

**REGULAR MEETING OF THE TOWN BOARD  
OF THE TOWN OF NEW HARTFORD, NEW YORK  
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN  
ON WEDNESDAY, JANUARY 26, 2011 AT 7:03 P.M.**

Town Supervisor Patrick Tyksinski called the meeting to order at 7:03 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:**

Councilman Donald C. Backman  
Councilwoman Christine G. Krupa  
Councilman David M. Reynolds  
Councilman Richard B. Woodland, Jr.  
Supervisor Patrick M. Tyksinski

**OTHER TOWN OFFICIALS/EMPLOYEES PRESENT:**

Codes Enforcement Officer Joseph Booth  
Deputy Supervisor Matthew Bohn III  
Highway/Sewer Superintendent Richard C. Sherman  
Parks and Recreation Director Michael W. Jeffery  
Police Chief Michael Inserra  
Town Attorney Herbert J. Cully  
Town Clerk Gail Wolanin Young

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

MINUTES APPROVAL

Since Town Board members Reynolds and Krupa had not read the January 12, 2011 Town Board minutes, action was deferred until the February 9, 2011 Town Board meeting.

PUBLIC HEARINGS

7:04 P.M. Kelly/Jay-K Zone Map Amendment application  
Local Law Introductory "A" of 2011

At 7:04 P.M. the Town Supervisor opened the Public Hearing on Local Law Introductory "A" of 2011 which, if adopted, would amend the Town Code, Chapter 118 thereof entitled ZONING, and map coincidental thereto, as it pertains to property located at 8448 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2 of said legislation, and changing the designation of twenty-two point thirty-seven (22.37) acres, more or less, from Manufacturing (M) to Retail Business (RB1). Said acreage is owned by Kevin M. and Christopher Kelly and known as the "Jay-K lumber property", and further identified as Tax Map Parcels Nos. 328.011-1-20.1; 328.011-1-21; 328.011-1-22 and 328.011-2-1.

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[The Town Clerk had available Local Law Introductory "A", the Notice of Public Hearing, proof of publication (January 14, 2011 edition of The Observer Dispatch), and proof of posting. Also available were the recommendations of the County Planning Department and Town Planning Board for approval of the zone map amendment, as well as the SEQR responses from various state and local agencies.]

The applicants' (the Messrs. Kelly) intended use of the acreage, should their application be approved, is to allow the sale of retail lumber and builder supplies, operation of an ALDI's grocery store and future uses permitted in an RB1 zone (to be determined).

The Town Supervisor inquired if anyone present wished to speak in favor of, in opposition to, or to comment upon the Kelly/Jay-K request for rezoning.

No one having come forth, the Public Hearing was closed at 7:05 P.M.

7:05 P.M.                      Sloan Zone Map Amendment Application  
Local Law Introductory "B" of 2011

At 7:05 P.M. Supervisor Tyksinski opened the Public Hearing on Local Law Introductory "B" of 2011 which, if adopted, would amend the Town Code, Chapter 118 thereof entitled ZONING, and map coincidental thereto, as it pertains to property located at 8438 and 8440 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2 of said legislation, and changing the designation of four point fifty-two (4.52) acres, more or less, from Manufacturing (M) to Retail Business (RB1). Said acreage is owned by Cain and S. Ross Sloan, identified as Tax Map Parcel No. 328.011-1-20.2.

[The Town Clerk had available Local Law Introductory "B", the Notice of Public Hearing, proof of publication (January 14, 2011 edition of The Observer Dispatch), and proof of posting. Also available were the recommendations of the County Planning Department and Town Planning Board for approval of the zone map amendment, as well as the SEQR responses from various state and local agencies.]

The applicants' intended use of the acreage, should their application be approved, is to allow continued operation of the S. R. Sloan, Inc. company as well as future uses permitted in an RB1 zone (to be determined).

The Town Supervisor inquired if anyone present wished to speak in favor of, in opposition to, or to comment upon the Sloan request for rezoning.

No one having come forth, the Public Hearing was closed at 7:06 P.M.

The Town Attorney pointed out the fine job that the Town Clerk had done with regard to the Kelly and the Sloan zone map amendment requests, keeping a detailed tracking sheet on each application. He said it is so much easier when someone is on top of things, it makes it easier.

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Attorney Cully then reviewed with the Town Board the criteria in General Municipal Law and SEQRA if the Town Board intends to approve the requested zone map amendment requests. The Town Board would need to determine whether adoption of a local law for the zone map amendments would have a significant adverse impact upon the environment.

Noting that people had just entered the meeting room, Councilman Backman inquired if any of them wished to speak in favor or opposition or comment upon the two (2) zone map amendment applications; namely, the Kelly/Jay-K and the Sloan applications. Even though the people were late arriving at the Town Board meeting, he requested that the Public Hearings be re-opened. Thereafter, Supervisor Tyksinski re-opened the Public Hearings:

7:08 PM        Re-opening of Public Hearings  
                  Local Law Introductory "A" of 2011  
                  Local Law Introductory "B" of 2011

After the Town Supervisor re-opened the Public Hearings on the Kelly/Jay-K and the Sloan zone map amendment applications, Paul and Maria Christopher came forth, indicating they were new to the area, having bought a home in The Manors area in October 2010. Having received a letter from the Town Clerk, the Christophers were present to learn what these applications were all about. Town Attorney Cully explained that the Public Hearings were required on the Zone Map Amendment applications for the Jay-K site and the Sloan property on Seneca Turnpike and to permit said properties to be used for retail business uses and that's what the applications are, a rezoning request from Manufacturing (M) to Retail Business (RB1). Mr. Christopher asked if traffic to the sites would come off Seneca Turnpike and not elsewhere; the Town Attorney responded that this is only a hearing to consider rezoning the properties and that if the rezoning were approved, the property owners would need to go before the Planning Board for site plan matters and review ingress/egress, stormwater and buffering, etc. The Town Attorney asked Ned Walker of Walker Planning and Design if he would come forward. Mr. Walker, who represented the applicants, displayed an aerial photo of the site showing the properties superimposed in pink. He informed the Christophers that this is not a site plan review request, it's a land use amendment to a map, from Manufacturing to Retail Business (despite for years Jay-K had been doing retail business besides manufacturing). There are two (2) separate petitions, Jay-K and Sloan. If the rezoning applications were to be approved, this RB1 classification would be joining an existing RB1 district. The Christophers were concerned whether it would encroach upon the woods and wetlands behind their residence. It was acknowledged there is a back-gated entrance but there is no intent to use it for ingress/egress. The wetlands are protected by statute. There being no further comments, the Supervisor closed the Public Hearings at 7:16 P.M.

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**Adoption of Local Law No. One of 2011 (Local Law Introductory "A" of 2011)**

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

**(RESOLUTION NO. 19 OF 2011)  
ADOPTION OF LOCAL LAW NO. ONE OF 2011**

**WHEREAS**, a resolution was duly adopted by the Town Board of the Town of New Hartford for a public hearing to be held by said Town Board on January 26, 2011 at 7:00 P.M. at Butler Memorial Hall, New Hartford, New York, to hear all interested parties on a proposed Local Law entitled Local Law Introductory "A" of 2011, A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 8448 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2, and changing the designation of property from M (Manufacturing) to RB1 (Retail Business); and

**WHEREAS**, notice of said public hearing was duly published in The Observer Dispatch, the official newspaper of the Town of New Hartford, on January 14, 2011, and posted on the Town Clerk's Bulletin Board, Butler Memorial Hall on January 13, 2011; and

**WHEREAS**, said public hearing was duly held on January 26, 2011 at 7:04 P.M. at Butler Memorial Hall and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof; and

**WHEREAS**, the Oneida County Department of Planning on December 17, 2010, pursuant to Section 239-m of the General Municipal Law, recommended approval of said proposed Local Law; and

**WHEREAS**, pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law it has been determined by the New Hartford Town Board that adoption of said proposed Local Law would not have a significant effect upon the environment and could be processed by their applicable governmental agencies without further regard to SEQRA; and

**WHEREAS**, the Town Board of the Town of New Hartford, after due deliberation, finds it in the best interest of the Town of New Hartford to adopt said Local Law;

**NOW, THEREFORE**, the Town Board of the Town of New Hartford hereby adopts said Local Law as Local Law No. One of 2011 entitled "A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 8448 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2, and changing the designation of

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property from M (Manufacturing) to RB1 (Retail Business)", a copy of which is set forth herein as Schedule "A" and made a part hereof, and the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of New Hartford, and to give due notice of the adoption of said Local Law to the Secretary of State.

### Schedule "A"

Local Law No. One of 2011

A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 8448 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2, and changing the designation of property from M (Manufacturing) to RB1 (Retail Business).

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

**Section 1.** Chapter 118 of the Code of the Town of New Hartford, Section 118-8, and particularly the map coincidental thereto and made a part thereof, is hereby amended as follows:

Section 118-8. Zoning Map.

(Change the designation of twenty-two point thirty-seven [22.37] acres, more or less, situate at 8448 Seneca Turnpike and identified as Tax Map Parcels No. 328.011-1-20.1; 328.011-1-21; 328.011-1-22 and 328.011-2-1, owned by Kevin and Christopher Kelly and referred to as the Jay-K Lumber property, from M [Manufacturing] to RB1 [Retail Business].

**Section 2.** The boundaries and description of said district are as follows:

All that piece or parcel of land situate in the Town of New Hartford, County of Oneida, State of New York, and more particularly described as follows:

Beginning at an iron pin set at the intersection of the southwesterly highway boundary of existing Seneca Turnpike (New York State Route #5) with the division line between Green Lawn Cemetery (liber 748, page 275, liber 793, page 447) on the southeast and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, and liber 2628, page 37) on the northwest; thence S. 60 12' 30" W. along the last mentioned division line 422.57 feet to an iron pin set at an angle point; thence S. 04 degrees 04' 00" W. along the division line between Green Lawn Cemetery (liber 748, page 275, liber 793, page 447) on the east and Kevin M. Kelly and

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Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the west 180.89 feet to an iron pin set at an angle point; thence S. 12 degrees 48' 34" W. along the division line between Green Lawn Cemetery (liber 748, page 275, liber 793, page 447) on the east and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the west 185.08 feet to a large multi-trunk birch tree; thence S. 83 degrees 58' 13" E. along the division line between Savage Homes, Inc. (liber 1278, page 153) on the north and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 238, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the south 3.23 feet to an angle point; thence S. 06 degrees 01' 47" W. along the division line between Savage Homes, Inc. (liber 1278, page 153) on the east and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the west 147.97 feet to an angle point; thence N. 83 degrees 58' 13" W. along the northerly highway boundary of existing Oakdale Avenue North 210.10 feet to a point of curvature; thence southwesterly along a 205.30 foot radius curve to the left and along the northwesterly highway boundary of existing Oakdale Avenue North an arc distance of 329.11 feet to a point of tangency; thence S. 04 degrees 10' 47" W. along the westerly highway boundary of existing Oakdale Avenue West 81.47 feet to a found iron pipe at an angle point; thence N. 85 degrees 49' 13" W. along the division line between Richard C. Sherman (liber 2823, page 136) on the south and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the north 150.22 feet to an angle point; thence N. 04 degrees 15' 57" E. along the division line between Scot A. and Deborah L. Gage (liber 2685, page 350) on the west and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the east 111.22 feet to an angle point; thence S. 81 degrees 42' 00" W. along the division line and its extension between Scot A. and Deborah L. Gage (liber 2685, page 350) on the south and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the north 490.84 feet to a found iron pipe at an angle point; thence N. 04 degrees 48' 25" E. along the division line between Bible Baptist Church (liber 2016, page 886) on the west and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the east 460.40 feet to an angle point; thence S. 79 degrees 43' 56" E. along the division line between Cain K. and Ross Sloan (liber 2124, page 937, liber 2407, page 147) on the north and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the south 359.96 feet to an angle point; thence N. 79 degrees 19' 01" E. along the division line between Cain K. and Ross Sloan (liber 2124, page 937, liber 2407, page 147) on the north and Kevin M. Kelly and Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the south 236.80 feet to an angle point; thence N. 24 degrees 58' 32" W. along the division line between Cain K. and Ross Sloan (liber 2124, page 937, liber 2407, page 147) on the west and Kevin M. Kelly and Christopher J. Kelly (liber

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1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the east 46.90 feet to the center line of existing Mud Creek; thence N. 24 degrees 59' 19" W. along the division line between Cain K. and Ross Sloan (liber 2124, page 937, liber 2407, page 147) on the west and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the east 180.17 feet to an angle point; thence N. 85 degrees 14' 19" W. along the division line between Cain K. and Ross Sloan (liber 2124, page 937, liber 2407, page 147) on the southwest and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the northeast 170.00 feet to an angle point; thence N. 26 degrees 10' 09" W. along the division line between Cain K. and Ross Sloan (liber 2124, page 937, liber 2407, page 147) on the west and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the east 391.55 feet to an angle point; thence N. 03 degrees 38' 40" E. along the division line between Mud Creek Limited Partnership (instrument number 2006-014572) on the west and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the east 112.57 feet to an iron pin found at an angle point; thence N. 78 degrees 56' 34" E. along the division line between John P. Leech (instrument number 2008-006862) on the north and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the south 175.50 feet to an angle point; thence S. 11 degrees 16' 39" E. along the division line between Middle Settlement Corp. (liber 2657, page 520) on the east and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the west 59.22 feet to an angle point; thence S. 80 degrees 53' 05" E. along a zoning line 204.45 feet to an angle point; thence S. 58 degrees 24' 08" E. along the division line between R. W. Z. Realty Corp. (liber 2492, page 71, liber 2640, page 230, liber 2637, page 690) on the northeast and Middle Settlement Corp. (liber 2574, page 39) on the southwest 207.91 feet to an angle point; thence N. 33 degrees 38' 59" E. along the division line between R. W. Z. Realty Corp. (liber 2492, page 71, liber 2640, page 230, liber 2637, page 690) on the northwest and Kevin M. Kelly, Christopher J. Kelly (liber 1906, page 239, liber 2317, page 244, liber 2504, page 221, liber 2628, page 37) on the southeast 407.00 feet to a point on the southwesterly highway boundary of existing Seneca Turnpike (N.Y. State Route # 5); thence S. 57 degrees 16' 00" E. along the last mentioned highway boundary 194.23 feet to an angle point; thence S. 52 degrees 17' 20" E. along the last mentioned highway boundary 448.79 feet to the point of Beginning, containing 974,752 plus or minus square feet or 22.37 acres more or less.

The above mentioned courses and distances are as shown on a map entitled, "Map and Survey Showing Lands To Be Conveyed By Kevin M. Kelly and Christopher J. Kelly, Town of New Hartford, County of Oneida, State of New York", surveyed by Christopher S. Nash, L.L.S., #049163, and dated July 15, 2000, and last revised November 8, 2010.

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**Section 3.** All other provisions of Chapter 118 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 4.** This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State.

Councilman Reynolds acknowledged that the Town had received from First Source Federal Credit Union a letter in support of the Jay-K Zone Map Amendment application. Councilman Backman expressed concerns about traffic but realized it is not the Town Board's domain to limit ingress/egress and he believes that eventually the Town will see an entrance/exit on Middle settlement Road (NYS Route 5B). Thereafter, the Town Board voted as follows:

Councilwoman Krupa of interest.	-	ABSTAINED, as she has a conflict
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Adoption of Local Law No. Two of 2011 (Local Law Introductory "B" of 2011)**

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

**(RESOLUTION NO. 20 OF 2011)  
ADOPTION OF LOCAL LAW NO. TWO OF 2011**

**WHEREAS**, a resolution was duly adopted by the Town Board of the Town of New Hartford for a public hearing to be held by said Town Board on January 26, 2011 at 7:00 P.M. at Butler Memorial Hall, New Hartford, New York, to hear all interested parties on a proposed Local Law entitled Local Law Introductory "B" of 2011, A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 8438 and 8440 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2, and changing the designation of property from M (Manufacturing) to RB1 (Retail Business); and

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**WHEREAS**, notice of said public hearing was duly published in The Observer Dispatch, the official newspaper of the Town of New Hartford, on January 14, 2011, and posted on the Town Clerk's Bulletin Board, Butler Memorial Hall on January 13, 2011; and

**WHEREAS**, said public hearing was duly held on January 26, 2011 at 7:05 P.M. at Butler Memorial Hall and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof; and

**WHEREAS**, the Oneida County Department of Planning on December 22, 2010, pursuant to Section 239-m of the General Municipal Law, recommended approval of said proposed Local Law; and

**WHEREAS**, pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law it has been determined by the New Hartford Town Board that adoption of said proposed Local Law would not have a significant effect upon the environment and could be processed by their applicable governmental agencies without further regard to SEQRA; and

**WHEREAS**, the Town Board of the Town of New Hartford, after due deliberation, finds it in the best interest of the Town of New Hartford to adopt said Local Law;

**NOW, THEREFORE**, the Town Board of the Town of New Hartford hereby adopts said Local Law as Local Law No. Two of 2011 entitled "A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 8438 and 8440 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2, and changing the designation of property from M (Manufacturing) to RB1 (Retail Business)", a copy of which is set forth herein as Schedule "B" and made a part hereof, and the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of New Hartford, and to give due notice of the adoption of said Local Law to the Secretary of State.

**Schedule "B"**

A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 8438 and 8440 Seneca Turnpike (aka NYS Route 5), a description of which is set forth in Section 2, and changing the designation of property from M (Manufacturing) to RB1 (Retail Business).

**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, Section 118-8, and particularly the map coincidental thereto and made a part thereof, is hereby amended as follows:

Section 118-8. Zoning Map.

(Change the designation of four point fifty-two [4.52] acres, more or less, situate at 8438 and 8440 Seneca Turnpike and identified as Tax Map Parcel No. 328.011-1-20.2, owned by Cain and S. Ross Sloan, from M [Manufacturing] to RB1 [Retail Business].

**Section 2.** The boundaries and description of said district are as follows:

All that piece or parcel of land situated southerly of Middle Settlement Road, Town of New Hartford, County of Oneida, State of New York, bounded and described as follows:

Beginning at an iron pipe found in the southwest corner of the lands of Mud Creek Limited Partnership, et al, (Instrument Number 2006-014572) on the north, and in the line between the lands of Lucky Boy Group, Inc. (Liber 2637 of deeds at Page 15) on the west, and the property herein described on the east, said iron pipe found being S 04 deg. 25' 39" W, 214.12 feet from a concrete highway monument found in the southerly boundary of an existing State Highway (New York State Route 12B, Middle Settlement Road), said iron pipe found being the point of beginning; Thence N 79 deg. 52' 41" E along the last mentioned division line 116.46 feet to an iron pipe found in the line between the lands of Kevin M. Kelly and Christopher J. Kelly (Liber 2504 of Deeds at Page 221) on the northeast and the property herein described on the southwest; Thence S 24 deg. 54' 47" E along the last mentioned division line 392.27 feet to a point in the line between the lands of the said Kelly on the north and the property herein described on the west; Thence S 84 deg. 00' 00" E along the last mentioned division line 170.00 feet to a capped iron rod set in a gravel driveway in the line between the lands of the said Kelly on the northeast and the property herein described on the southwest; Thence S 23 deg. 44' 52" E along the last mentioned division line 227.00 feet to a capped iron rod set in the line between the lands of the said Kelly on the south and the property herein described on the north; Thence S 80 deg. 32' 34" W along the last mentioned division line 236.79 feet to a point in Mud Creek in the line between the lands of the said Kelly on the south and the property herein described on the north; Thence N 78 deg. 30' 24" W along the last mentioned division line 359.96 feet to an iron pipe found in the line between the lands of the said Lucky Boy Group, Inc., on the west and the property herein described on the east; Thence the following two courses and distances along the last mentioned division line:

N 06 deg. 01' 58" E, 127.56 feet to a point, and

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N 04 deg. 38' 13" E, 402.49 feet to the point of beginning, containing 4.52 acres. All bearings are referred to Magnetic North as the needle pointed in the year 1982 AD.

Being the same premises conveyed to Cain K. Sloan and S. Ross Sloan by deed recorded June 22, 1988 in Liber 2407 of Deeds at Page 147 in the Oneida County Clerk's Office.

Subject to the following easements:

Oneida County Sewer District, 20 foot easement:

Liber 1888 of Deeds at Page 173, recorded January 10, 1969.

A 60' Right of Way for ingress and egress to Seneca Turnpike per Liber 2124 of Deeds at Page 937, recorded March 30, 1982.

An easement to erect and maintain an advertising sign at the site of the present S.R. Sloan sign, along the westerly line of the above referenced 60 foot Right of Way to Seneca Turnpike, per Liber 2124 of Deeds at Page 937, recorded March 30, 1982.

**Section 3.** All other provisions of Chapter 118 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 4.** This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State.

Councilman Backman expressed concerns about traffic but realized it is not the Town Board's domain to limit ingress/egress and he believes that eventually the Town will see an entrance/exit on Middle settlement Road (NYS Route 5B). Thereafter, the Town Board voted as follows:

Councilwoman Krupa	-	ABSTAINED, as she has a conflict of interest.
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**PUBLIC PRESENTATIONS**

**Traffic Signal – Seneca Turnpike (aka NYS Route 5) intersection with Applewood-Cherrywood Boulevards**

James Varieur, a resident of the Applewood Community, inquired about the timeframe for installation of the traffic signal at the Seneca Turnpike/Applewood intersection. The

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Town Supervisor reported that he has talked with officials at the NYS Department of Transportation (DOT) and has delivered to that office certified copies of the Town Board's December 22, 2010 Resolution with regard to financing the installation. He stated that DOT needs to perform another on-site visit and perform engineering work so that, in his opinion, a plausible date for installation of the light would be Fall 2011; however, the Supervisor will stay in touch with DOT and keep the Applewood residents informed as well as Councilman Woodland.

**\$20 Sewer Unit Charge – Applewood Community**

Ralph Humphreys asked the Town Attorney if he had found any documents that would have mandated the Applewood Community to be levied the \$20 unit sewer charge per mobile home [versus \$20 for approximately 300 mobile homes in toto] on their annual Town and County tax bills. The Town Attorney stated he needs more time to research this matter as he has numerous other projects he's working on.

**Sales Tax Revenue – Police Department**

Alluding to a recent Observer Dispatch newspaper article, Ralph Humphreys initiated discussion on whether the Town Supervisor could use sales tax [part-town revenue] to offset a deficit in the Police Department budget; Mr. Humphreys said that by using this part-town revenue, the Village of New Hartford would be paying nothing toward police services. The Town Supervisor said the police fund is a part-town fund...according to State Comptroller, and also emphasized that the newspaper article was not entirely correct. Continued discussion included sales tax use, establishment of a police district, the Police Department deficit mentioned in the State Comptroller's audit and corrective action that has been taken to concerns raised in that audit.

**REPORTS OF TOWN OFFICIALS SUBMITTED BY STANDING COMMITTEE CHAIRPERSON**

Councilman Backman:

**Bridge - Elm Street, Chadwicks; Award of Contract - Retracted**

Upon recommendation of the Highway Superintendent, Councilman Backman offered the following Resolution for adoption; seconded by Councilman Woodland:

**(PROPOSED RESOLUTION 2011)**

**WHEREAS**, the Town Clerk's Office had received five (5) bids on December 22, 2010 for the replacement of the bridge on Elm Street, Chadwicks; and

**WHEREAS**, the Highway Superintendent and the Public Works and Sewer Standing Committee had canvassed the five (5) bids;

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**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of New Hartford does hereby accept the low bid of and award the contract for said bridge replacement to the low bidder, Economy Paving Co., Inc., 1819 NYS Route 13, Cortland, NY 13045, in the amount of Five Hundred Ninety-four Thousand Eight Hundred Thirty-two Dollars (\$594,832).

The Highway Superintendent had met with officials of Economy Paving, had reviewed their list of sub-contractors, and stated that the beams will be made in New York Mills; Delta Engineering found the company to be responsible. Economy Paving has estimated that the Town could stand to save \$150,000 to \$200,000 on the project if Elm Street could be closed entirely to traffic and the project could be completed in two (2) months rather than three (3). Discussion included safety – fire department responses, routine ambulance visits to several Elm Street area residents and crossing the Sauquoit Creek. The Town Supervisor asked Councilmen Backman and Reynolds to speak further with the Willowvale Fire Department officials and the Town Attorney questioned whether a vehicle could be rented and kept near the bridge replacement area. The Sauquoit Fire Department will cover the two (2) days when the road is closed to pour concrete but the question arose of whether there would be sufficient coverage and response time should Elm Street be closed entirely for two (2) months; also there is no ambulance service from the Town of Paris or Sauquoit Fire Department. Since the Town Supervisor expressed a desire for more research, Councilmen Backman and Woodland withdrew their respective motions. This matter will be discussed at the February 9, 2011 Town Board meeting.

### **Bridge – Elm Street, Chadwicks; Clerk of the Works**

Highway Superintendent Sherman informed the Board that Delta Engineering, who performed the bridge design work, has proposed a clerk-of-the-works for this project to ensure, but not be limited to, proper billing, compliance with Equal Employment Opportunity, be present and assure that concrete beams are made correctly and installed properly in the amount of \$29,928 for these part-time services. The matter was deferred until the February 9, 2011 Town Board meeting.

### **State reimbursement - roadwork**

Highway Superintendent Sherman reported that the State of New York owes the Town multi-modal money for roadwork since 2008 [\$72,035.65 for Taber Road and Deerpath Road; \$35,815.40 for White Pine Road] and he has asked NYS Senator Griffo's office to follow up on this. The Highway Superintendent and Supervisor Tyksinski will review this matter tomorrow, January 27, 2011.

### **Retainages – Pre-Development Agreements**

Supervisor Tyksinski queried three (3) separate retainages from the Faxton – St. Luke's Healthcare facility that the Town has been holding since 2003, 2004 and 2006. The Town Attorney will review any existing agreements from the former Planner and former

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Engineer’s files and, assuming all conditions of those agreements have been met, the retainage money could be released. Thereafter, Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Reynolds:

**(RESOLUTION NO. 21 OF 2011)**

**RESOLVED** that, upon satisfaction of the Codes Enforcement Officer and Town Attorney that all Pre-Development Agreement requirements have been met, the Town Board of the Town of New Hartford does hereby authorize and direct the Town Supervisor to refund the retainages that the Faxton – St. Luke’s Healthcare facility had deposited with the Town for three (3) separate projects, said retainages having been received in 2003 [sum of \$17,230], 2004 [sum of \$3,900] and 2006 [\$4,442].

The Board members then voted by roll call:

Councilwoman Krupa	-	Aye.
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Windpower matter – Advisory Committee on Zoning Law**

Councilman Backman introduced the following Resolution, which was duly seconded by Councilman Woodland:

**(RESOLUTION NO. 22 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby authorize and direct Codes Enforcement Officer Joseph Booth to contact the current five (5) members of the Advisory Committee on Zoning Law to determine their interest in re-appointment to this Committee, which shall be delegated the responsibility of reviewing windpower rules and regulations.

Councilman Backman recommended that Ralph B. Humphreys be appointed to the Advisory Committee on Zoning Law; a Resolution might need to be adopted first, however, to expand the Committee. The Supervisor polled the Board members who voted as follows:

Councilwoman Krupa	-	Aye.
Councilman Reynolds	-	Aye

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Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

REPORTS OF SPECIAL COMMITTEES

Stormwater Management (Advisory) Improvement Committee

**Membership**

Chairperson Elisabetta DeGironimo will be canvassing committee members to determine their interest in continuing and she will schedule a committee meeting in February 2011.

MATTERS SUBMITTED BY COUNCILMEN AND TOWN ATTORNEY

Councilwoman Krupa:

**January 2011 Oneida County Association of Towns Meeting**

Councilwoman Krupa reported on various topics that had been discussed at the organizational meeting of the Oneida County Association of Towns on January 18, 2011: fire districts, issues affecting villages and towns, flood plain issues, matters specific to planning board members issuing permits and the Time Warner Cable franchise/fees. A number of municipalities have discovered that Time Warner Cable franchise fees are not being calculated properly because of various zip codes that may fall within a town; for example, the Town of New Hartford has Utica zip codes (13501, 13502), Frankfort zip code (13340), Sauquoit zip code (13456), Clinton zip code (13323); Whitesboro zip code (13492) and New York Mills zip code (13417 – partially in New Hartford and partially in Whitestown) and the fees are being distributed by zip code to the home municipality not the Town of New Hartford. Discussion ensued and the Board will ask to review Time Warner Cable’s records.

**Sauquoit Creek Basin Commission**

Highway Superintendent Sherman reported that the Sauquoit Creek Basin Commission is constructing a fishermen’s dock at the rear of the Pietryka Park near a creek; BOCES is building the deck and the Commission has asked the Town of New Hartford to dig with their grad-all for the piers to be installed on the side of the creek. It is planned that employees from the Town of New Hartford, Village of New York Mills and Village of Whitesboro will pour the pillars. This would involve about a day’s work in the month of April 2011. Councilman Reynolds questioned, “..you have the equipment and know what they need and have access?” The Highway Superintendent replied yes. Town Attorney Cully advised that the Town’s insurance company should be notified. Thereafter,

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

**(RESOLUTION NO. 23 OF 2011)]**

**RESOLVED** that the Town Board of the Town of New Hartford does hereby authorize Highway Superintendent Sherman to allow Highway Department employees to assist in the construction of a fishermen's dock in the New York Mills' Pietryka Park, with necessary Town equipment, said project expected to commence in April 2011 and involve one day's work. Notification to the Town's insurance carrier shall be made prior to commencement of the project.

The Supervisor polled the Board members who voted as follows:

Councilwoman Krupa	-	Aye.
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Mud Creek**

Councilwoman Krupa stated that the Town Attorney needs to contact Attorney William Borrill about the Mud Creek issue.

Councilman Reynolds:

**Bid specifications – Recreation Center roof**

Councilmen Reynolds and Backman having met with Recreation Center Manager John Cunningham and Parks and Recreation Director Michael Jeffery to discuss options for roof repair at the Recreation Center, Councilman Reynolds offered the following Resolution for adoption; seconded by Councilman Backman:

**(RESOLUTION NO. 24 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby authorize and direct the Parks and Recreation Director to prepare bid specifications for the metal roof repair and re-coating system or metal re-roofing system for the Recreation Center in anticipation of initiating the competitive bid process.

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Discussion included a metal re-roof or a composite (ceramic insulation coating), the latter of which would be considerably cheaper and warranted for ten (10) years with the option to buy a fifteen (15) year warranty. Thereafter, a roll call vote was duly held and resulted as follows:

Councilwoman Krupa	-	Aye.
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Willowvale Fire Company, Inc. Special Award Program (SAP)**

Councilman Reynolds noted that several months ago Damian Ulatowski of Affordable Benefits provided information on changes to the Willowvale Fire Company's SAP. Councilman Backman wanted to make sure this was a sideways move, not a more expensive program; the matter is unresolved. Supervisor Tyksinski will gather the information to compare at the February 9, 2011 Town Board meeting.

Town Attorney:

**Proposed Local Law – MS4 (Municipal Separate Storm Sewer System)**

This proposed legislation has been updated several times and the Town Attorney would like to move forward on this in the near future.

**MATTERS SUBMITTED BY THE TOWN SUPERVISOR**

Financial:

**Monthly Report of Expenses/Revenues**

The Town Supervisor had distributed the December 2010 report to all Town Board members.

**2009-2010 Audit - RFPs**

The Town Supervisor stated that of the five (5) auditing companies contacted for quotes, three (3) declined and two (2) submitted the following proposals to conduct an audit of the Town's 2009-2010 finances:

- \$26,000 Barone Howard & Co., CPAs PC
- \$28,700 D'Arcangelo & Co., LLP CPAS

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After some discussion, Councilwoman Krupa offered the following Resolution for adoption and Councilman Reynolds seconded same:

**(RESOLUTION NO. 25 OF 2011)**

**RESOLVED** that the Town Board of the Town of New Hartford does hereby accept the Request for Proposal submitted by D’Arcangelo & Co., LLP CPAS, and does hereby award a contract to said firm who shall perform an audit of the Town’s finances for fiscal years 2009 and 2010, for the sum of Twenty-eight Thousand Seven Hundred Dollars (\$28,700); further, the Town Board does hereby request that said audit be completed by March 31, 2011. The Town Supervisor is hereby authorized and directed to enter into and to execute all necessary documents in this regard.

The Resolution was duly put to a vote upon roll call:

Councilwoman Krupa	-	Aye.
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Surplus Sale – 2004 Chevrolet Silverado (Animal Control)**

E-bay bids had closed with regard to the surplus pick-up truck formerly used by the Animal Control unit. Thereafter, Councilman Backman introduced the following Resolution for adoption; seconded by Councilwoman Krupa:

**(RESOLUTION NO. 26 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby accept and approve the high E-bay bid of Three Thousand Nine Hundred Sixty-three Dollars (\$3,963.00) submitted by Matthew Shropshire (e-mail address: [matt.shropshire@ymail.com](mailto:matt.shropshire@ymail.com)) for his purchase of one (1) Town surplus 2004 Chevrolet Silverado, VIN 1GCEC19T94E310060; and be it

**FURTHER RESOLVED** that the Town Board does hereby authorize and direct the Town Supervisor to execute all documents to finalize the sale and transfer of ownership of the aforementioned surplus vehicle and for the Town Clerk to arrange for termination of insurance coverage on the aforementioned vehicle.

The foregoing Resolution was duly put to a vote upon roll call:

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Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Federal-Aid Highway and Marchiselli-Aid Local Project Agreement – Philip A. Rayhill Trail, Phase I Extension**

Upon recommendation of the Town Supervisor, Councilman Reynolds introduced the following Resolution for adoption and Councilwoman Krupa seconded same:

**(RESOLUTION NO. 27 OF 2011)**

**WHEREAS**, on January 12, 2011 the New Hartford Town Board adopted Resolution No. 15 entitled “**Authorizing the implementation, and funding in the first instance 100% of the federal-aid and State “Marchiselli” Program-aid eligible costs, of a transportation federal-aid project, and appropriating funds therefore**”;

**NOW, THEREFORE, BE IT RESOLVED** that the said Town Board does hereby amend Resolution No. 15 of 2011 insofar as the amount appropriated shall be \$877,000, instead of \$701,600, the latter of which is the 80% federal reimbursement.

The Town Board then voted upon roll call:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Part-County Sewer District - (DEC Consent Order)**

The Town Supervisor has not received the final financial agreement yet from Commissioner Steve Devan, Oneida County Part-County Sewer District. It is Supervisor Tyksinski’s understanding that the NYS Department of Environmental Conservation will be granting an extension to the County to remediate infiltration problems until the year 2020 (instead of 2014).

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**Creation of Director of Finance, Part-time**

The Town Supervisor briefed the Town Board on the advertisement on the Town's website of a part-time Director of Finance position to be created and subsequently approved by the Oneida County Personnel Department, including qualifications. Dan Dreimiller of New Hartford responded and had been interviewed by Deputy Supervisor Bohn and the Town Supervisor; Mr. Dreimiller has many years of municipal accounting experience. He would work a five (5) to ten (10) hour week at an annual salary of \$10,400, as budgeted. Two other applicants, one a retired New York State auditor and the second having been a higher-level bookkeeper, had also been considered. Thereafter, Councilwoman Krupa introduced the following Resolution for adoption and Councilman Reynolds seconded same:

**(RESOLUTION NO. 28 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby create the position of Part-time Director of Finance, subject to approval by the Oneida County Department of Personnel, and does further authorize and direct the Town Supervisor to sign Form MSD-222, New Position Duties Statement, to be filed with said Department of Personnel.

The foregoing Resolution was voted upon by roll call:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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

**Appointment of Part-time Director of Finance**

The Town Supervisor stated that the Director of Finance appointment is that of the Town Supervisor and he announced that he was appointing Daniel T. Dreimiller to that position effective Thursday, January 27, 2011, at an annual salary of \$10,400, payable bi-weekly.

The Town Supervisor, Deputy Supervisor and Councilwoman Krupa have started the process of putting together review programs for all town officials, extending to other departments who handle cash, such as the highway department, parks department, recreation center, nutrition center, etc. – developing an audit program...do reviews and balancing bank statements, internal procedures...any place where money is coming in, review and report to the Town Board. A procedural audit will be done with all departments, separation of duties, etc.

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EXECUTIVE SESSION

Councilwoman Krupa introduced the following Resolution for adoption and Councilman Backman seconded same:

**(RESOLUTION NO. 29 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss the Sangertown Square Mall certiorari (assessment) against the Town of New Hartford.

A roll call vote ensued:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

Thereafter, the Resolution was declared unanimously carried and duly **ADOPTED**. All persons present, including the news media and Department Heads, were then excused from the meeting at 8:48 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

END OF EXECUTIVE SESSION

Councilman Reynolds then offered the following Resolution for adoption and Councilwoman Krupa seconded same:

**(RESOLUTION NO. 30 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby move to end its Executive Session and to reconvene the regular portion of the Town Board meeting.

The Board members voted upon roll call that resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

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The Supervisor declared the Resolution unanimously carried and duly *ADOPTED*; the Executive Session ended at 9:31 P.M. The regular portion of the Town Board meeting was immediately reconvened.

ADJOURNMENT

They're being no further business to come before the Town Board, upon motion of Councilman Reynolds and seconded by Councilwoman Krupa, the meeting was adjourned at 9:32 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk