

**JOINT PUBLIC HEARING ON CHERRYWOOD ANNEXATION
BETWEEN THE TOWN OF NEW HARTFORD
AND THE TOWN OF KIRKLAND
HELD AT BUTLER MEMORIAL HALL, NEW HARTFORD,
NEW YORK ON THURSDAY, JULY 16, 2009 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 PRESENT:

Councilman Robert A. Payne III
Councilwoman Christine G. Krupa
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Earle C. Reed

OTHER TOWN OFFICIALS PRESENT:

Highway Superintendent Richard C. Sherman
Planner Kurt L. Schwenzfeier
Police Chief Raymond Philo
Senior Engineering Technician John Meagher
Town Clerk Gail Wolanin Young

KIRKLAND TOWN BOARD MEMBERS & OFFICIALS PRESENT:

Supervisor Robert J. Meelan
Councilman Nicholas S. Venero
Councilman Michael D. O'Neil
Councilman Fred A. Lomanto
Councilman Mark C. Lewis
Attorney for the Town Anthony G. Hallak
Town Clerk Dianne V. Tuttle

Councilman Woodland announced that tonight's Public Hearing was to consider the annexation of approximately eleven (11) acres from the Town of Kirkland into the Town of New Hartford, specifically affecting the Cherrywood Mobile Home Community. The Hearing will be opened, the Boards will hear from the petitioners and within ninety (90) days, the Boards will make their decisions after deliberation.

The Public Hearing was opened at 6:03 P.M. with regard to the Cherrywood Annexation Petition. [NOTE: The Town Clerk's files included:

- the original petition for annexation
- the Notice of Public Hearing
- Proof of Publication of Notice of Public Hearing

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- Affidavit of Posting of Notice of Public Hearing
- Short Environmental Assessment Form (EAF)
- notifications of Public Hearing to
 - New Hartford Central and Clinton Central School Districts
 - New Hartford Town and Kirkland Town Police Departments
 - New Hartford Fire and Clinton Fire Departments
 - Ralph Humphreys (mortgage holder for Cherrywood)
 - residents who signed original petition for annexation
- SEQR referrals to
 - NYS Department of Environmental Conservation
 - Oneida County Planning Department
 - Oneida County Environmental Health
 - Town Planning Board
 - New Hartford Police Department
 - Kirkland Police Department
 - New Hartford Fire Department
 - Clinton Fire Department
 - NYS Department of Transportation
 - copy to Town of Kirkland Clerk
- Referral to Oneida County Planning Department (General Municipal Law)
- SEQR responses from
 - Oneida County Planning Department
 - NYS Department of Environmental Conservation
 - Oneida County Health Department
 - Town Planning Board
 - New Hartford Police Department]

Attorney Murray Kirshtein said he had prepared the petition for annexation on behalf of the Kirkland residents who, he believed, had compelling reasons for the annexation. Attorney Kirshtein stated Cherrywood is a community with a common interest. Currently, seven (7) residents in the Kirkland portion of Cherrywood thought they lived in the Town of New Hartford and voted in New Hartford by mistake until this matter was brought up and have since changed their registration so they will be able to vote in the election under General Municipal Law. Cherrywood Community has one entrance, that being in New Hartford; one Community Center in New Hartford. Basically, it's a community for 55-year old and older residents with similar interests and should be subject to one government and one set of rules, not two. Currently, Cherrywood is a community in two (2) towns with access in only one town, tax ramifications since they were being taxed in New Hartford while some land is in Kirkland. Water and sewer services are provided by New Hartford while fire protection is provided by Kirkland {Clark Mills Fire Dept). Attorney Kirshtein had submitted a signed argument of all seven (7) Kirkland residents, and a petition by forty-one (41) residents of Cherrywood

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Community in New Hartford, supporting the annexation and he would invite anyone present to speak, residents in the area or elsewhere with their arguments or support.

Those who spoke were:

- *Gail Schmidt, in behalf of her sister, Joan Parker Noonan* – stated that New Hartford had issued a ***Building Permit but won't issue a Certificate of Occupancy. Codes Enforcement Officer Joseph Booth said it came to the Town's attention that the property was in Kirkland after the Building Permit had been issued and that he doesn't have the authority to now issue a Certificate of Occupancy.
- *Sharon Sbaraglia* of Cherrywood said she looked at a lot and gave a deposit and she couldn't get a Certificate of Occupancy. It's costing her more money to stay where she is. The house [in Cherrywood] is already built and is in Kirkland and she needs a Certificate of Occupancy for the loan. Councilwoman Krupa inquired if Ms. Sbaraglia had approached Kirkland's Codes Department to obtain a Certificate of Occupancy. Attorney Hallak interjected that the project has never been approved by the Town of Kirkland or in the Town of Kirkland.

Councilman Payne asked Codes Enforcement Officer Booth if there was a temporary Certificate of Occupancy. Codes Officer Booth responded "Yes", but said he doesn't have the authority to act in and for the Town of Kirkland. Attorney Green interjected "We're trying to work out these problems."

- Attorney Kirshtein said that in all fairness to the Town of Kirkland, the Town of Kirkland ceded authority to New Hartford to issue permits. In the Noonan case, he believed the Building Permit was issued 2 or 3 years ago for this Kirkland property and since Kirkland ceded the right to New Hartford on permitting for this area that at the very least a temporary Certificate of Occupancy could be issued by New Hartford because it issued the Building Permit. Attorney Green said, again, we've outlined the legalities and legal options available. The annexation petition was received in May 2009; an inter-municipal agreement can be prepared, or the courts are open (Judge Hester made clear in that one limited instance, COE to issue a permit to Mrs. Kies but it was limited and the court recognized the legal limits.).

***Attorney Kirshtein clarified that Ms. Noonan wasn't issued a Building Permit Linda Kies was issued a Building Permit by court order.

Attorney Kirshtein stated that the owner of Cherrywood Community has died and the property is now in the Estate of Mr. Larsen; Ralph Humphrey, former owner of

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Cherrywood Community, is a mortgagee and is taking some action against Mr. Larsen's estate.

The New Hartford Town Board's next regularly scheduled meeting is August 12, 2009 and Kirkland's is August 10, 2009. Brief discussion ensued about introducing legislation and conducting a public hearing to assign a zoning classification to the 11-acre parcel if it is annexed into New Hartford.

Councilman Krupa asked the Town Attorney how far along he was on the inter-municipal agreement; he replied that the draft had been given to her and that's where it sits.

- Clinton School District Superintendent Marie Wiles – was not sure how this would affect taxes – difference in taxes between New Hartford and Kirkland. She needs to know the amounts as someone had said the property would be assessed at the New Hartford rate. Ralph Humphreys commented that about 5 houses in the Cherrywood Community are in the New Hartford Central School District and are taxed differently from those in the Clinton School District. He said it would be \$0 for school taxes but not necessarily on the town and county taxes.
- New Hartford Police Chief Ray Philo responded under SEQRA. He prepared a study of call records, part of his written recommendations, that shows only 17 Police/Animal Control complaints had been received for the period 2006 – 2008. He read, “in the past few years, I have had the opportunity to work on several annexation issues involving the Town of New Hartford and neighboring communities. Driving these annexations were site developments straddling municipal boundaries. If annexation did not occur, the delivery of municipal services, especially police services, would become inefficient and confusing. Annexation allows for the efficient and coherent delivery of municipal services, and further provides for the cohesiveness of a neighborhood or commercial development. I believe this is the case with the proposed Cherrywood Annexation. In addition, entrance and egress to this complex is in New Hartford and to my knowledge, there is no plan to place an entrance in the Town of Kirkland.” Chief Philo acknowledged that Kirkland Police Chief Daniel English was present

Chief Philo believed the annexation to be in the overall interest of the public (GML Section 705) and that any impact on the New Hartford Police Department would be minimal or marginal, if approved.

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ADJOURNMENT

There being no one further wishing to speak, upon motion duly made and seconded, the Public Hearing was closed at 6:29 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk