditches had more surface water than ground water and I am satisfied there is an interconnection between ground water and surface water. The ground water is coming to the surface and becomes surface water and that could be our problem. I don't want you to feel pressured to do something because of a concern of a legal liability. I don't think we have a legal liability. I wanted to distinguish that from your authority to do it if you wish to. If you want me, at any point, to have a conversation with Mr. Wicklow I would be happy to do that.

Tony Reynolds: We as a board (two new members) did say we would help do whatever we could with Mr. Wicklow's help to pitch in at a prior meeting (October 2019). We approved the road and we will help out and do what we can to alleviate the water problems from the people on Stoneybrook.



Howard Kroll: Think we need to come to some kind of conclusion of what you want to do. I don't think tonight you render the decision. We have come to the end and exhausted all of your analysis you can possibly do. It's time to move forward or do nothing. I can't suggest to you what to do but in future subdivisions I think we need to change the way we do business. I feel the two families have waited long enough for a decision. I don't know the estimated cost of the project. I am at a crossroad on this as what to do next.

Doug Sinclair: Take the plans to Mr. Wicklow and see what deal he will give us.

John Snyder: Wouldn't CES give a construction estimate?

Jon Witten Jr: The report written on 8/4/2020 has an estimated cost of \$32,000.00.

Snyder made motion to have Howard speak with Mr. Wicklow regarding his help with the project if the council should decide to go ahead and to bring this back at the 8/20/2020 meeting. Seconded by councilor Murphy.

Howard Kroll: If Mr. Wicklow does not give me an answer by charter anything over \$24,999 is a Special Town Meeting.

Tony Reynolds: Special Town Meeting is a good idea if the board decides to spend the money.

Howard Kroll: Do you want me to prepare a Special Town Meeting warrant for the 20th? You have a regular council meeting on the 20th. It takes 7 days to post a warrant per charter. Since we have legal council, may I have advice on how to proceed?

Ed Bearor: To have a Town Meeting warrant article question the board has to frame what that question will be and voted on. "To see if the town will vote to expend \$32,000 for What I am hearing more is you want a chance to decide if you want to do that. I think you wanted to have some discussions with Mr. Wicklow between now and the 20th. Seems to be on the 20th you may decide what this board would recommend to the town and decide to move forward with this project in any capacity and schedule the town meeting anytime after the 20th with 7 days notice.

Ron Bouchard: I heard you say the town would be liable if storm water was being dumped onto our properties.

Ed Bearor: I am suggesting with the adoption of/acceptance of the town roads and ditches we have a responsibility. I am not suggesting it rises to the level of a liability but I think being responsible for the water in the ditches, yes. But we have a responsibility that rises to the level that we could exercise so discession if we wanted to take some steps to do that. When I came here I was wrestling with do we have a legitimate public purpose? Public: meaning broadly speaking to do this. Early on I was quite convinced we did but later on I was little less convinced we did. We can if we want to.



That is why I don't mean to direct you in anyway in terms of action you might choose no matter how this plays out. I don't think we will be liable to you as property owners given what I have heard as a description of the genesis of the water problem.

Adam Leach: Howard, I would ask you to get financial support from Mr. Wicklow and a separate contractor doing the work vs. him coming onto our property.

Doug Sinclair: If he does the work with the direction of our engineer, I don't know what would be the problem.

Adam Leach: If the town engineer directed him....there is not a lot of trust there.

D. OTHER ITEMS: (from Table Package)

X. APPOINTMENTS:

XI. MANAGER STATUS REPORT:

Manager Kroll thanked everyone for coming out this evening.

XII. FINAL PUBLIC ITEMS OR COMMENT: (*Items Not Already on Agenda*)

XIII. COUNCIL ITEMS:

XIV. EXECUTIVE SESSION:

XV. ADJOURNMENT:

Councilor Lever moved to adjourn the meeting at 8:20PM. Councilor Snyder gave seconded. With no objection the meeting was adjourned at 8:20 PM.

Respectfully Submitted,

**Kristen Cushman
Town Clerk**

Explanatory note #1: All items in the CONSENT CALENDAR are considered routine and are proposed for adoption by the Town Council with one motion without DISCUSSION or deliberation. If DISCUSSION on any item is desired, any member of the Council or public may request the removal of an item for it to be placed in the regular agenda prior to the motion to approve the Consent Agenda.

Explanatory Note #2: In the interest of effect decision-making: At 10:00 p.m., the Chairman shall poll the Council and Town Manager to identify remaining items which shall be carried forward to the next Regular Meeting.

Explanatory Note #3: A Councilor who feels the need for the Council excusing his/her absence will make the request to the Town Manager or the Town Clerk prior to the meeting.