

**REGULAR MEETING OF THE TOWN BOARD OF
THE TOWN OF NEW HARTFORD, NEW YORK,
HELD AT BUTLER MEMORIAL HALL ON
WEDNESDAY, JANUARY 23, 2008 AT 6:00 P.M.**

The Town Supervisor called the meeting to order at 6:00 P.M. and led those in attendance in the Pledge of Allegiance to the American Flag. The roll was then taken with the following Town Officials and Department Heads being present during the progress of the meeting:

TOWN BOARD MEMBERS: Councilman Robert A. Payne III
Councilwoman Christine G. Krupa (arrived 6:01 PM)
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Earle C. Reed

OTHER TOWN OFFICIALS: Assessor Paul E. Smith
Codes Enforcement Officer Gerald F. Back
Codes Enforcement Officer Joseph A. Booth
Highway Superintendent Roger A. Cleveland
Parks & Recreation Director Michael W. Jeffery
Planner Kurt Schwenzfeier
Town Clerk Gail Wolanin Young

Thereafter, a quorum was declared present for the transaction of business.

MINUTES

January 9, 2008 Town Board Meeting

Councilman Reynolds introduced the following Resolution for adoption, seconded by Councilman Woodland:

(RESOLUTION NO. 18 OF 2008)

RESOLVED that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the **Regular** Town Board meeting held **January 9, 2008** and does further waive the reading of the same.

Upon roll call, the Board members voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

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Thereafter, the Resolution was declared unanimously carried and duly *ADOPTED*.

PRESENTATIONS

Upon questioning by the Town Supervisor, there was no one present wishing to address the Board.

REPORTS OF TOWN OFFICIALS

PARKS AND RECREATION DIRECTOR:

Award of Competitive Bid – Skid Steer Loader with Attachments

Upon recommendation of the Parks and Recreation Director, Councilman Payne introduced the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 19 OF 2008)

WHEREAS, the Parks and Recreation Director did, on the 23rd day of January 2008, duly recommend the purchase of certain equipment after bids had been received on January 8, 2008 and canvassed;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby accept the sole bid submitted by Clinton Tractor & Implement, Clinton, New York and does hereby authorize the Parks and Recreation Director to purchase, in accordance with the provisions of Article 5-A of the General Municipal Law, the following equipment, as per Town specifications, from said Clinton Tractor & Implement:

- One (1) New Holland Model L150, Skid Steer Loader with attachments
 - V-plow (48"-72")
 - 60" Hydraulic Broom
 - Snow Blower (28" height, 60" wide, adjustable shoes)
 - Thin Tires (to keep minimum width – 27 x 8.50-15)
 - Over Tire Rubber soft tracks

for a maximum aggregate price of Thirty-one Thousand Four Hundred Sixty-six Dollars (\$31,466), delivered at Sherrillbrook Park, Route 12, New Hartford, New York, by February 22, 2008. Upon delivery of the item(s) purchased, the Town Supervisor shall pay the amount of \$31,466 from budgetary appropriations for purchase of equipment and reimbursed to the Town by a \$20,000 Grant from a New York State Member Item Grant.

This equipment will be used to clear sidewalks that the Town must maintain as a result of improvements on State highways (ex: Seneca Turnpike [NYS Route 5] and Commercial Drive [NYS Route 5A]), the sidewalks around the perimeter of the Recreation Center

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building, ice removal at the Recreation Center, and heavy use in preparing new trails in the Park system; the Parks & Recreation Director reported the Town has been awarded a \$20,000 Grant for renovations of existing Sherrillbrook Park trails. The Parks & Recreation Director is completing the sidewalk winter maintenance policy to be presented to the Town Board. (initial program to begin at the village line, down Commercial Drive to and including the Philip Rayhill Memorial Trail, Town-owned property such as the Veterans Memorial Park at the NYS Route 5-9-12 junction and back to the village line). Also being considered is the Oneida Street-Chapman Road areas and other connector lines, including schools, the library and businesses; help will be needed from the Committee in the future with respect to analyzing and extending this service into residential areas. Thereafter, the Town Board voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED***.

Finance - \$155,000 Bond Resolution/Recreation Center Improvements & Dump Truck

The Parks & Recreation Director reviewed issues necessitating a capital project at the 27-year old Recreation Center on Mill Street:

- Lighting capacity – not energy efficient; replace lighting and switches
- Three 25-year old furnaces – need replacing
- 16-17 year old dasher boards – cracking, creating liability
- De-super Heater – needs replacement
- remove and replace side walkway
- addition of a new outdoor marquee board for marketing

With the defeat of last year's proposal, the Parks & Recreation Director has proposed a program to shorten the range of financing to lessen costs. Since last year, energy saving rebates for the lighting and switch phase have been decreased from \$6,600 to \$6,000. When everything is installed and operational, the Town can apply for the rebate and the energy savings after upgrade is estimated to be \$16,400 yearly.

Further, the Parks & Recreation Director is requesting funding for a one-ton dump truck to replace a 1994 dump truck (#55) that had been removed from service in September 2005 due to safety concerns and sold as surplus in November 2005.

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The following resolution was offered by Councilman Payne, who moved its adoption, seconded by Councilman Reynolds, to-wit:

(RESOLUTION NO. 20 OF 2008)

BOND RESOLUTION DATED JANUARY 23, 2008.

A RESOLUTION AUTHORIZING VARIOUS PURPOSES IN AND FOR THE TOWN OF NEW HARTFORD, ONEIDA COUNTY, NEW YORK, AT AN AGGREGATE MAXIMUM ESTIMATED COST OF \$155,000, AND AUTHORIZING THE ISSUANCE OF \$155,000 BONDS OF SAID TOWN TO PAY THE COST THEREOF.

WHEREAS, all conditions precedent to the financing of the purposes hereinafter Described, including compliance with the provisions of the State Environmental Quality Review Act, have been performed; and

WHEREAS, it is now desired to authorize the financing thereof; **NOW, THEREFORE,**

BE IT RESOLVED, by the Town Board of the Town of New Hartford, Oneida County, New York, as follows:

Section 1. For the purpose of paying the cost of various purposes in and for the Town of New Hartford, Oneida County, New York, there are hereby authorized to be issued \$155,000 serial bonds of said Town pursuant to the provisions of the Local Finance Law, apportioned among such items as set forth below:

- a) Improvements to the Town Recreation Center, including energy savings related projects, improvements to sidewalks and signage, as well as incidental costs, in and for said Town, at a maximum estimated cost of \$115,000. It is hereby determined that the plan for the financing of such class of objects or purposes shall consist of the issuance of \$115,000 serial bonds of the \$155,000 serial bonds authorized to be issued therefor pursuant to this bond resolution. It is hereby determined that the period of probable usefulness of the aforesaid class of objects or purposes is five years, pursuant to subdivision 89 (subdivisions 12, 13, 24 and 32) of paragraph a of Section 11.00 of the Local Finance Law; and

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- b) The purchase of a dump truck, including incidental expenses, for said Town, at a maximum estimated cost of \$40,000. It is hereby determined that the plan for the financing of such specific object or purpose shall consist of the issuance of \$40,000 serial bonds of the \$155,000 serial bonds authorized to be issued therefor pursuant to this bond resolution. It is hereby determined that the period of probable usefulness of the aforesaid specific object or purpose is fifteen years, pursuant to subdivision 28 of paragraph a of Section 11.00 of the Local Finance Law.

It is hereby further determined that the maximum maturity of the serial bonds herein authorized for each of the above-described objects or purposes shall not exceed five years.

Section 2. The faith and credit of said Town of New Hartford, Oneida County, New York are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. There shall annually be levied on all the taxable real property in said Town, a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 3. Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the bonds herein authorized, including renewals of such notes, is hereby delegated to the Supervisor of said Town, the chief fiscal officer. Such notes shall be of such terms, form and contents, and shall be sold in such manner, as may be prescribed by said Supervisor, consistent with the provisions of the Local Finance Law.

Section 4. The powers and duties of advertising such bonds for sale, conducting the sale and awarding the bonds, are hereby delegated to the Supervisor, who shall advertise such bonds for sale, conduct the sale, and award the bonds in such manner as he shall deem best for the interests of said Town.

Section 5. All other matters except as provided herein relating to the bonds herein authorized including the date, denominations, maturities and interest payment dates, within the limitations prescribed herein and the manner of execution of the same, including the consolidation with other issues, and also the ability to issue bonds with substantially level or declining annual debt service, shall be determined by the Supervisor, the chief fiscal officer of such Town. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, and shall otherwise be in such form and contain such recitals, in addition to those required by Section 51.00 of the Local Finance Law, as the Supervisor shall determine consistent with the provisions of the Local Finance Law.

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Section 6. The validity of such bonds and bond anticipation notes may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or
- 3) Such obligations are authorized in violation of the provisions of the Constitution

Section 7. This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150.2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 8. This resolution, which takes effect immediately, shall be published in summary form in the official newspaper of said Town for such purpose, together with a notice of the Town Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was thereupon declared duly ***ADOPTED.***

RECEIVER OF TAXES AND ASSESSMENTS:

Appointment – Part-time Clerk Sub

In behalf of Receiver of Taxes Hilarie C. Elefante, the Town Clerk presented the Receiver's request to hire a part-time Clerk Sub in the Tax office to cover for busy times and/or absences from the office. Councilman Payne then introduced the following Resolution for adoption; seconded by Councilwoman Krupa:

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(RESOLUTION NO. 21 OF 2008)

RESOLVED that the New Hartford Town Board does hereby appoint Hilarie A. Elefante as a Part-time Clerk Sub in the Receiver of Taxes and Assessment Office to cover during busy times and during absences from the office, retroactive to January 7, 2008, at an hourly wage of Seven Dollars and Seventy-five Cents (\$7.75), payable bi-weekly.

Upon roll call, the Board members voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

2008 Budget Transfer – Receiver of Taxes & Assessments

Upon further request of the Receiver of Taxes and Assessments, the following Resolution was offered for adoption by Councilman Payne and duly seconded by Councilman Woodland:

(RESOLUTION NO. 22 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Bookkeeper to transfer the sum of Fifteen Hundred Dollars (\$1500) from General Fund Whole-Town Account AA1990.4 (Contingency) to General Fund Whole-Town Account AA1330.12 (Receiver of Taxes Clerk Sub) to cover the Clerk Sub wages for 2008.

A roll call vote ensued:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

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TOWN CLERK:

Request for Proposals – Renewal of Insurance Policies

Upon presentation of the Town Clerk, Councilwoman Krupa introduced the following Resolution; seconded by Councilman Woodland:

(RESOLUTION NO. 23 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Clerk to advertise for ***Request for Proposals (RFP's)*** in The Observer Dispatch, with regard to the renewal of the Town's various insurance policies that will expire June 30, 2008; ***RFP's*** shall be submitted by 4:00 P.M. on Friday, May 20, 2008.

Supervisor Reed announced that Councilman Woodland would again review all RFP's the Town will receive and will make a recommendation to the Town Board. Thereafter, the Board voted upon roll call as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly ***ADOPTED***.

Annual Report

The Town Clerk submitted the Annual Report of monies received in the Town Clerk's Office during calendar year 2007; the Report is to be audited during the Town's annual audit process.

Training School

In behalf of Planning Board member Margaret Rotton, the Town Clerk presented the following Resolution that was introduced for adoption by Councilman Reynolds and duly seconded by Councilman Payne:

(RESOLUTION NO. 24 OF 2008)

WHEREAS, Section 77-b of the General Municipal Law allows the governing board of municipalities to authorize any officer or employee to attend a convention, conference or school conducted for the betterment of such municipality;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of New Hartford does hereby grant permission to Planning Board member Margaret Rotton to

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attend the 19th Annual Local Government Conference on March 27, 2008 in Watertown, New York, with expenses to be borne by said Town as budgeted.

The Resolution was voted upon by roll call as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**.

Zone Text Amendment Application – Local Law Introductory “A” of 2008

The Town Clerk recited the procedures taken since receipt in August 2007 of the application by Young-Duck Ahn for a Zoning Law text amendment that, if approved, would allow convenience stores with gasoline service in Planned Highway Business (PHB) Districts. While Mr. Ahn is particularly interested in the PHB district along Seneca Turnpike, several other PHB districts exist in the Town and would be affected by this proposed change. Town policy requires notification to affected property owners. To allow the Assessor’s Office sufficient time to prepare a property owner mailing list since January and February are busy months in that office, the Town Clerk suggested that the Public Hearing upon this matter be scheduled in March 2008. The Town Board suggested that the Assessor and Planner work together on identifying the numerous parcels. While the Oneida County Planning Department had submitted a recommendation of approval, the Town Planning Board did not endorse Mr. Ahn’s request; at the same time, the applicant is entitled to a Public Hearing.

Thereafter, Councilman Reynolds introduced the following legislation for consideration by the Town Board at a future public hearing; co-sponsored by Councilman Woodland:

TOWN OF NEW HARTFORD, NEW YORK
Local Law Introductory “A” of 2008

A Local Law to amend the Code of the Town of New Hartford, Chapter 118 thereof entitled **ZONING**, by amending Section 118-93, Schedule of Use, Area and Bulk Regulations for a PHB – Planned Highway Business District and specifically, the list of Site Plan Review Uses and Special Permit Uses.

BE IT ENACTED by the Town Board of the Town of New Hartford, as follows:

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SECTION 1. Chapter 118 of the Code of the Town of New Hartford is hereby amended as follows:

Section 118-93 Schedule of Use, Area and Bulk Regulations
 PHB – Planned Highway Business District

Add:

Site Plan Review Use	Convenience Store Without Gasoline Service
Minimum Lot Size (Area):	20,000 square feet
Minimum Lot Size (Minimum Width):	100 feet
Maximum Lot Coverage:	40%/50%
Minimum Percent of Lot to be Permeable:	60%/50%
Maximum Building Height:	35 feet
Minimum Yard Dimensions – (Front)	50 feet
- (Each Side) *2	15 feet
- (Rear) *2	30 feet
Site Plan Review Use	Convenience Store With Gasoline Service
Special Permit Use	Convenience Store With Gasoline Service
Minimum Lot Size (Area):	40,000 square feet
Minimum Lot Size (Minimum Width):	150 feet
Maximum Lot Coverage:	65%/70%
Minimum Percent of Lot to be Permeable:	35%/30%
Maximum Building Height:	35 feet
Minimum Yard Dimensions – (Front)	50 feet
- (Each Side) *2	20 feet
- (Rear) *2	30 feet

SECTION 2. All other provisions of the Code of the Town of New Hartford, and amendments thereto, are hereby affirmed except to the extent that this Local Law shall modify or amend.

SECTION 3. This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

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Public Hearing Scheduled – Local Law Introductory “A” of 2008

Whereas the Oneida County Planning Department and the Town Planning Board have submitted their recommendations with regard to Local Law Introductory “A” of 2008, Councilman Reynolds offered the following Resolution for adoption, seconded by Councilman Woodland

(RESOLUTION NO. 25 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on **Wednesday, March 12, 2008 at 6:00 P.M.**, or as soon thereafter as reached in the regular course of business, in Butler Memorial Hall, 48 Genesee Street, New Hartford to consider **Local Law Introductory “A” of 2008** which, if adopted, would amend the Code, Chapter 118 thereof entitled **ZONING** by amending Section 118-93, Schedule of Use, Area and Bulk Regulations for a Planned Highway Business District and, specifically, the list of Site Plan Review Uses and Special Permit Uses with regard to convenience stores without gasoline service and convenience stores with gasoline service;

and be it

FURTHER RESOLVED that the Town Board does authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in The Observer Dispatch.

A roll call vote ensued:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

Fireworks Permit – Denial and Refund of Permit Fee

Having received an Application for Fireworks Display Permit from the Yahnundasis Golf Club in behalf of a private party to be held Saturday, February 2, 2008, the Town Clerk had referred the application to the Codes and Police Departments for their review and comment. While the Codes Enforcement Officer had no comment, the Police Chief brought to the Town’s attention a 2007 Informal Opinion rendered by the NYS Attorney General’s Office indicating that the Penal Law provides no authority for the issuance of a fireworks permit for a private display of fireworks by an individual for private family

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entertainment. After some discussion, Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilman Payne:

(RESOLUTION NO. 26 OF 2008)

WHEREAS, it has come to the attention of the New Hartford Town Board that a May 2007 Informal Opinion rendered by the NYS Assistant Solicitor General in Charge of Opinions, indicates that a town may not issue a fireworks display permit for a private display of fireworks; and

WHEREAS, statutory framework [Penal Law, Section 405.00 (2)] provides that, "...[n]otwithstanding the provisions of Section 270.00, the permit authority of a state park, county park, city, village or town may upon application in writing, grant a permit for the public display of fireworks by municipalities, fair associations, amusement parks or organizations of individuals";

NOW, THEREFORE, BE IT RESOLVED that, based upon the preambles of this Resolution, the Town Board does hereby deny the Application for a Fireworks Display Permit submitted by the Yahnundasis Golf Club for a private party to be held February 2, 2008 at the Golf Club premises and does further authorize and direct the refund of the Seventy-five Dollar (\$75) permit fee that had accompanied the Application.

The foregoing Resolution was subject to a vote upon roll call:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

PLANNING BOARD:

GEIS/Southern Area of Town – Advertising/Mailing costs

In behalf of the Planning Board, Planner Schwenzfeier explained the need for a wider-spread notification to residents of the GEIS that would affect the southern area of the Town; a couple options were suggested for this non-budgeted item:

- mass mailing – minimum cost of \$5,000
- insert an 8 ½" x 11" flier in various newspapers (Town Crier, Observer Dispatch, Pennysaver); website, businesses, fire stations, etc.

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- Estimated cost \$1,500 for fliers in Town Crier, Observer Dispatch and Pennysaver
- Estimated Cost \$900 for fliers only in Town Crier and Pennysaver

The second public informational meeting on the GEIS is scheduled for 1:00 P.M. Saturday, March 8, 2008 at the Willowvale Fire Co., Inc., 3459 Oneida Street, Chadwicks. After some discussion, it was agreed that the Town Supervisor and Planner would discuss this additional cost with *peter j. smith & associates* on January 24, 2008.

HIGHWAY SUPERINTENDENT:

Stormwater Improvement Management (Advisory) Committee

Highway Superintendent Cleveland briefed the Town Board on the January 16, 2008 Stormwater (Advisory) Committee meeting:

- update from Oneida County Soil & Water Agency (Joanne Faulkner)
 - preliminary design work for improvements to stormwater off Tilden Avenue
 - use of southern reservoirs (Mohawk Valley Regional Water Authority).
- update by Shumaker Engineering as regards their investigation on stormwater issues in the southern GEIS
- consensus that the Town and Shumaker Engineering enter into an agreement to assess mitigation options for the Woodberry/Beechwood Road sub-area (\$13,450)
- consensus that the Town move forward to obtain land appraisal for stormwater mitigation in the Oxford-Kellogg-Tibbitts Road sub-area
- consensus to go forward with soliciting a Request For Proposals (RFP's) to address a number of issues related to the downstream impacts of upstream improvements.
- discussed term limits for members – place on February 27, 2008 Town Board agenda
- staff to identify various drainage districts in the Town.

Agreement – Stormwater Mitigation/Woodberry-Beechwood Road sub-areas

Thereafter, Councilman Payne introduced the following Resolution for adoption; seconded by Councilman Reynolds:

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(RESOLUTION NO. 27 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute an Agreement between the Town of New Hartford and Shumaker Engineering, the latter of whom shall assess mitigation options for the Woodberry/Beechwood Road sub-area for a fee proposal of Thirteen Thousand Four Hundred Fifty Dollars (\$13,450).

The Highway Superintendent had discussed this matter with the Advisory Committee on Public Works, which concurred with the recommendation. The Town Board then voted upon roll call that resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

Agreement – Real Property Appraisal/Stormwater – Oxford-Tibbitts-Kellogg Road

The Stormwater (Advisory) Committee having recommended that the Town move forward to obtain an appraisal for real property for stormwater purposes, the Highway Superintendent proposed the following Resolution, which was introduced for adoption by Councilman Reynolds and duly seconded by Councilwoman Krupa:

(RESOLUTION NO. 28 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute an Agreement with ***Roefaro, Dickinson & Donato, Real Estate Appraisers***, for a fee proposal of Six Hundred Dollars (\$600), to appraise real property for stormwater mitigation for the Oxford-Tibbitts-Kellogg Road sub-area, with the landowner funding Fifty Percent (50%) of the proposed fee.

The foregoing Resolution was subject to a vote upon roll call, resulting as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

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- Two (2) 2008 Ford, Escape Sport Utility Vehicles - \$14,861/each \$ 29,722.00

as per Town specifications, for a maximum aggregate price of Forty-five Thousand Nine Hundred Fourteen Dollars and Ninety-eight Cents (\$45,914.98), delivered at the Sanger Public Works Garage, 111 New Hartford Street, New Hartford, New York, not later than eight (8) weeks after award of the contract; and be it

FURTHER RESOLVED that the Town Superintendent of Highways is authorized (subject to the approval of the County Superintendent of Highways if value exceeds \$1,000) to surrender to Steet-Ponte Ford Lincoln Mercury one (1) 2005 Ford, F250 XL Super Duty w/fisher plow EZV, VIN 3FTNF21L63MB38894, at an agreed trade-in value of Ten Thousand Dollars (\$10,000); and be it

YET FURTHER RESOLVED that a contract for the item(s) purchased shall be duly executed in triplicate between the Town Superintendent of Highways and such vendor and when approved by the County Superintendent of Highways, it shall become effective. When the contract has been executed and approved, and upon delivery of the item(s) purchased, the Town Supervisor shall pay the amount of Forty-five Thousand Nine Hundred Fourteen Dollars and Ninety-eight Cents (\$45,914.98) from budgetary appropriations for purchase of equipment.

Upon roll call, the Town Board voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

Inter-municipal Agreement – Fuel/New York Mills Union Free School District

Upon presentation of the Highway Superintendent, Councilwoman Krupa offered the following Resolution for adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 30 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute an Inter-municipal Agreement between the Town of New Hartford and the New York Mills Union Free School District, wherein the

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Town shall provide fuel to said School District during calendar year 2008 and for which the School District shall reimburse the Town.

A roll call vote was duly held and resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly *ADOPTED*.

Fiscal – Payment to New York Susquehanna & Western Railroad (NYS&WRR)

Upon presentation by the Highway Superintendent, the following Resolution was introduced for adoption by Councilman Payne; seconded by Councilwoman Krupa:

(RESOLUTION NO. 31 OF 2008)

WHEREAS, in 2003, in anticipation of a contract modification between the *NYS&WRR* and *OCIDA* in regards to property tax payments, the Town started withholding contractually obligated payments and fees to the *NYS&WRR*; and

WHEREAS, in 2006, *OCIDA* returned all *NYS&WRR* lands under their control to the *NYS&WRR*, and subsequent to that action, all *NYS&WRR* properties within the Town of New Hartford are now subject to remitting property taxes to the Town; and

WHEREAS, by reason of the foregoing, the Town is without legal basis for withholding said contractually obligated payments and fees to the *NYS&WRR*; and

WHEREAS, it has been alleged by the *NYS&WRR* that the total sum of contractual obligations that the Town of New Hartford is in arrears to the *NYS&WRR* is reputedly \$30,030.92;

THEREFORE, BE IT RESOLVED that the Town Board recognizes that the Town has been delinquent in fulfilling its contractual obligations to the *NYS&WRR*; and be it further

RESOLVED that the Town Board directs the Town Bookkeeper to verify the amount allegedly due and owing the *NYS&WRR* and further identify the account from which monies are to be drawn to satisfy the outstanding obligation; and be it further

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RESOLVED that the Town Board authorizes the Town Attorney to negotiate installment payments of the outstanding monies with the *NYS&WRR*; and be it further

RESOLVED that the Town Board does authorize the separate payment of \$1,460 (P.O. #079466) as invoiced by the *NYS&WRR* for the calendar year 2008, under invoice numbers 17791, 17792, 17793, 17794, and 17795, to be satisfied out of the operating budget account SS8110.4.

Thereafter, the Town Board members voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly *ADOTPED*.

Debt Service – Higby Road Water District

Highway Superintendent Cleveland reported that it had been discovered a few properties outside the Higby Road Water District had been charged debt service and that some properties in said District had not been charged debt service. The Town is attempting to resolve this matter and has contacted Bond Counsel who said this was not an uncommon circumstance.

Frank Kolanko reputedly owns an adjoining vacant parcel that is a sub-standard building lot and he questioned whether or not he was going to be assessed the one-half unit charge for that parcel. The Town Board deferred the matter until the February 13, 2008 meeting by which time they expect to determine if there are other similar situations.

Councilman Reynolds introduced the following Resolution for adoption and Councilman Payne seconded same:

(RESOLUTION NO. 32 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize that letters be mailed to property owners outside the Higby Road Water District who were charged debt service, as well as to those few property owners inside said Water District that were not charged debt service, explaining the circumstances and offering a resolution.

A roll call vote was duly held as follows:

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Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

Longworth Acres – Deviation from approved plans

Referring to a concern of Neil Pritchard, Planner Kurt Schwenzfeier clarified that the Longworth Acres contractor had been building but not according to approved plans; the contractor was required to make repairs and the corrections were made. The Planner acknowledged there is still an outstanding stormwater issue at the corner of Tibbitts and Oxford Roads, involving Oneida County – Jubilee Estates on the right side; Longworth Acres on the left but the issue starts further up the hill on Tibbitts. Everything that has been required to be done has been signed off by the NYS Department of Environmental Conservation.

MATTERS SUBMITTED BY COUNCILMEN/ATTORNEY

COUNCILMAN PAYNE:

Safety Committee

Councilman Payne will schedule a meeting with the Safety Committee and decide how to proceed with filling two (2) resident positions.

MATTERS SUBMITTED BY TOWN SUPERVISOR

NEW BUSINESS:

Appointment – Department Head for Codes Enforcement Office

Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilman Payne:

(RESOLUTION NO. 33 OF 2008)

WHEREAS, Codes Enforcement Officer/Department Head Gerald F. Back will retire effective the close of business on Friday, January 25, 2008;

BE IT RESOLVED that the Town Board of the Town of New Hartford does hereby appoint Codes Enforcement Officer Joseph A. Booth as Department Head for that Office effective Saturday, January 26, 2008.

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Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly ***ADOPTED***.

FINANCIAL

Audit of bills

Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilwoman Woodland:

(RESOLUTION NO. 34 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the payment of the bills itemized on the following Abstracts, that have been duly audited by the Town Board:

General Fund Whole-Town Abstract No. 2	
Vouchers AA30-AA37	\$ 35,528.54
General Fund Whole-Town Abstract No. 2A (POLICE)	
Vouchers AA38-AA44	\$ 38,437.50
General Fund Whole-Town Abstract No. 3	
Vouchers AA45-AA78; AA80-AA137;	
Vouchers AA153; AA161 – AA163	
Vouchers AA165 – AA179	\$ 218,386.61
General Fund Whole-Town Abstract No. 3A (POLICE)	
Vouchers AA138-AA160; AA164	\$ 9,508.97
General Fund Part-Town Abstract No. 2	
Voucher BB2	\$ 4,441.99
General Fund Part-Town Abstract No. 3	
Vouchers BB3-BB20	\$ 4,475.55
Highway Fund Part-Town Abstract No. 2	
Vouchers DB11-DB14	\$ 28,783.88
Highway Fund Part-Town Abstract No. 3	
Vouchers DB15-DB30; DB32-DB36	\$ 91,929.75
Highway Fund Part-Town Abstract No. 4	
Voucher DB31	\$ 109,911.75
Sewer Fund Abstract No. 2	
Vouchers SS3-SS5	\$ 2,982.87

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Sewer Fund Abstract No. 3	
Vouchers SS6-SS8	\$ 7,196.83
Street Light Fund Abstract No. 1	
Voucher SL1	\$ 9,078.89
Drainage Capital Project Abstract No. 2	
Vouchers HC2-HC3	\$ 503.61
GEIS Capital Project Abstract No. 1	
Voucher HX1	\$ 5,830.00
Higby Road Water Capital Project Abstract No. 1	
Voucher HF1	\$ 105.00
Water Fund Abstract No. 1	
Voucher FF1	\$ 19.96
	TOTAL: \$567,121.70

Whereupon, the Town Board members voted individually as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

Thereafter, the Resolution was declared unanimously carried and duly **ADOPTED**.

NEW BUSINESS (CONT'D)

Public Nuisance Abatement – Local Law Introductory “B” of 2008

Councilman Woodland introduced the following legislation to protect the Town’s property values, and public health, safety and welfare, for the Town Board’s consideration at a future public hearing; co-sponsored by Councilman Reynolds:

TOWN OF NEW HARTFORD, NEW YORK
Local Law Introductory “B” of 2008

A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF NEW HARTFORD,
BY ADDING A NEW CHAPTER 86 ENTITLED PUBLIC NUISANCE ABATEMENT
LAW.

BE IT ENACTED by the Town Board of the Town of New Hartford as follows:

§86-1. Title.

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This chapter shall be known and cited as the "Town of New Hartford Public Nuisance Abatement Law."

Sec. 86-2. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public nuisance includes, but shall not be limited to:

- (1) Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance or marihuana [marijuana] as defined by the New York State Penal Law.
- (2) Any building, structure or real property used for the purposes of prostitution as defined by the New York State Penal Law.
- (3) Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the New York State Penal Law and this Code.
- (4) Any building, structure or real property used for purposes of illegal gambling activity as defined in the New York State Penal Law.
- (5) Any building, structure or real property used for the purpose of the commission of illegal possession, use or sale of firearms or weapons as defined by the New York State Penal Law.
- (6) Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the New York State Alcohol Beverage Control Law.
- (7) Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the New York State Penal Law.
- (8) Any building, structure or real property used for purposes of loitering as defined by the New York State Penal Law.

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- (9) Any building, structure or real property wherein there exists or has occurred any violation of the Code of the Town of New Hartford, including, but not limited to, Chapter 56, Dogs And Pets; Chapter 118, Zoning, including the New York State Uniform Fire Prevention and Building Code, the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, all of which have been previously adopted and incorporated into said Code of the Town of New Hartford by reference.
- (10) Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.
- (11) Any building, structure or real property wherein an occupant, guest or business invitee conducts or performs activities or behaves in a manner that detrimentally effects the quiet and reasonable use and enjoyment of adjacent or neighboring property as such conduct and activities are defined by the New York State Penal Law.

Sec. 86-3. Nuisance forbidden.

No owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall knowingly conduct, maintain, permit or allow the existence of a public nuisance at the building, structure or real property.

Sec. 86-4. Presumption of knowledge.

Notice by first class mail or personal service of activities entailing a public nuisance to the property owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall be prima facie evidence of knowledge of the public nuisance.

Sec. 86-5. Administrative review hearing.

Whenever there is prima facie evidence of a public nuisance at any building, structure or real property within the Town of New Hartford, the Town Attorney shall initiate an administrative review hearing, before bringing a civil action as described in Sec. 86-6 herein.

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- (a) *Service of notice:* A notice of the review hearing shall be served on one or more owners of the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building. The notice shall be served in the manner required by New York State Civil Practice Law and Rules.
- (b) *Content of notice:* The notice shall allege the facts constituting the public nuisance. The notice shall be accompanied by affidavit(s) for purposes of showing that the owner or his agent had notice of the nuisance, had an opportunity to abate the nuisance and failed to do so. The notice shall further contain a time, date and place for the review hearing to be held before a panel.
- (c) *Hearing panel:* The panel shall consist of a member to be appointed by the chief code enforcement officer, a member to be appointed by the chief of police and a member to be appointed by the Town Board. Each appointing authority shall be authorized to appoint himself/herself or any member of his/her staff or department to the hearing panel.
- (d) *Hearing:* At the time, date and place designated in the notice, the Town Attorney or his/her designee shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the building, structure or real property, the presumption of knowledge of the subject nuisance(s), proper service of sufficient notice on one or more owners, the failure or refusal of the owner(s) of the building, structure or real property to fully and properly abate said nuisance, despite notice and opportunity to do so. The owners of the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross-examine any witnesses presented by the Town Attorney or his/her designee. The owners of the building, structure or real property, or their representatives, may present any relevant evidence and/or witnesses in their defense. The Town Attorney, or his/her designee, shall have the right to examine such evidence and cross-examine any witnesses presented by the owners of the building, structure or real property, or their representatives.
- (e) *Panel's finding and recommendation:* Within five (5) business days of the review hearing, the panel shall provide a written decision to the Town Supervisor for presentment to the Town Board at or before the next regularly scheduled Town Board meeting.

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Within five (5) business days of the review hearing, the panel shall provide a copy of its decision to the Town Board, Town Attorney, the Code Enforcement Officer, the Police Chief and to the owner(s) of the subject building, structure or real property. The written decision shall state whether or not the panel determined there is prima facie evidence of the existence of a public nuisance at the building, structure or real property. If a public nuisance is found to exist, the panel shall further state in its decision the remedial measures the owner(s) of the subject building, structure or real property are to perform or undertake to abate the public nuisance, along with a specified time frame within which the nuisance is to be abated.

Responsibility for monitoring the abatement of the identified nuisance shall rest with the Police Department and/or the Code Enforcement Office. Upon satisfactory abatement of the subject nuisance within the designated time frame, the Police Chief and/or the Code Enforcement Officer shall provide written notification of compliance to the panel, the Town Board, the Town Attorney and the owner(s) of the building, structure or real property.

In the event of non-compliance with the decision of the panel, the Police Chief and/or the Code Enforcement Officer shall provide written notification of non-compliance to the panel, Town Board, Town Attorney and owner(s) of the building, structure or real property and expressly request the Town Attorney to seek Town Board authority to bring a civil action as described in Sec. 86-6 herein.

Sec. 86-6. Summons and complaint for civil action.

- (a) The Town Attorney may bring and maintain a civil action in the name of the Town to abate a public nuisance and shall commence the civil action by the filing and serving of a summons and complaint in the manner required by New York State Civil Practice Law and Rules.
- (b) The summons and complaint shall name as defendants the building, structure or real property by describing it by tax map number and/or street address and shall name as defendants at least one of the owners of some portion of or some interest in the property.
- (c) The summons and complaint may also name as defendants any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property.

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- (d) The complaint shall allege the facts constituting the public nuisance.
- (e) The complaint shall be accompanied by affidavit(s) for purposes of showing that the owner or his agent had notice of the nuisance, had opportunity to abate the nuisance and failed to do so.
- (f) The venue of the action shall be in the New York State Supreme Court (“Supreme Court”) located in the County of Oneida where the public nuisance is being conducted, maintained, permitted or allowed.
- (g) In the event personal jurisdiction cannot be obtained over a proper party, in rem jurisdiction over the building, structure or real property shall be completed by affixing the summons to the building, structure or real property and by mailing the summons and complaint by certified or registered mail, return receipt requested, to the person in whose name the real property is recorded at the office of the Town Assessor.
- (h) With respect to any action commenced or to be commenced, the Town Attorney shall file a notice of pendency pursuant to the New York State Civil Practice Law and Rules.

Sec. 86-7. Civil penalty.

If, upon the trial of an action in Supreme Court for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed \$1,000.00 for each day it is found that defendants conducted, maintained, permitted or allowed the public nuisance after first notice to abate had been given by the Town. Upon recovery, such penalty shall be paid into the general Town fund.

Sec. 86-8. Permanent injunction.

- (a) If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted as ordered by the Court.
- (b) A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the New York State Civil Practice Law and Rules and for the actual costs, expenses and disbursements of the Town in investigating, bringing and maintaining the civil action.

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Sec. 86-9. Preliminary injunction.

Upon a motion or order to show cause from the Town Attorney and pending an action for a permanent injunction, a preliminary injunction enjoining the public nuisance may be granted for any of the relief obtainable by a permanent injunction.

Sec. 86-10. Temporary restraining order.

Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendants, for any of the relief obtainable by a permanent injunction.

Sec. 86-11 No act of ownership.

Injunctive action taken by the Town police department or Code Office in accordance with any Court order shall not constitute an act of possession, ownership or control by the Town, and shall not relieve the owner(s) of his/her/their duties, responsibilities and legal obligations as relate to the building, structure or real property.

Sec. 86-12 Severability.

If any clause, sentence, paragraph, word, section or part of this Code shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved in the controversy in which said judgment shall have been rendered.

Sec. 86-13 Exclusivity.

Nothing within this Section of the Code of the Town of New Hartford shall preclude the New Hartford Police and/or the New Hartford Code Enforcement Officers from prosecuting and/or enforcing the very same acts of public nuisance against the same owner(s), occupiers, tenants or lessees of the subject building, structure or real property under any other applicable section of the Town Code or laws of the State of New York.

Sec. 86-14 Effective Date.

This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

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Public Hearing Scheduled – Local Law Introductory “B” of 2008

Thereafter, Councilman Woodland offered the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 35 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, **February 13, 2008 at 6:00 P.M.**, or as soon thereafter as reached in the regular course of business, in Butler Memorial Hall, 48 Genesee Street, New Hartford to consider **Local Law Introductory “B” of 2008** which, if adopted, would amend the Code by adding a new Chapter 86 entitled **PUBLIC NUISANCE ABATEMENT LAW**, forbidding any owner, operator, manager, lessee or other occupier of a building, structure or real property to knowingly conduct, maintain, permit or allow the existence of a public nuisance at the building, structure or real property; and be it

FURTHER RESOLVED that the Town Board does authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in The Observer Dispatch.

A roll call vote ensued:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

Thereafter, the Resolution was declared unanimously carried and duly **ADOPTED**.

ADJOURNMENT

There being no further business to come before the Board, upon motion of Councilman Reynolds, seconded by Councilwoman Krupa, the meeting was adjourned at 7:08 P.M.

RECONVENE – MATTERS SUBMITTED BY TOWN SUPERVISOR

The Town Supervisor immediately reconvened the Board meeting to address two (2) items on the Agenda.

FINANCE:

Designation of Official Depository

The following Resolution was offered for adoption by Councilman Reynolds and duly seconded by Councilwoman Krupa:

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(RESOLUTION NO. 36 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford does hereby designate First Niagara as an Official Depository in which funds of the Town of New Hartford shall be deposited in 2008; and be it

FURTHER RESOLVED that the Town Supervisor or Bookkeeper of said Town be and hereby are authorized and directed to secure a Pledge of Security covering the maximum amount of money the Town would have on deposit at any one time during the Fiscal Year 2008 from First Niagara. A written security agreement and custodial agreement (which can be combined into one document) must be obtained. The Town, however, will try to have delivery of the collateral to an unrelated third party. If this cannot be effected, then all pertinent legal and financial risks will be evaluated; and be it

YET FURTHER RESOLVED that the Town Board of the Town of New Hartford does hereby authorize the Town Supervisor or Bookkeeper of the said Town to deposit funds not needed for immediate expenditures in the form of interest-bearing Certificates of Deposit, Repurchase Agreements, Treasury Bills and Money Market Certificates with First Niagara.

The Town Board members voted upon roll call:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

Appointment – Mohawk Valley Regional Water Finance Authority

The Finance Committee appointment, which alternates between the Towns of Whitestown and New Hartford, is due for action by the Town of New Hartford. The matter was deferred until the February 13, 2008 Town Board meeting.

ADJOURNMENT

There being no further business to come before the Board, upon motion of Councilman Reynolds, seconded by Councilman Payne, the meeting was adjourned at 7:10 P.M.

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Respectfully submitted,

Gail Wolanin Young, Town Clerk