

**SPECIAL MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON WEDNESDAY, JUNE 17, 2009 AT 6:03 P.M.**

In the absence of the Town Supervisor who had a conflicting business meeting, Deputy Supervisor Reynolds called the meeting to order at 6:03 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 PRESENT:

Councilwoman Christine G. Krupa
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.

ABSENT:

Councilman Robert A. Payne III
Supervisor Earle C. Reed

OTHER TOWN OFFICIALS PRESENT:

Codes Enforcement Officer Joseph Booth
Director of Budget Heather Mowat
Director of Senior Services M. Eileen Spellman
Highway Superintendent Richard C. Sherman
Planner Kurt L. Schwenzfeier
Senior Engineering Technician John Meagher
Town Attorney Gerald J. Green
Town Clerk Gail Wolanin Young

Thereafter, a quorum was declared present for the transaction of business. Councilman Payne was unable to attend this Special Meeting due to a conflicting business meeting with PAR.

MINUTES

May 27 and June 9, 2009 Town Board Meetings

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

(RESOLUTION NO. 133 OF 2009)

RESOLVED that the Town Board of the Town of New Hartford does hereby accept and approve as submitted the minutes of the *Regular* Town Board meetings held *May 27, 2009 and June 9, 2009*, and does further waive the reading of the same.

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Upon roll call, the Board members voted as follows:

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

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

INSURANCE QUOTE(S) & AWARD

Chip Roe of Bailey, Haskell & LaLonde reviewed that agency’s proposal for renewal of various insurance policies for the period June 30, 2009 – June 30, 2010. [NOTE: The Brown and Brown agency had contacted the Town Clerk on June 1, 2009 and they will submit a proposal next year for the period June 30, 2010 – June 30, 2011.

The GASB 34 brought about the biggest change in the insurance renewal premium(s), that document being the September 2008 appraisal of the Town’s fixed assets (buildings, structures, contents, etc.). This recent appraisal (replacement value) of buildings compared to the 2008-2009 insured value was a difference of approximately \$8,000,000. “Obviously that needs to be taken care of because if you had a big loss, you’d have a problem replacing the building(s),” advised Mr. Roe who gave the following as examples:

<u>Building</u>	<u>2008-2009 Insured 100% Building Value</u>	<u>Current Building Replacement Value</u>
Sanger Public Works Garage	\$1,292,222	\$2,560,679
Recreation Center (Ice Rink)	\$1,722,222	\$3,046,229

Councilman Reynolds commented that is the purpose of GASB 34, to provide up-to-date values on Town assets.

The program manager(s) have changed companies, with Firemen’s Fund municipal accounts division having been acquired by U. S. Specialty Insurance Company/Houston Casualty out of Houston, TX. This company has done a lot of good things – they didn’t take anything (coverage) away. Bailey, Haskell & LaLonde have reflected in its proposal the insured values as the policies were expiring (2008-2009) and what it would cost to bring the (replacement) values up to date for buildings/structures and contents...about a \$10,000,000 increase. The Property Coverage policy carries a \$1,000 deductible on buildings and includes \$1,000,000 coverage for earthquake (only for *Non-Damage Areas*) and \$1,000,000 coverage for flood (excluding *Special Flood Hazard Areas known as 100 year flood plain*) based on replacement cost. This policy also covers equipment

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breakdown, formerly covered by the Boiler & Machinery policy, when a piece of equipment self-destructs; not for coverage by lightning strikes, etc.

Councilman Reynolds acknowledged that the Town wouldn't lose any coverage but GASB 34 had identified some shortcomings, which have been rectified. He also noted that a "Consent to Settle" clause has been included.

The General Liability policy carries a limit of \$1,000,000 coverage per occurrence for matters such as negligently causing bodily or property damage, slander, libel, etc. and also covers herbicide and pesticide application(s). The GL policy excludes police departments.

The Law Enforcement (police) Liability policy provides \$1,000,000 coverage per occurrence and a \$2,000,000 annual aggregate and also provides a Line of Duty Death Coverage, Consent to Settle and Non Monetary Defense.

The Public Officials (errors and omissions) policy provides \$1,000,000 coverage for each claim with an annual aggregate of \$2,000,000 for wrongful acts, you make a decision not necessarily intentional and the court may decide it was wrong and perhaps someone had a financial loss....includes zoning and land use issues, permit issues. The policy provides limited coverage for identity theft for the Town Supervisor only, emergency travel reimbursement (terrorism) and Consent to Settle.

The Employment Practices Liability Coverage is \$1,000,000 per claim with an annual aggregate of \$2,000,000 and covers matters such as, but not limited to, wrongful hiring/firing, sexual harassment, workplace violence, etc. and the Consent to Settle.

Automobile liability coverage is \$1,000,000; it also includes \$10,000 for medical expenses and \$1,000,000 for uninsured motorists and provides for \$500 deductible for comprehensive and for collision and \$250 deductible for towing per disablement.

The Umbrella Liability policy provides \$4,000,000 over and above the other policies (General Liability, Auto Liability, Law Enforcement Liability, Public Officials Liability and Employment Practices Liability).

With regard to risk control services, HCC will send out a loss prevention employee to talk with department heads for safety measures and offer recommendations on how to implement them.

Terrorism Coverage is an option and the annual premium is \$719.00.

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L.E.A.P. Limited endorsement for Autos Procedure – endorsement requests to add or to delete vehicles during the policy term, within specific guidelines, will be marked “stamped” and no additional premium (AP) or return premium (RP) invoice will be generated and no further paperwork will be issued. *ENDORSEMENT AND BILLING WILL STILL BE PROCESSED FOR ALL VEHICLES WITH LIEN HOLDERS, ALL FIRE OR RESCUE VEHICLES AND ALL VEHICLES WITH ORIGINAL COST NEW OF \$100,000 OR GREATER.*

ACCOUNT SUMMARY

<u>Coverage</u>	<u>2008 Expiring Premiums</u>	<u>2009 Proposed- Per Expiring</u>	<u>2009 Proposed- Appraised Property Values</u>
Package	\$ 87,555	\$118,176	\$128,513
Commercial Auto	Included	Included	Included
Inland Marine	Included	Included	Included
Public Officials	\$ 15,373	Included	Included
Umbrella	\$ 15,074	Included	Included
Owners/Contractors Protective Liability- New York State	\$ 500	\$ 500	\$ 500
TOTAL PREMIUM	\$118,502	\$118,676	\$129,013

Thereafter, Councilman Woodland introduced the following Resolution for adoption; seconded by Councilwoman Krupa:

(RESOLUTION NO. 134 OF 2009)

RESOLVED that the New Hartford Town Board does hereby accept the insurance policy renewal proposal submitted by Bailey, Haskell & LaLonde for the period June 30, 2009 through June 30, 2010 and does hereby award renewal of the Town’s policies to said Bailey, Haskell & LaLonde for a not-to-exceed amount of \$129,013.

The Town Board members voted as follows:

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

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Deputy Supervisor Reynolds declared the Resolution unanimously carried and duly *ADOPTED*.

PROPOSED ANNEXATION – CHERRYWOOD MOBILE HOME COMMUNITY

This matter is a continuation of discussion from the June 9, 2009 Town Board meeting with regard to advice from Town Attorney Gerald Green that the New Hartford Town Board not authorize Codes Enforcement Officer Joseph Booth to issue permits and perform inspections within the Town of Kirkland portion of the Cherrywood Mobile Home Community on Seneca Turnpike, New Hartford.

Attorney Green advised the Town Board they have three (3) choices with regard to building permits for the Kirkland portion of this development while the annexation proceeding is pending:

1. let the Town of Kirkland issue their own permits within their jurisdiction through their Codes Enforcement Office
2. direct that an inter-municipal agreement be entered into between the Town of Kirkland and the Town of New Hartford
3. let the owner of the Cherrywood development and/or the homeowner go to court seeking an order for the Town of New Hartford to issue permits, etc. outside its borders as per Judge Hester's order in November 2008 for the Kies property.

When the matter came to light in September 2008 with Mrs. Kies whose residence would be in the Town of Kirkland, Codes Enforcement Officer Booth alerted legal counsel and asked whether he should be issuing permits outside the Town of New Hartford; he was directed not to do so and explored the issue and Kirkland Town Attorney Hallak and New Hartford Town Attorney Green began the process of a preliminary look at what would constitute an inter-municipal agreement between Kirkland and New Hartford. During that process, Attorney Goldbas – who represented Mrs. Kies – brought an Order to Show Cause before Judge Hester at which time Attorneys Hallak and Green stopped and went with Judge Hester's decision/order to issue one (1) more permit but restricted it as expressly stated in the court order. If another issue of similar importance or concern should arise, that matter is supposed to go back to court. If the Town Board is asking for Attorney Green's opinion that, in the absence of an inter-municipal agreement and/or further order from Judge Hester, that New Hartford's Code Enforcement Officer issue permits for the Town of Kirkland, the answer is "no". The Town of Kirkland's May 11, 2009 resolution authorizing the Town of New Hartford to issue permits in Kirkland is not an offering of adequate legal protection. This has been our (New Hartford's) position since 2008; and in fairness to Attorney Hallak, he did write a letter requesting certain information that he has yet to receive...no follow up or renewed request from Attorney Kirshtein with regard to renewing efforts for an inter-municipal agreement. Attorney Green had been contacted again in February 2009 when Mr. Baker, manager of

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Cherrywood Community, inquired about some permits and he was given a copy of Judge Hester's order. Then Ralph Humphreys appeared before the New Hartford Town Board inquiring about the annexation process after which, on May 6, 2009 the New Hartford Town Board received a petition for annexation. There's no reason why Kirkland (1) can't get up to speed with this, and (2) an inter-municipal agreement is another possibility and (3rd) is just simply go to court. Attorney Green stands by his opinion that no Town Official perform work in another town without an inter-municipal agreement or a court order – New Hartford needs to be legally protected.

Murray Kirshtein, Attorney for Ralph Humphreys/Cherrywood, stated that the three (3) options given by the Town Attorney are costly and time consuming. The only issues raised were with fire and police services, which are centrally dispatched, so there is no liability on the Town of New Hartford's part, according to Attorney Kirshtein. He said that Codes Enforcement Officer Booth has been issuing permits for the Town of Kirkland portion of this development for four (4) years and this development has been on the table for twenty-one (21) years. Further, that the Town of New Hartford might have collected taxes from the Kirkland side of this development. Attorney Kirshtein stated that New Hartford provides the public water and sewer for the entire community and which services had the approval of the New York State Department of Environmental Conservation and the Oneida County Health Department. He feels the Town of New Hartford "...should be practical" and that the New Hartford Town Board "...should direct Joe [Codes Enforcement Officer] to issue permits like he's been doing for the past four (4) years." Attorney Kirshtein claimed that the New Hartford Codes Enforcement Officer "...has been given the authority through the ceding resolution from Kirkland." Attorney Kirshtein said the inter-municipal agreement would be costly to involve attorneys to get it done and would accomplish the same thing as an annexation. The residents have re-registered as Kirkland voters, having originally registered as New Hartford voters.

To Councilwoman Krupa's question of how many people are waiting for permits, Ralph Humphreys stated there are two (2) homes needing permits and one (1) that was issued a building permit but needs a Certificate of Occupancy. Two (2) houses were started said Mr. Humphreys and a 3rd is on hold, they were told not to start digging. He said the houses are paid for and the people are waiting to move in.

To Councilwoman Krupa's question whether the annexation will cover just these three (3) properties, Attorney Kirshtein said the annexation would include 10+ acres. When the development is completed, it would include a total of twenty (20) lots said Mr. Humphreys.

Councilman Woodland questioned that three (3) permits were issued without realizing a mistake [property in Kirkland] and one (1) permit was issued by court order; no permits

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have been issued since. Ralph Humphreys said the two (2) he's talking about – Attorney Kirshtein interrupted, saying the owner brought in the house, they had liens on them, they didn't come in after Judge Hester's order – at the same time. Mr. Humphreys said one (1) was in New Hartford and the others in Kirkland; two (2) were started this Spring and commitments had been made by someone other than Mr. Humphreys.

Attorney Kirshtein claimed that for twenty-one (21) years New Hartford has been collecting taxes from the Kirkland portion of the development and that for four (4) years, building permits have been issued for the Kirkland portion. Codes Enforcement Officer Booth clarified that in late 2006 and in 2007 several building permits had erroneously been issued for the Kirkland portion of Cherrywood and further stated that he did not issue those permits.

Discussion then turned to the required notice of public hearing on the annexation and Attorney Kirshtein reviewing the timeframe for publication, and the time during which the annexation request can be evaluated prior to rendering a decision; also, there must be a special election/referendum. Attorney Green clarified that the Town(s) have ninety (90) days to deliberate after the joint public hearing. Town Clerk Young noted that the Town of Kirkland would be responsible for the special election since the property and residents involved are under Kirkland's jurisdiction.

Codes Enforcement Officer Booth stated that the annexation doesn't take care of the problem and noted the same situation across the street (Applewood Community).

Councilwoman Krupa asked what Kirkland's objection was to issuing the permits themselves. Attorney Kirshstein replied, "I don't really know; perhaps they look at it as a New Hartford project."

Referring to Judge Hester's order, Councilwoman Krupa Christine questioned "...the order doesn't go to further development without further order from the court?" Attorney Green stated that, in the absence of an inter-municipal agreement or other legal document to protect the Town of New Hartford, the matter needs to go to court. In an instance like this, the Town of Kirkland and the property owner(s) have been put on notice since September 2008. If anybody in the Town of Kirkland felt this matter would stop at the Kies application, by doing nothing, they've accomplished nothing. If a series of further permits was needed for the Kirkland part of Cherrywood, they should have taken further action. They knew this matter existed in 2008, Judge Hester understood the urgency as well as the property location, title and jurisdiction, and directed New Hartford one more time to take care but that it's not an automatic and the issue needs to be resolved. Attorney Green said this isn't a personal issue. To send someone from New Hartford to Kirkland to issue permits is going to be done through a legal document that provides

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sufficient legal protection to the Town of New Hartford; Kirkland has a Codes Department.

Councilman Woodland questioned what kind of precedent the Town may have set by mistakenly issuing those few building permits in Kirkland; how would the courts look at it in the past? Attorney Green stated that Codes Enforcement Officer Booth contacted retired Codes Enforcement Officer Gerald Back, the latter of who thought there was a Town Board resolution or an inter-municipal agreement that gave him the right to issue the permits for Kirkland; but after a search of records, neither New Hartford nor Kirkland could locate such an agreement. After discovery of the error when the former Codes Officer issued the permits for Kirkland in late 2006-2007, Codes Enforcement Officer Booth did not issue any permits for the Kirkland side of Cherrywood. He alerted Town Officials when the Kies request for a building permit came about because it was in the Town of Kirkland.

Codes Enforcement Officer Booth asked Attorney Kirshtein what type of agreement he's looking for that would allow this interim issuance of permits. Attorney Kirshtein said you have a resolution from the Town of Kirkland authorizing you to do this...an offer and an acceptance. Attorney Kirshtein said, however, that Attorney Green and Codes Officer Booth are "...taking the stand that they can't do it." Codes Officer Booth said he didn't get an answer to his question.

Councilman Reynolds acknowledged the advice of Town Attorney Green that no permits will be issued without an inter-municipal agreement or other legal document being in place.

Mr. Humphreys asked how long it would take New Hartford to get things ready to bring to the Town of Kirkland for an inter-municipal agreement. Attorney Green said that would be up to Kirkland Attorney Hallak – he requested documents in October 2008 but Attorney Green couldn't address that because the process had stopped. Councilman Woodland asked if the process could start again; yes, it can.

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

(RESOLUTION NO. 135 OF 2009)

RESOLVED that, upon advice of Town Attorney Gerald Green, the Town Board of the Town of New Hartford will not authorize Codes Enforcement Officer Joseph Booth to issue building permits and/or to inspect properties in the Town of Kirkland in the absence of an inter-municipal agreement or court order.

It was clarified that Codes Officer Booth can give the appropriate information to the Kirkland Codes Department. The Town Board members then voted upon roll call:

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

Deputy Supervisor Reynolds declared the Resolution unanimously carried and duly ***ADOPTED.***

The Town Board directed Attorney Green to contact Kirkland Town Attorney Hallak and Ralph Humphreys (Cherrywood) to expedite this process to have a successful operation at Cherrywood Community.

James Spellman inquired if Oneida County corrected their tax maps; and if not, that they should. Further, if taxes were paid to New Hartford for Kirkland property, New Hartford should refund the money to the Town of Kirkland; Councilman Reynolds agreed.

Planner:

Project Development Agreement (Johnson Controls) – Energy Savings Performance Contract

Planner Schwenzfeier reviewed the work Johnson Controls had performed for the Town in 2008, with presentations at a November and December 2008 Town Board meeting. The matter has been held in abeyance since December 2008. The next step would be for Johnson Controls to perform a detailed evaluation study of the Town's buildings to determine the energy consumption and operational characteristics of the buildings and to identify the energy conservation measures, procedures, and other services that could be provided in order to reduce the Town's energy consumption and operating costs. Chris Kalwara of Johnson Controls said he would work with the Town to finalize the scope, pricing and guarantees and put forth an agreement for implementation. Planner Schwenzfeier noted the Town would apply for federal stimulus money.

Councilwoman Krupa had questions and was concerned about the cost of the project and any savings the Town would realize, as well as the payback period.

Councilman Reynolds asked Director of Budget Heather Mowat if she had any experience with this type of matter, to which she replied she had a lot of experience. Director Mowat said Councilman Payne called her this morning on this matter but she didn't have time to review all the documents today. She suggested the Board withhold action for two (2) weeks during which time the Town Attorney would also review the documents.

RFP's – 2008 Audit

Director of Budget Mowat had informed Councilwoman Krupa that RFPs had been sent out for the 2008 audit; the Town received only one RFP and that was in the amount of \$10,000 from Barone and Howard. Carol Ryan, Supervisor's Secretary, had contacted numerous companies but they declined to submit quotes. The Town had budgeted \$15,000 for the audit. Thereafter, Councilwoman Krupa introduced the following Resolution for adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 136 OF 2009)

RESOLVED that the New Hartford Town Board does hereby accept the Request for Proposal submitted by Barone and Howard, PC, in the amount of Ten Thousand Dollars (\$10,000) and does hereby award the RFP to said Barone and Howard, PC, which will perform the 2008 Audit of the Town's finances.

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

The Resolution was declared unanimously carried and duly adopted.

ADJOURNMENT

There being no further business to come before the Town Board, upon motion of Councilwoman Krupa and duly seconded, the meeting adjourned at 7:25 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk