

**REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON WEDNESDAY, APRIL 25, 2012 AT 7:00 P.M.**

Town Supervisor Patrick Tyksinski called the meeting to order at 7:00 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 Donald C. Backman
Councilman Paul A. Miscione
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Patrick M. Tyksinski

OTHER TOWN OFFICIALS/EMPLOYEES PRESENT:

Assessor Paul E. Smith
Codes Enforcement Officer Joseph A. Booth
Deputy Supervisor Matthew Bohn III
Director of Senior Services M. Eileen Spellman
Finance Director Daniel Dreimiller
Highway/Sewer Superintendent Richard C. Sherman
Parks & 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

Town Board Meetings – March 14 and April 4, 2012

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

(RESOLUTION NO. 92 OF 2012)

RESOLVED that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the Regular Town Board meeting held March 14, 2012 and the minutes of the Regular Town Board meeting held April 4, 2012 with the clarification that, pertaining to Resolution No. 63 adopted on April 4, 2012, any Town resident desiring to serve on a board/committee/commission may submit an application beginning six (6) months before the term expires and up to the date of term expiration and does further waive the reading of the same.

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Upon roll call, the Board members voted as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Councilman Backman | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

PRESENTATIONS (Resident Comments)

Zone Map Amendment Application – 129 Oxford Road (Husted/Hogeboom & Canfield): Public Hearing scheduled

Attorney Mark Levitt was present on behalf of the current owner (Hogeboom & Canfield) of property behind the New Hartford Public Library on Oxford Road and a potential purchaser, Liberty Affordable Housing, Inc., whose intent is to construct 80 or 90 conventional housing units for people 55 years old and older, renting between \$900 and \$1200 per month. The zone map amendment from Low Density Residential (LDR) to High Density Residential (HDR) would allow the construction of the one (1) and two (2) bedroom conventional apartments. The residential project would not be subsidized and no tax relief is being sought. These would be conventional apartments with the age 55 restriction. This conclusion was based on a market study and Mr. Levitt noted there is probably a demand for about 1,000 units in this area. CRM (Commercial Residential Management) will be manager of the apartment complex and the owner lives on Snowden Hill Road and has been in the area for some time. As part of this project, the land between the railroad tracks and the NYS Route 8 (Sauquoit Valley Arterial), which is not part of the rezoning application, perhaps could be given to the Town for possible stormwater drainage use. The total property acreage is 44.16; however, only 26.39 acres is being requested for rezoning. [NOTE: Refer to February 8, 2012 Town Board minutes. Also, on March 8, 2012 Attorney Levitt had submitted a request to the Town Board asking that they extend the review time of the Planning Board past the 45 day normal review due to circumstances that would prevent him from attending the April 9, 2012 Town Planning Board meeting.].

The Town Clerk confirmed that the Town had received the County Planning Department's recommendation and SEQR responses from numerous agencies but had not yet received the recommendation from the Town Planning Board. Councilman Backman then offered the following Resolution for adoption; seconded by Councilman Reynolds:

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(RESOLUTION NO. 93 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, **May 23, 2012 at 7:00 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 the Zone Map Amendment application submitted by Husted/Hogeboom & Canfield with regard to rezoning acreage at 129 Oxford Road from Low Density Residential (LDR) to High Density Residential (HDR) for the purpose of constructing 80 to 90 senior housing units; 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:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Peddling & Soliciting Law, proposed amendment

Cheryl Zammiello was present regarding the possible amendment of the Town's Peddling & Soliciting law requested by an ice cream vendor. The Town Attorney read the proposed amendment for her information. Current legislation provides an appeal process when a peddler/solicitor has their application denied or revoked. Ms. Zammiello said she is bothered by the ice cream truck and would prefer that the Town Board not amend the current law. She objects to what she described as loud amplified music, repetitive noise all summer long. She is not opposed to a peddler, ice cream or noisy children but is bothered by the intrusive sound of the ice cream truck that interferes with the peace in the neighborhood.....sound travels and echoes through the hills. She wants the Town to ban this but now sees what is being proposed, that being the extension of the current hours for peddling. The Town Attorney stated this is a proposal and needs a public hearing.

Wind Turbine Legislation

Ralph Humphreys inquired about the status of the wind turbine legislation that the Zoning Law Advisory Committee had reviewed over a year ago. The Town Supervisor responded that whoever chairs that Committee should proceed with further review and submit a report to the Town Board. Codes Officer Booth stated that the Committee had

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finalized a proposal in late 2011, a copy of which had been referred for the Town Attorney's review.

Hydrofracking Legislation

The Town Attorney reported that a hydrofracking local law is being prepared and copies will be distributed to the Zoning Law Advisory Committee members.

Planning Board member Brymer Humphreys noted that on Saturday, April 21, 2012 County Executive Picente held a forum on hydrofracking at MVCC and he didn't recall seeing any Town officials there. He doesn't think the Town is availing itself to view both sides and he thinks the Town needs to see the pluses and minuses. The Town Supervisor responded that the Town Attorney and he have been in communication with a group on this matter "to see the other side of the story" and it is hopeful to bring this group before the Town Board.

Local Law Introductory "D" of 2012 – Zoning Law: Wind Energy Conversion Systems

The Town Attorney said he had reviewed the latest version of the legislation proposed to regulate windmills/turbines in the Town. Thereafter, Councilman Reynolds introduced the following legislation for the Town Board's approval at a future public hearing; co-sponsored by Councilman Backman:

**Town of New Hartford, NY
Local Law Introductory "D" of 2012**

A Local Law to amend the Code of the Town of New Hartford, Chapter 118 thereof entitled ZONING, by creating a new Article XIA entitled as Wind Energy Conversion Systems.

Be it enacted by the Town Board of the Town of New Hartford as follows:

Section 1. Purpose & Intent

A. To promote the effective and efficient use of the Town of New Hartford's wind energy resources through wind energy conversion systems ("WECS") and to regulate the placement of such commercial WECS so that the public health, safety, and welfare are not jeopardized.

B. Wind energy is an abundant, renewable, and nonpolluting energy resource and its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources.

C. This local law is designed to properly regulate and site wind energy facilities so as to protect the health, safety and welfare of the community and deal with potential problems they can create

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including: aesthetic impacts, drainage problems, harm to farmlands, a risk to bird and bat populations, risks to the property values of adjoining properties, significant noise, traffic problems during construction, and electromagnetic interference with various types of communication.

Section 2. Definitions

AGRICULTURAL LAND - The land and on-farm buildings, equipment, manure processing, and handling facilities and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation, as defined in Subdivision 13 of New York Agriculture and Markets Law § 301, and timber processing, as defined in Subdivision 14 of New York Agriculture and Markets Law § 301. Such operations may consist of one or more parcels of owned or rented land, which may be contiguous or noncontiguous to each other. The use of land for agricultural production purposes, including tilling of the soil, dairying, pasture, animal and poultry husbandry, apiculture, arboriculture, horticulture, floriculture, viticulture, and accessory uses for packing, storing, processing and retail sales of products, provided that the operation of any such accessory uses shall be secondary to that of the principal agricultural production activities.

ACCESSORY FACILITIES OR EQUIPMENT - Any structure other than a wind turbine, related to the use and purpose of deriving, collecting or distributing energy from such wind turbines located on or associated with a wind energy facility.

LARGE WIND ENERGY CONVERSION SYSTEM - A Wind Energy Conversion System ("WECS") consisting of one wind turbine, one tower, and associated control or conversion electronics which has a rated capacity greater than 150 kilowatts, a total height less than 500 feet, and is intended to supply some portion of its produced electrical power for sale to a power grid. Such a WECS may also be called a "Commercial Wind Energy Conversion System."

ENVIRONMENTAL ASSESSMENT FORM ("EAF") - A form used in the environmental review process under the State Environmental Quality Review Act ("SEQRA") as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.⁹

SMALL WIND ENERGY CONVERSION SYSTEM - A WECS consisting of one wind turbine, one tower, and associated control or conversion electronics which has a rated capacity of not more than 150 kilowatts and a total height less than 180 feet, and is intended to primarily reduce consumption of utility power at that location (on-site).

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OVERSPEED CONTROL - A mechanism used to limit the speed of blade rotation to below the design limits of the WECS.¹

PUBLIC ROAD - Any federal, state, county, city, town or village road which is open to the public, or private road regularly used by multiple persons for access to separate off-site parcels of land, access to which is unrestricted by the owner(s) of said private road.

RESIDENCE - Any dwelling for habitation, either seasonally or permanently, by one or more persons. A residence may be part of a multi-dwelling or multi-use building and shall include buildings such as hotels, hospitals, motels, dormitories, sanitariums, long term care facilities, schools or other buildings used for educational purposes, or correctional institutions.

RESIDENTIAL WIND ENERGY CONVERSION SYSTEM - A WECS consisting of one wind turbine, one tower, and associated control or conversion electronics which has a rated capacity of not more than [10] kilowatts and a total height less than [50] feet, and is intended to primarily reduce consumption of utility power at that location (on-site).

STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA") - The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.14

SITE - The parcel of land where the WECS is to be placed including related tower and transmission equipment. The site may be publicly or privately owned by an individual or group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements.

TOTAL HEIGHT - Height of WECS measured from ground elevation to top of tip of blade in vertical position.

TOWER - Support structure, including guyed, monopole, and lattice types, upon which wind turbine or other mechanical device is mounted.¹⁷

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill"). A WECS can be commercial or noncommercial. A WECS may include one or more wind turbines, towers, associated control or conversion electronics, transformers, and/or

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maintenance and control facilities or other components used in the system. The turbine or windmill may be on a horizontal or vertical axis, rotor or propeller.18

WIND ENERGY FACILITY - Any WECS or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures that are under common ownership or operating control.

WIND MEASUREMENT TOWER - A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction installed prior to construction of a WECS for wind site assessment.

Section 3. Applicability

A. The requirements of this section shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this article.

B. Wind energy facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this article shall not be required to meet the requirements of this section, however;

1. Any such preexisting wind energy facility which does not provide energy for a continuous period of 12 months shall meet the requirements of this section prior to recommencing production of energy.

C. No modification or alteration, excluding regular maintenance and repair, to an existing wind energy facility shall be allowed without full compliance with this section.

Section 4. Building/Grading Permits Required

A. No wind energy facility shall be constructed, reconstructed, or modified in the Town of New Hartford except in compliance with this article.

B. No wind energy facility, but for those outlined in § 4(B) (1) below, shall be constructed, reconstructed, or modified in the Town of New Hartford except pursuant to site plan approval from the Town of New Hartford Planning Board and a special use permit from the Town of New Hartford Planning Board] issued in accordance with this article.

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1. Residential WECS are allowed as accessory uses in all zoning districts and may be constructed, reconstructed, or modified without being issued a special use permit. Residential WECS must otherwise submit documentation described in § 5 at the time of building permit application and comply with safety and other standards described in §§ 8 and 9 of this article.

C. No wind energy facility shall be constructed, reconstructed, or modified in the Town of New Hartford except pursuant to a building/grading permit from the Codes Enforcement Office.

D. Large wind energy facilities are only allowed in A districts.

E. Small wind energy facilities are allowed in the following zones A, RA1, RA2, RB1, RB2, M, I, PHB, PDMU, and PDI.

Section 5. Applications for Small and Large Wind Energy Facilities

A. An application for a special use permit for wind energy facilities shall include the following:

1. Name, address, and telephone number of the applicant and land owner and affidavit of agreement between landowner and facility owner, if any.
2. Address or other property identification of each proposed facility including tax map number, existing use and acreage of parcel, and zoning designation.
3. A description of the facility and project including the number of WECS, data pertaining to each tower's safety and stability, including safety results from test facilities and certification from the turbine manufacturer that the turbine can withstand excessive wind speeds, and for each WECS the make, model, a picture, and manufacturing specifications including noise decibel data and maximum rated capacity.
4. Vertical drawing of all WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between the ground and the lowest point of any blade, and the location of climbing pegs and access doors. One drawing may be submitted for each WECS of the same type and total height.
5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly show the following:
 - a. Property lines, physical dimensions of the site, and the location, dimensions and types of existing structures and uses on the site.

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- b. Public roads and access roads,
- c. Adjoining properties within [500] feet of the site including zoning designations, residences, schools, churches, hospitals, and libraries within [1,000] feet of each tower.
- d. The location, elevation, and total height of each Wecs,
- e. Above-and below-ground utility lines within a radius of [1/1.5] times the total height of the WECS,
- f. Setback lines,
- g. All other proposed facilities on the site including transformers, electrical lines, substations, storage or maintenance units, ancillary equipment or structures, transmission lines, and fencing.

Section 6. Applications for Large Wind Energy Facilities Only

A. A full Environmental Assessment Form ("EAF") and visual EAF addendum.

1. A copy of written notice of the application to the Federal Aviation Administration ("FAA"), microwave communications link operators, and utilities, including utility interconnection data and a lighting plan to be reviewed by the FAA showing FAA required lighting, if applicable and other proposed lighting.
2. A detailed construction and installation plan including: a construction schedule, hours of operation, routes to be used by vehicles, gross weights and heights of vehicles, traffic impacts, drawings of access roads, adverse sound impacts, a detailed plan for disposal of debris, and the name and phone number of a contact person in the field.
3. An operation and maintenance plan providing for regular periodic maintenance schedules and any special maintenance requirements.³⁴
4. A detailed fire control and prevention and emergency response plan to coordinate with local emergency response providers.³⁵

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5. A transportation plan describing ingress and egress to the proposed project site to deliver equipment and provide access during and after construction. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, as well as measures which will be taken to restore damaged or disturbed access routes following construction.

6. A decommissioning and site restoration plan as detailed in § 8(B) of this article.

7. A survey map showing federal, state, county or local parks, recognized historic or heritage sites, state-identified wetlands, or important bird areas as identified in federal, state, county, local or New York Audubon's GIS databases or other generally-available documentation.

8. A landscaping plan showing the current vegetation, describing the area to be cleared, listing the specimens proposed to be added, and detailing re-grading and restoration measure to be taken after construction according to New York State Agriculture and Markets and New York State Department of Environmental Conservation guidelines. The plan should also include details regarding how erosion and sediment control will be dealt with.

9. A list of property owners, with their mailing addresses, within 1500 feet of the outer boundaries of the proposed site.

a. Visual impact. This shall include a computerized photographic simulation showing the site fully developed and demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The study shall also indicate the color treatment of the facility's components and any visual screening incorporated into the project that is intended to lessen visual prominence.

b. Noise. This shall include a description and map of the project's noise-producing features and the noise-sensitive environment, including the range of noise levels and the tonal and frequency characteristics expected. The report shall include noise levels at property lines, off-site residences, and any other sensitive noise-receptors, i.e. hospitals, libraries, schools, and places of worship, with identification of potential problem areas. The report shall cover low frequency, A-weighted, infrasound, pure tone, and

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repetitive/impulsive noise. It shall also include a report prepared by a qualified professional that analyzes the preexisting ambient noise. The report shall describe the project's proposed noise-control features, including specific measures proposed to protect construction workers and mitigate noise impacts for sensitive receptors, consistent with levels in this article.

c. Electromagnetic interference. This shall include an analysis of the potential for electromagnetic interference with microwave, radio, television, personal communication systems, 911, and other wireless communication.

d. Avian impact. This shall include an analysis of bird and bat migration, nesting, and habitat that will be affected by the proposal. The applicant shall solicit input from the New York State Department of Environmental Conservation on such studies and shall follow any required protocols established, adopted, or promulgated by the Department.

e. Geotechnical impact. This shall at a minimum include an analysis of soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing, foundation design criteria for all proposed structures, slope stability analysis, grading criteria for ground preparation, cuts and fills, and soil compaction.

f. Engineer's report. This shall be prepared by a professional engineer licensed in New York State and provide information regarding:

i. Ice throw. The report shall calculate the maximum distance that ice from the turbine blades could be thrown.

ii. Blade throw. The report shall calculate the maximum distance that pieces of the turbine blades could be thrown.

iii. Catastrophic tower failure. The report shall include a statement from the turbine manufacturer detailing the wind speed and conditions that the turbine is designed to withstand.

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iv. Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind-loading requirements for structures as established by the New York State Uniform Construction Code.

g. Shadow flicker. This shall identify locations where shadow flicker may interfere with off-site residences and roadways and the expected duration of the flicker. The study shall identify measures that shall be taken to eliminate or mitigate the problem.

h. Fiscal and economic impact. This shall include a property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on the value of properties adjoining the project site.

i. Land use and water impacts. This shall detail potentially impacted wetlands, surface water and groundwater resources, and the geology and land use of the site.

Section 7. Application Review Process

A. Application. Applicants for a special use permit for a wind energy facility must submit copies of the application to the Town of New Hartford Code Enforcement Officer. The Town of New Hartford staff or consultants shall within 30 days determine if all required information is included in the application. If the application is incomplete, the applicant will be provided with a written statement detailing the missing information. If the application is complete, the Town of New Hartford Code Enforcement Officer will forward the application to the Planning Board.

B. Hearings. The Town of New Hartford Planning Board] shall conduct at least one public hearing on the application with notice given to the public in the manner customary for the municipality. All adjoining property owners within 1,500 feet of the outer boundary of a Large Wind Energy Facility and(500) feet of a Small Wind Energy Facility must be given written notice of the hearing via first class mail. The Town of New Hartford will also conduct the SEQRA review.

C. Approval. The Town of New Hartford Planning Board may grant the special use permit, grant the special use permit with conditions, or deny the special use permit in writing.

D. Findings. To grant the special use permit, the Planning Board must find that the wind energy facility will not unreasonably

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interfere with the Town of New Hartford's orderly land use and development plans, the benefits to the applicant and the public exceed the burdens, the project is not detrimental to the public health, safety, or general welfare of the community, and the project complies with all of the relevant provisions of the zoning law or will comply with those requirements based on conditions that may be attached to the approval unless variances have been granted.

E. Consultants. The Town of New Hartford reserves the right to hire any consultants and/or experts reasonably necessary to assist the Town of New Hartford at the applicant's expense for any Large WEC

Section 8. Criteria for Approval of WECS

A. Safety Standards.

1. The minimum distance from the ground to the rotor blade tips shall not be less than 30 feet.
2. WECS shall not be climbable up to 10 feet above the ground. 62 This can be achieved through anti-climbing devices or a fence around the tower with locking portals at least 6 feet high.
3. All access doors on towers or to electrical equipment shall be locked or fenced.
4. There shall be clearly visible signs on all WECS, electrical equipment, and wind energy facility entrances warning of electrical shock or high voltage and harm from revolving machinery. Signage shall also include a 24-hour emergency contact number.
5. WECS shall comply with all applicable FAA requirements for air traffic warning lights.
6. No artificial lighting shall be allowed on WECS except to the extent required by the FAA or other air safety authority. Minimal ground level security lighting is permitted.
7. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No WECS shall be permitted which lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.

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8. The Town of New Hartford Board shall determine an acceptable range for ice throw based on the activities in the area of the WECS.

B. Siting and Installation.

1. Road access to project site. The applicant must only use designated traffic routes established in the application review process. Routes should be chosen to minimize traffic impacts taking into consideration wind energy facility related traffic during school bus times, wear and tear on local roads, and impacts on local businesses. Existing roads should be used to the extent possible or if new roads are needed they should minimize the amount of land used and the adverse environmental impacts. The applicant is responsible for remediation of any damaged roads due to siting and installation of the wind energy facility.

2. Power lines. Power lines between turbines, between turbines and the on-site substation, and between turbines and any other buildings or structures should be completely underground. Power lines for connection to the public utility company and transmission poles, towers, and lines may be aboveground.

3. Connection of transmission lines from the wind energy facility to local distribution lines.

a. No construction of any WECS shall be started until evidence is given of a signed interconnection agreement or letter of intent with an interconnecting utility company.

b. The wind energy facility shall meet the requirements for interconnection and operation as set forth in the electric utility's then current service regulations applicable to wind power generation facilities.

c. Transmission lines and points of connection to local distribution lines should be combined to the extent possible. The wind energy facility should be connected to existing substations if possible, or if new substations are needed, the number should be minimized.

4. Any construction on agricultural land should be conducted according to the New York State Department of Agriculture and Market Guidelines for Agricultural Mitigation for Wind Power Projects.

C. Setbacks for Small and large WECS.

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1. Each WECS shall be set back 2.5 times tower height from all existing residences on a non-participating landowner's property.
2. Each WECS shall be set back a minimum of 2 times tower height from the nearest school, hospital, church, or public library.
3. Each WECS shall be set back a minimum of 1 times tower height from all property lines, overhead utility or transmission lines, other towers, electrical substations, meteorological towers, and public roads.
4. Each WECS shall be set back a minimum of 1.5 times tower height from all structures and buildings other than residences on a non-participating landowner's property.

D. Nuisance.

1. Noise. The noise level generated by a WECS shall not exceed [45] A-weighted decibels ("dBA") measured at the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement. If the ambient noise level measured at the site property line exceeds the standard, the standard shall be equal to the ambient noise level. The noise level generated by a WECS must also not increase ambient sound levels by more than 3 dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, within 2,500 feet of the site property line.
2. Interference with electromagnetic communications, radio signals, microwave and television signals. No wind energy facility shall be installed in any location where its proximity with microwave communications, fixed broadcast, retransmission or reception antenna for radio, television, or wireless phone, or other personal communications systems would produce electromagnetic interference with signal transmission or reception.

E. Environmental and Visual Effects.

1. Advertising. No advertising shall be allowed on any part of the wind energy facility including the fencing and support structures. No lettering, company insignia, brand names, logo, or graphics shall be allowed on the tower, hub, or blades. Reasonable identification of the turbine manufacturer, facility owner, and facility operator is permitted.

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2. Colors and surfaces of WECS. Colors and surface treatment of all WECS shall minimize visual disruption by using white, beige, off-white, gray or another non-reflective, unobtrusive color. WECS shall also use materials, textures, screening, and landscaping that blend the facility into the natural setting and existing environment.

3. Landscaping. The landscaping of the wind energy facility should be appropriate to screen accessory structures from roads and adjacent residences. It should be designed to minimize the impacts of land clearing and loss of open space.

4. Ecosystems and animals. Wind energy facilities shall have no significant adverse impact on endangered or threatened species, particularly birds and bats, or critical habitats.

5. Shadow flicker. WECS shall be located in a manner that makes reasonable efforts to minimize shadow flicker to any [occupied building/residences/roadway] on a non-participating landowner's property. Mitigation measures including landscaping shall be incorporated into any special use permit approval.

F. Operation.

1. Maintenance. An annual report of operations and maintenance shall be submitted to the Town of New Hartford.

a. All WECS must be maintained in operational condition meeting all of the requirements of this article and other permit conditions at all times, subject to reasonable maintenance and repair outages. If the WECS becomes inoperative, damaged, unsafe, or violates a permit condition or standard, the owner/operator shall immediately notify the Town and remedy the situation within 90 days after written notice from the Code Enforcement Officer. The Code Enforcement Officer or the Town of New Hartford Town Board may extend the period by 90 days.

b. If the WECS is not repaired or brought into permit compliance within the Time frame stated above, the Town of New Hartford may, after a public hearing, order remedial action or revoke the special use permit and order removal of the WECS within 90 days.

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2. Inspections. All Large wind energy facilities shall be inspected annually for structural and operational integrity by a New York State licensed professional engineer at the owner's expense and the report shall be submitted to the Town of New Hartford Code Enforcement Officer.

Section 9. Abatement, Decommissioning, Site Restoration Plan and Bond

A. If the wind energy facility is not operated for a continuous period of 30 days, the Town of New Hartford shall be notified by the owner. If the WEC is out of service for 365 consecutive days the owner must remove the WECS at its own expense according to the decommissioning plan within [90] days. If the applicant does not remove the WECS within the above stated time frame the Town of New Hartford can contract for removal and restoration using the money in the decommissioning bond and charge the applicant any difference in cost.

B. Decommissioning and Site Restoration Plan.

1. The plan shall include:
 - a. The anticipated life of the WECS,
 - b. Triggering events for decommissioning and removal,
 - c. The estimated decommissioning costs in current dollars,
 - d. How the estimate was determined,
 - e. The method by which such decommissioning costs will be kept current, and
 - f. The manner in which the WECS will be decommissioned and the site restored including removal of all structures, turbines, cabling, electrical components, debris, and foundations to a depth of [4] feet, restoration of the soil and vegetation, and restoration of roads and driveways, less any fencing or residual minor improvements requested by the landowner.

C. Bond.

1. A decommissioning bond payable to the Town of New Hartford in an amount to be determined by the Town of New Hartford for removal of nonfunctional WECS and restoration of the wind energy facility site shall be maintained by the applicant.
2. The bond must be confirmed to be sufficient to cover decommissioning and site restoration costs every [5] years.

Section 10. Liability Insurance

Prior to issuance of a building permit, the applicant shall provide the Town of New Hartford with proof of a general liability insurance policy at a level to be determined by the Town of New Hartford Town

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Board in consultation with the Town of New Hartford's insurer, to cover damage or injury that might result from failure of any part of the wind energy facility.

A. If ownership of a WECS changes, the new owner must present proof to the Town of New Hartford clerk that all required bonds and insurance policies remain in full force [30] days prior to the transfer of ownership.

B. Any replacement of or modification or alteration to a WECS, excluding regular maintenance and repair, requires an amendment to the special use permit.

C. Replacement of a WECS may occur without Town of New Hartford Planning Board approval when there will be:

1. No increase in the total height of the WECS,
2. No change in the location of the WECS,
3. No additional lighting on the WECS, and
4. No increase in noise produced by the WECS.

Section 11. Requirements for Wind Measurement Towers

A. The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer towers, shall be permitted as a special use in all districts that permit large and small WECS.

B. Anyone seeking to build a wind measurement tower must submit an application for a special use permit to the Town of New Hartford Planning Board. The special use permit is valid for up to [2] years and may be renewed.

1. An application for a wind measurement tower shall include:
 - a. Name, address, and telephone number of the applicant.
 - b. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the application.

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c. Address of each proposed tower site, including tax map section, block, and lot number.

d. Site plan.

e. Decommissioning plan, based on the criteria in this article for WECS, including a security bond or cash for removal.

f. Wind measurement towers must be set back from property lines at least [1] times the total height of the tower.

C. Removal.

1. Wind measurement towers shall be removed within 30 days of erection.

2. Subsequent to removal of wind measurement towers, installation sites shall be restored to a condition substantially similar to the site's condition upon installation of wind measurement tower.

Section 12. Enforcement and Violations

A. During construction, the Town of New Hartford Code Enforcement Officer may issue a stop work order at any time for violations of this ordinance, the special use permit, building permit, or site plan approval.

B. Any person owning, controlling, or managing any building, structure, or land who undertakes a wind energy facility in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order of the Code Enforcement Officer, and any person who assists in so doing, shall be subject to the procedures outlined in section 65-17 Enforcement; penalties for offenses of the Town of New Hartford Code.

Section 13. Host Community Agreements

Nothing in this article limits the Town of New Hartford's ability to enter into an agreement with the applicant to compensate the Town of New Hartford for expenses or impacts of the WECS.

Section 14. Severability

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 15. Effective Date

This Local Law shall become effective immediately upon its filing with the Office of the Secretary of State.

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Public Hearing Scheduled – Local Law Introductory “D” of 2012

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

(RESOLUTION NO. 94 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, **May 23, 2012 at 7:00 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 “D” of 2012** which, if adopted, would amend the Code, Chapter 118 thereof entitled **ZONING** by creating a new Article XIA entitled as Wind Energy Conversion Systems; and be it

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

A roll call vote ensued:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**. Upon inquiry of Mark Krasinski, a Zoning Law Advisory Committee member, the Town Attorney explained the procedure for implementing a regulation by local law that must be in its final form and includes a public hearing and postings on the Town’s website or by visiting Town offices.

Zone Map Amendment Application – 129 Oxford Road (Husted/Hogeboom & Canfield)

Edmund Wiatr Jr., New Hartford Public Library Trustee, stated that he would contact Library Board President Linda Romano to see if Attorney Levitt appears before the Library Board of Trustees to review the materials submitted since the rezoning matter could affect the Library, and Mr. Wiatr asked that the Town Board not take any final action on this Zone Map Amendment application.

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REPORTS OF TOWN OFFICIALS BY STANDING COMMITTEE CHAIRPERSON

Zoning (Codes) & Planning Committee – Councilman Miscione

Local Law Introductory “B” of 2012 – Zone Map Amendment application; PDP to PDMU for portion of Business Park

The Town Attorney stated that since the March 14, 2012 Public Hearing on the Zone Map Amendment application by various property owners within the Planned Development Park (PDP) district, a request had been submitted by PAR Technology to exclude a portion of their property from the January 2012 Zone Map Amendment application, thereby reducing the acreage to 206 to be considered for rezoning versus the original 216 acres. This modification request was received on April 4, 2012 and the Town Board adopted a Resolution on that date to refer this modification request to the Oneida County Planning Department; their recommendations have been received, including comments with regard to retail. The Town Board had concerns about the amount of retail that would be allowed under the rezoning to PDMU and developer Lawrence Adler (New Hartford Office Group) submitted a letter dated April 4, 2012 agreeing to

“.....limit retail development on lands it owns, including those parcels zoned Planned Highway Business (PHB) and PDMU. Specifically, prior to an update of the Town Comprehensive Plan, the New Hartford Office Group will limit retail development to no more than 175,000 square feet on the PBH and PDMU zoned lands.”

A zone map amendment to PDMU would allow uses such as a bank, restaurant, small offices. The Town Attorney confirm that the April 4, 2012 letter is binding.

Councilman Reynolds asked developer Lawrence Adler for examples of a 40,000 square foot business; Mr. Adler stated that restaurants in The Orchards are about 6,000 to 7,000 square feet, that the Ann Taylor shop is about 20,000 square feet. He stated that most of the retail would be along Seneca Turnpike.

Councilman Backman said he had extensive conversations with the developer and that he had attended Planning Board meetings; if nothing happens there (Business Park), everyone loses, referring to Town money spent previously by prior administrations. Councilman Backman had two impediments to his vote tonight – 1.) does the Town’s comprehensive plan comply with the zoning law; 2.) with every other retail developer in the Town, it has been the developer’s responsibility to put in infrastructure, sidewalks, roads, etc., etc. – no money from taxpayers – except this development. Supervisor Tyksinski clarified that the bonding taken out by the prior administration is being paid by a PILOT (Payment In Lieu of Taxes) by the Hampton Inn and The Hartford, not by

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taxpayers, but by the businesses now in the Business Park. Payments are used to pay down debt.

Developer Lawrence Adler said he did not get a PILOT for The Hartford; they got it from the IDA (Industrial Development Agency). The hotel (Hampton Inn) is paying 100% of taxes; they are not getting a tax break. Developer Adler stated that about 2012 The Hartford would pay about \$36,000 in taxes and that in 2018, would pay about \$400,000 in taxes.

While Mr. Wiatr understands Mr. Adler's concerns, he agreed with Councilman Backman's stand. He believed the Town should publish the costs that the Town has expended so that Town residents could see the statistics and that Town Board action on this matter should be deferred. Supervisor Tyksinski stated that the PILOTs were formed in 2007, all subject to public hearings. He assumed the figures were given out at that time and they were reviewed by this administration around 2010.

Councilman Miscione stated, whether the uses are retail or office space, they are bringing in jobs to the area.

SEQR Negative Declaration; Adoption of Local Law Introductory "B" of 2012 as Local Law No. Three of 2012: PDP to PDMU for Business Park

The Town Attorney acknowledged that SEQR responses had been received by numerous state and local agencies with regard to the Zone Map Amendment application for the Business Park rezoning from PDP to PDMU. Thereafter, Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilman Miscione:

**(RESOLUTION NO. 95 OF 2012)
ADOPTION OF LOCAL LAW NO. THREE OF 2012**

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 March 14, 2012 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 2012, 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 designated Planned Development Park (PDP) located along Woods Highway in the Town of New Hartford, a description of which is set forth in Section 2, and changing the designation of property from PDP to Planned Development Mixed Use (PDMU); and

WHEREAS, notice of said public hearing was duly published in The Observer Dispatch, the official newspaper of the Town of New Hartford, on March 2, 2012, and posted on the Town Clerk's Bulletin Board, Butler Memorial Hall on March 1, 2012; and

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WHEREAS, said public hearing was duly held on March 14, 2012 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 March 6, 2012 and April 24, 2012, 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 SEQR; 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 Introductory "B" as Local Law No. Three of 2012 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 designated Planned Development Park (PDP) located along Woods Highway in the Town of New Hartford, a description of which is set forth in Section 2, and changing the designation of property from PDP to Planned Development Mixed Use (PDMU), 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"

**TOWN OF NEW HARTFORD, NY
LOCAL LAW NO. THREE OF 2012**

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 designated Planned Development Park District (PDP) located along Woods Highway in the Town of New Hartford, a description of which is set forth in Section 2, and changing the designation of property from PDP to Planned Development Mixed Use (PDMU).

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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:

Change the designation of approximately 206 acres, more or less, identified as the following Tax Map Parcels or portions thereof and owners from PDP to PDMU:

- #328.000-3-1 - Karen Szymanski/David Iadanza
- #328.000-3-2 - Ann & Daniel Rieben
- #328.000-3-3 - Samuel & Margaret Silverman
- #328.000-3-7 - New Hartford Office Group, LLC
- #328.000-3-8 - Niagara Mohawk Power Corp.
- #328.000-3-10.1 *(the portion that is vacant only is being rezoned)* - Par Tech Corp.
- #316.000-2-21 - Michael Paladino
- #316.000-2-32.1 - Woods 840 LLC
- #316.000-2-32.2 - James & Michelle Henderson
- #316.000-2-32.3 - David Wargo
- #316.000-2-32.4 - Crown Atlantic Company, LLC
- #316.000-2-41.1 - AXNY Office, LP;

Section 2. The boundaries and description of the PDMU District as revised are shown on the drawing attached as Exhibit A, and described as follows:

“206+/- ACRE PARCEL”

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE TOWN OF NEW HARTFORD, COUNTY OF ONEIDA AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

Beginning at a point on the westerly boundary of Karen Szymanski, Etal. (Now or Formerly) (Tax Parcel 328.000-3-1) (Liber 2738 of Deeds at Page 72), said point standing a distance of approximately **195 feet** northerly as measured along the westerly boundary of Karen Szymanski, Etal. from a point standing at the intersection of the westerly boundary of Karen Szymanski, Etal. with the northerly highway boundary of New York State Route 5 (State Highway Number 9205) (Seneca Turnpike), thence easterly a distance of approximately **147 feet** and through the property of Karen Szymanski, Etal. to the northwesterly corner of lands of Terrence Tupaj (Reputed Owner) (Tax Parcel 328.010-2-1); thence easterly a distance of approximately **219 feet** along the northerly boundary of Terrence Tupaj and then along the northerly boundary of land of Terrence Tupaj and Mary Tupaj (Reputed Owner) (Tax Parcel 328.010-2-2) to the northeasterly corner of Terrence Tupaj and Mary Tupaj; thence northeasterly a distance of approximately **85 feet** through the property of Karen Szymanski, Etal. to the

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northwesterly corner of lands of Girolamo Tavolante and Michele Tavolante (Reputed Owner) (Tax Parcel 328.010-2-3); thence easterly a distance of approximately **605 feet** along the northerly boundary of Girolamo Tavolante and Michele Tavolante, the northerly boundary of Timothy Maine and Kathryn Maine (Reputed Owner) (Tax Parcel 328.010-2-5), the northerly boundary of Norman Deep (Reputed Owner) (Tax Parcel 328.010-2-6) and then along the northerly boundary of Fred B. Grimaldi (Reputed Owner) (Tax Parcel 328.010-2-7) to a point; thence continuing along the northerly boundary of Fred B. Grimaldi in an easterly direction a distance of approximately **70 feet** to the westerly highway boundary of Woods Road; thence southerly a distance of approximately **230 feet** along the westerly highway boundary of Woods Road to the northerly highway boundary of New York State Route 5; thence easterly along the northerly highway boundary of New York State Route 5 a distance of approximately **153 feet** to a point standing on the easterly highway boundary of Woods Road; thence northerly a distance of approximately **309 feet** along the easterly highway boundary of Woods Road to a point; thence continuing northerly a distance of approximately **875 feet** along the easterly highway boundary of Woods Road to a point standing on the southerly highway boundary of a 60 ft. wide Town Highway (Road "A") (Instrument Number 2010-016652); thence easterly a distance of approximately **758 feet** along the southerly highway boundary of a 60 ft. wide Town Highway (Road "A") to a point standing on the northerly extension of the division line of the lands of the New Hartford Office Group, LLC on the west and Par Technology Corporation (Now or Formerly) (Liber 2166 of Deeds at Page 61) (Tax Parcel 328.00-3-10.1) on the east; thence southerly a distance of approximately **85 feet** along the northerly extension of the division line of the lands of the New Hartford Office Group, LLC on the west and Par Technology Corporation on the east to a point standing on the northerly boundary of Par Technology Corporation (Now or Formerly) (Liber 2166 of Deeds at Page 61) (Tax Parcel 328.00-3-10.1); thence easterly a distance of approximately **464 feet** along the northerly boundary of Par Technology Corporation to a point standing on the westerly boundary of Par Technology Corporation; thence northerly a distance of approximately **111 feet** along the westerly boundary of Par Technology Corporation to a point standing on the southerly highway boundary of a 60 ft. wide Town Highway (Road "A"); thence easterly a distance of approximately **514 feet** along the southerly highway boundary of a 60 ft. wide Town Highway (Road "A") to a point standing on the easterly highway boundary of a 60 ft. wide Town Highway (Road "A"); thence northerly a distance of approximately **824 feet** along the easterly highway boundary of a 60 ft. wide Town Highway (Road "A") to a point standing on the northerly boundary of Par Technology Corporation; thence easterly a distance of approximately **25 feet** to a point standing on the easterly boundary of the lands of the New Hartford Office Group, LLC (Now or Formerly) (Tax Parcel 328.000-3-7.1); thence northerly a distance of approximately **338 feet** along the easterly boundary of the lands of the New Hartford Office Group, LLC to a point standing on the southerly highway boundary of a 60 ft. wide Town Highway (Road "C"); thence easterly a distance of approximately **1090 feet** along the southerly highway

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boundary of a 60 ft. wide Town Highway (Road "C") to a point standing on the easterly highway boundary of a 60 ft. wide Town Highway (Road "C"); thence northerly a distance of approximately **605 feet** along the easterly highway boundary of a 60 ft. wide Town Highway (Road "C") and then along the easterly boundary of Ryan Companies US, Inc. (Now or Formerly) (Tax Parcel 316.000-2-41.1) to a point standing on the southerly highway boundary of Judd Road (Route 840); thence westerly and then northwesterly a distance of approximately **3939 feet** along the southerly highway boundary of Judd Road (Route 840) to a point standing on the easterly highway boundary of Gentile Street; thence southerly a distance of approximately **680 feet** along the easterly highway of Gentile Street to a point standing on the northeasterly highway boundary of Woods Road; thence southwestwardly a distance of approximate **77 feet** to a point standing at the intersection of the southwestwardly highway boundary of Woods Road with the westerly boundary of Michael S. Paladino (Now or Formerly) (Tax Parcel 316.000-2-21); thence southerly a distance of approximately **1135 feet** along the westerly boundary of Michael S. Paladino to a point standing on the northerly boundary of Karen Szymanski, Etal. (Now or Formerly) (Tax Parcel 328.000-3-1) (Liber 2738 of Deeds at Page 72); thence northwesterly a distance of approximately **1115 feet** along the northerly boundary of Karen Szymanski, Etal. to a point standing on the westerly boundary of Karen Szymanski, Etal.; thence southwestwardly a distance of approximately **333 feet** along the westerly boundary of Karen Szymanski, Etal. to a point standing on the southerly boundary of Karen Szymanski, Etal.; thence southeasterly a distance of approximately **1975 feet** along the southerly boundary of Karen Szymanski, Etal. to a point standing on the westerly boundary of Karen Szymanski, Etal. thence southerly a distance of approximately **905 feet** along the westerly boundary of Karen Szymanski, Etal. to the **point and place of the beginning.**

The above described parcel containing **206 acres** of land, more or less.

Section 3. This local law eliminates the PDP zone which comprises parcels owned by Par Technologies being used for research and development and manufacturing.

Section 4. 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 5. This Local Law shall become effective immediately upon its filing with the Office of the Secretary of State.

The Supervisor polled the Town Board members who voted as follows:

Councilman Miscione - Aye, the rezoning still brings in jobs; would rather see some development

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Councilman Backman - Nay
Councilman Reynolds - Aye, what he was hearing
was preponderance of retail in that area of Town and the desire to not have retail in the Business Park and he thinks the commitment of the developer to limit retail (including in the already rezoned PHB portion of the Business Park) allays a lot of his concerns
Councilman Woodland - Nay, his constituents are
against the rezoning
Supervisor Tyksinski - Aye.

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

Local Law Introductory "E" of 2012 – Zoning/Temporary Signs

The Town Attorney presented the language for legislation to amend the Town's Zoning Law with regard to the maximum size of temporary signs throughout the Town. After much discussion about the size, currently a maximum of 32 square feet in commercial sections of the Town and 6 square feet in residential areas, Councilman Miscione introduced the following legislation for the Town Board's consideration at a future public hearing:

**Town of New Hartford, NY
Local Law Introductory "E" of 2012**

A Local Law to amend the Code of the Town of New Hartford, Chapter 118 thereof entitled ZONING, by amending Section 118-54. Signs., F. Signs not requiring a permit, (6) Temporary signs.

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

Section 1. Chapter 118 of the Town Code of the Town of New Hartford, Section 118-54. Signs, is hereby amended as follows:

Section 118-54.

Omit the existing Paragraph F. Signs not requiring a permit, sub-Paragraph(6). Temporary signs

Replace Paragraph F. (6) with the following language:

Temporary signs, including but not limited to inflatables, banners or pennants relating to garage, lawn or other individual non-recurring sales, for the sale of produce grown or harvested by the property owner where the subject sign is located, or for a church bazaar, political campaign, fund drive, parade, fair, firemen's field day or other event or undertaking conducted by a political, civic, religious, charitable or educational organization. Such temporary signs are limited to eight (8) square feet in size when placed on any property used for commercial or residential purposes. Additionally, these signs

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can be displayed for no more than two months and shall be removed within seven (7) days after the termination of the activity being advertised.

Section 2. 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 3. This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State.

GML-239 Review – Local Law Introductory “E” of 2012 (Zoning/Temporary Signs)

The following Resolution was introduced for adoption by Councilman Miscione and duly seconded by Councilman Reynolds:

(RESOLUTION NO. 96 OF 2012)

WHEREAS, the Town Board has proposed a local law to amend the Town Zoning Law and specifically addressing the maximum size of temporary signs;

NOW, THEREFORE, BE IT RESOLVED that said Town Board of the Town of New Hartford does hereby refer Local Law Introductory “E” of 2012 entitled as “*A Local Law to amend the Code of the Town of New Hartford, Chapter 118 thereof entitled ZONING, by amending Section 118-54. Signs., F. Signs not requiring a permit, (6) Temporary signs*” to the Oneida County Planning Department and to the Town Planning Board for their review and written recommendation pursuant to General Municipal Law and the Town’s Zoning Law.

Upon roll call, the Town Board voted as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Resignation of Fire/Codes Enforcement Officer, Part-time

Codes Enforcement Officer Joseph Booth had reported that, effective April 26, 2012, Anthony Klimek would be retiring from his employment with New York State; therefore, he must be out of work and off the payroll from any public employment for 24 hours. The Town Supervisor said he had discussed this with Personnel Technician Barbara Schwenzfeier since Mr. Klimek is an Assistant Fire/Codes Enforcement Officer for the Town. Town Attorney Cully said he had a long conversation with the State

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Comptroller’s office about this procedure. The Town could accept Mr. Klimek’s resignation as Assistant Fire/Codes Enforcement Officer effective April 26, 2012 and could then re-appoint him effective April 28, 2012; there must be a break in employment. Codes Enforcement Officer Booth acknowledged receipt of Mr. Klimek’s written resignation from his Town employment and that a copy had been filed with Personnel Technician Schwenzfeier and with New York State. Thereafter, Councilman Miscione introduced the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 97 OF 2012)

RESOLVED that the New Hartford Town Board does hereby accept the resignation of Assistant Fire/Codes Enforcement Officer Anthony Klimek, who is also retiring from his employment with New York State, effective April 26, 2012; and be it

FURTHER RESOLVED that the said Town Board does hereby re-appoint Mr. Klimek as Assistant Fire/Codes Enforcement Officer on a part-time basis effective April 28, 2012 at the same hourly rate of pay he was earning prior to his resignation effective April 26, 2012.

A roll call vote ensued:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Training – Planning Board Member

Upon request of Brymer Humphreys, the following Resolution was introduced for adoption by Councilman Miscione and duly seconded by Councilman Reynolds:

(RESOLUTION NO. 98 OF 2012)

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 Brymer Humphreys to attend the Continuing Education Program on May 2, 2012 in the Town of Schuyler, New

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York, with the Twenty Dollar (\$20) registration fee to be borne by said Town as budgeted. This training session will satisfy the State requirement of four (4) hours of class time for 2012.

The Resolution was voted upon by roll call as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Election Committee – Councilman Woodland

Councilman Backman initiated discussion at the April 4, 2012 Town Board meeting about adjustments to the election ward/districts in the Town, which he believed would evenly distribute workload for Town Board members. Oneida County Legislator James D’Onofrio was present and commented that election districts were determined by the number of registered voters rather than population. Councilman Backman will seek more information from the Oneida County Board of Elections.

Public Works and Sewer Committee – Councilman Reynolds

Training – Highway Superintendent and Foreman

Upon request of the Highway Superintendent, the following Resolution was introduced for adoption by Councilman Reynolds and duly seconded by Councilman Woodland:

(RESOLUTION NO. 99 OF 2012)

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 Highway Superintendent Richard Sherman and Highway Foreman Chris Moran to attend the 2012 Highway School sponsored by the Town and County Officers Training School and the Association of Towns of the State of New York, in cooperation with Cornell University Local Roads Program, from June 11, 2012 through June 13, 2012 in Ithaca, New York, with expenses to be borne by said Town not to exceed Five Hundred Dollars (\$500), including registration. The Town Board does hereby authorize an advance of Two Hundred Dollars (\$200), with

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accompanying receipts to be submitted to the Finance Department upon return from the conference.

The Resolution was voted upon by roll call as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Highway Law, Section 284 – Road Paving List

The Highway Superintendent presented his list of proposed streets for paving during 2012. Councilman Backman offered the following Resolution for adoption and Councilman Miscione seconded same:

(RESOLUTION NO. 100 OF 2012)

RESOLVED that, pursuant to the provisions of Section 284 of the Highway Law, the Town Board and Highway Superintendent do hereby agree that moneys levied and collected for the repair and improvements of highways, and received from the State or other sources for the repair and improvement of highways, shall be expended as follows:

1. GENERAL REPAIRS (5110 and 5120): The sum of \$419,160.88 may be expended for general repairs upon 6.82 miles of Town highways, including sluices, culverts and bridges having a span of less than five (5) feet and boardwalks or the renewals thereof.
2. IMPROVEMENTS (5112): The sum of \$419,160.88 shall be set aside to be expended for the improvement of the following Town highways:
 - a) Concord Blvd/Concord Ext., distance of .47 miles
 - b) Homestead Road East and West, a distance of 1.12 miles
 - c) Partyka Road, a distance of .11 miles
 - d) Midland Place, a distance of .17 miles
 - e) Salem Road, a distance of .09 miles
 - f) Norwood Road, a distance of .08 miles
 - g) Lexington Boulevard, a distance of .05 miles
 - h) North Oakdale Ave., a distance of .05 miles
 - i) Elmhurst Road, a distance of .12 miles

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- j) Balsam Crescent, a distance of .21 miles
- k) Cone Circle, a distance of .26 miles
- l) Larchmont Drive, a distance of .25 miles
- m) Upper Mallory Road, a distance of 1.38 miles)
- n) Sessions Road, a distance of .67 miles)\$200,939.91
- o) \$42,730.32 - Lower Sessions Road, a distance of 2.61 miles
- p) \$14,841.60 - Beechwood Road, a distance of .49 miles
- q) \$5,066.64 - Rosedale Court, a distance of .08 miles
- r) \$8,233.00 - Pleasantview Ave, a distance of .13 miles
- s) \$5,573.31 - Parkway Place, a distance of .08 miles
- t) \$6,002.39 - Mulvihill Drive, a distance of .08 miles
- u) \$10,241.44 - Hilltop Terrace, a distance of .15 miles
- v) \$13,601.18 - Collins Lane, a distance of .22 miles
- w) \$37,614.92 - Sycamore Drive East and West, a distance of .45 miles

The Resolution was then voted upon as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Budget Adjustment – Highway Paving

The Highway Superintendent explained that he needs \$36,000 left over from last year to do general repairs at the end of Tamarack Drive; Councilman Woodland then introduced the following Resolution that was duly seconded by Councilman Reynolds:

(RESOLUTION NO. 101 OF 2012)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the transfer of Forty Thousand Dollars from the Highway Fund balance into the Highway Fund Part-Town Paving Account DB5112.4 to cover the cost of road repairs in the vicinity of Tamarack Drive.

The Supervisor polled the Town Board members who voted as follows:

| | | |
|---------------------|---|-----|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |

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| | | |
|----------------------|---|------|
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Highway Equipment

Highway Superintendent Sherman had prepared a list of current equipment, mileage, etc.

2012 Agreement – Roadside Mowing

Upon recommendation of the Highway Superintendent, Councilman Reynolds presented the Roadside Mowing Agreement and moved its adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 102 OF 2012)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor and Highway Superintendent to enter into and to execute the Roadside Mowing Agreement between the Town and the County of Oneida wherein the Town agrees to mow town and county roads within the Town of New Hartford from May 2012 through September 2012 and the County agrees to furnish the tractor with mower that is to be operated by a town employee, and as more fully defined in said Agreement.

The Town Board voted upon roll call as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Stormwater management – Brantwood Road

Prior to his becoming Highway Superintendent, Richard Sherman noted that stormwater work had been performed at 3 Brantwood Road. Due to heavy rains, stormwater has washed out soil from underneath the large rocks, which have sunk and the property owner desires that the rocks be re-set. The Town Attorney will check to determine if the Town has an easement. Highway Superintendent Sherman obtained two (2) estimates and further noted that there is a sprinkler system in also.

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Senior Citizen Committee – Councilman Reynolds

2012 Donation and Budget Adjustment

Upon request of Director of Senior Citizens M. Eileen Spellman, Councilman Reynolds introduced the following Resolution that was seconded by Councilman Miscione:

(RESOLUTION NO. 103 OF 2012)

WHEREAS, on November 4, 1998 the New Hartford Town Board had established a “gift”/“donation” policy pursuant to Section 64(8) of the Town Law;

NOW, THEREFORE, BE IT RESOLVED that said Town Board does hereby accept the donation of Five Hundred Ninety-one Dollars and Twenty-five Cents (\$591.25) from the Capitol District Physician Health Plan (CDPHP) to sponsor the Senior Volunteer Recognition Program on May 24, 2012; and be it

FURTHER RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Finance Department to make the following 2012 budget adjustments for the New Hartford Adult Dining and Activity Center:

- Increase General Fund Whole-Town Contractual Account A6772.4 - \$591.25
- Increase General Fund Whole-Town Revenue A2705.1 - \$591.25.

A roll call vote ensued:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Library Committee - Councilman

The Town Clerk acknowledged receipt of the April 18, 2012 letter from New Hartford Public Library President Linda Romano that the Library Board had appointed James Kirkpatrick to fill the unexpired term of Elizabeth Lemieux who had resigned.

Town Clerk Committee – Councilman Woodland

Upon recommendation of the Town Clerk, Councilman Woodland offered the following Resolution for adoption; seconded by Councilman Reynolds:

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(RESOLUTION NO. 104 OF 2012)

WHEREAS, pursuant to (Chapter 59; Part T of the Laws of 2010) Article 7 of the Agriculture and Markets Law and the Municipal Home Rule Law of the State of New York, the Town Board on December 8, 2010 adopted a Dog Licensing and Control local law to protect the health, safety, morals and general welfare of the inhabitants, visitors and property of the Town of New Hartford, from dog-related nuisance, damage, or injury, through the establishment and imposition of certain restrictions, regulations, responsibilities and requirements; and

WHEREAS, all dogs within the Town that are four months of age or older shall be licensed on an annual basis and the applications for which shall be accompanied by a current certificate of rabies vaccination proving that the dog has been vaccinated against rabies;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of said Town does hereby authorize and direct the Town Clerk to proceed with a dog enumeration (census), including the printing of forms and receiving applications for Dog Enumerators (Laborers) who shall be paid Seven Dollars and Seventy-five Cents (\$7.75) per hour on a bi-weekly basis, plus mileage at the current rate of \$.46 per mile.

A roll call vote ensued:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Heavy Trash Permit - Tag System/Curbside Pick-up

In 2011 the Town Board had authorized a “trial basis” heavy trash permit program for the period August 1, 2011 and ending September 30, 2011, with tags to be issued by the Town Clerk’s Office (Resolution No. 174, July 13, 2011). The program was successful and the Highway Superintendent recommended continuation of this program.

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

(RESOLUTION NO. 105 OF 2012)

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RESOLVED that the New Hartford Town Board does hereby establish an annual Heavy Trash Permit – Tag System/Curbside Pick-up beginning April 1 through September 30 each year whereby Town residents, upon presentation of their NYS Driver’s License to the Office of the Town Clerk, may purchase Trash Permit Tags at the cost of Five Dollars (\$5) per item to be picked up by the Town Highway Department at curbside; and be it

FURTHER RESOLVED that the following schedule of items (as defined in the Town’s annual Trash & Brush Collection Schedule) is hereby approved for pick up during this program:

- Category 1: All metal and major appliances (including stoves, refrigerators [doors must be removed], water heaters, microwaves, small appliances, washers, dryers, doors and windows, bed springs containing no fabric, bicycles)
- Category 2: Rims only: NO tires and NO tires on rims
- Category 3: Furniture (including mattresses, stuffed furniture, and junk)
- Category 4: Construction and Demolition debris: stone, lumber, shingles, sheet rock, window frames, rugs, bricks, concrete. **MUST BE CONTAINERIZED. LIMITED TO A MAXIMUM OF 3 METAL OR PLASTIC CONTAINERS, NOT TO EXCEED 45LBS. EACH.**

The Town Highway Department will NOT collect the following items:

- Recyclable material
- Broken glass
- Clothes
- Liquids (paint, oil, anti-freeze, etc.)
- Batteries
- Tires
- Propane tanks
- Dirt/sand piles
- Household Hazardous Waste
- Paint cans, empty or full
- Garden debris (pots, stones, dirt).

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

| | | |
|---------------------|---|-----|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |

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Councilman Woodland - Aye
Supervisor Tyksinski - Aye.

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

NYS Liquor Authority – Waiver

The Town Clerk had received a request from the law firm of *Wilson, Elser, Moskowitz, Edelman & Dicker LLP* requesting a waiver of the statutory 30-day notice period for a liquor license for their client, 99 West, LLC (99 Restaurant). Councilman Woodland then offered the following Resolution for adoption and Councilman Miscione duly seconded same:

(RESOLUTION NO. 106 OF 2012)

WHEREAS, the 99 Restaurant intends to file an on-premises liquor license application with the New York State Liquor Authority for the sales of beer, wine and liquor at the aforementioned premises; and

WHEREAS, the 99 Restaurant is undergoing a change in ownership, which has resulted in the need to file a new license application;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of New Hartford does hereby waive the thirty (30) day timeframe, having been notified on April 5, 2012 that the 99 Restaurant would be applying for a new on-premise liquor license.

The Resolution was voted upon by roll call as follows:

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

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

Fireworks Display Permit – Steven Kowalsky Wedding

The Town Attorney had reviewed the fireworks display application received by the Town Clerk and recommended its approval; thereafter, the following Resolution was introduced for adoption by Councilman Miscione and seconded by Councilman Woodland:

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(RESOLUTION NO. 107 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Town Clerk, who has received an Application for a Fireworks Permit and the appropriate Certificate of Insurance naming the Town of New Hartford as an additional insured, to issue to American Fireworks Display LLC, a Fireworks Display Permit for the display of fireworks upon the premises of the Yahnundasis Golf Club, 8639 Seneca Turnpike, New Hartford, NY on June 10, 2012 at 10:00 P.M. as part of the Steven Kowalsky wedding celebration, in accordance with the State Penal Law and regulations set forth in said Permit

The Town Clerk noted that the application had been referred to Police Chief Inserra, Codes Enforcement Officer Booth and New Hartford Fire Chief Bolanowski, none of who had issued any negative comments. The Supervisor polled the Board members who voted as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Fireworks Display Permit – July 4th Celebration

Upon presentation by the Town Clerk, the following Resolution was introduced for adoption by Councilman Miscione and seconded by Councilman Woodland:

(RESOLUTION NO. 108 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Town Clerk, who has received an Application for a Fireworks Permit and the appropriate Certificate of Insurance naming the Town of New Hartford as an additional insured, to issue to American Fireworks Display LLC, a Fireworks Display Permit for the display of fireworks upon the premises of the Yahnundasis Golf Club, 8639 Seneca Turnpike, New Hartford, NY on July 4, 2012 at 9:30 P.M. as part of the Fourth of July celebration by the Yahnundasis Golf Club, in accordance with the State Penal Law and regulations set forth in said Permit. The issuance of the Fireworks Permit is contingent upon the Town Attorney’s review and approval of the Application for Fireworks Permit.

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The Town Clerk confirmed that the application had been referred to Police Chief Inserra, Codes Enforcement Officer Booth and New Hartford Fire Chief Bolanowski, none of who had issued any negative comments. The Supervisor polled the Board members who voted as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

MATTERS SUBMITTED BY COUNCILMEN AND TOWN ATTORNEY

Councilman Backman

Stormwater Management (Advisory) Improvement Committee – Status of

Councilman Backman has been approached by various residents who have experienced stormwater problems and he asked the status of the stormwater advisory committee, noting that there is no chairman being paid and that a member of said committee had died. Councilman Reynolds agreed with Councilman Backman that there are important stormwater issues. The Town Supervisor understood that this committee had a sunset clause. Consensus of the Town Board was to solicit new members by posting this matter on the Town's website.

Willowvale Fire Company – Special Awards Program

Councilman Backman had met with members of the Willowvale Fire Company, Inc. relative to matters involving the Special Awards Program for their members.

The Town Clerk reminded the Town Board members about the pending contract with Affordable Benefit Concepts, Inc. with regard to the Willowvale Fire Company's special awards program (retirement). They had been able to maintain their rates for the past five (5) years but now find it necessary to increase these rates and had submitted a new contract on February 28, 2012 for the 2012 plan year. No action was taken at this time.

Franchise - Cable TV/Status

Upon Councilman Backman's inquiry, the Town Supervisor responded that resident Sidney Perry is trying to arrange a meeting of interested Town Supervisors on this matter.

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Town Survey

Councilman Backman would like the Town to put forth a survey to Town residents and although no funds had been budgeted for the 2012 fiscal year, he would like consideration of this proposal for the 2013 Budget. The Town Supervisor designated Councilman Backman to work on this project.

Town Attorney:

Rayhill Memorial Trail, Extension – Railroad Crossing

Attorney Cully reported that he had attended a New York Mills Village Board meeting with regard to the required railroad crossing for extension of the Rayhill Memorial Trail. Originally, three (3) railroad crossings would have been necessary; however, the trail extension design had been subsequently amended, which reduced the number of railroad crossings to one (1). Previously, the Town Board had passed a Resolution to go forward with the project and that under Section 90 of the Railroad Law that a hearing occur. The Village of New York Mills Board has passed a resolution and the Town needs to do the same. Councilman Miscione then introduced the following Resolution for adoption and Councilman Woodland seconded same:

(RESOLUTION NO. 109 OF 2012)

WHEREAS, the Town of New Hartford, New York intends to layout, extend and construct the Rayhill Trail across the tracks and right of way of the New York, Susquehanna and Western Railway Corporation at a point in the Town of New Hartford and Village of New York Mills; and

WHEREAS, pursuant to Section 90 of the Railroad Law, a trail crossing over tracks is the equivalent of a “new street” and is governed by Section 90 of the Railroad Law; and

WHEREAS, the Town has heretofore conducted a Hearing in this matter and passed a prior resolution;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to Section 90 of the Railroad Law, the Town Board of the Town of New Hartford does hereby determine the necessity for such crossing in the Village of New York Mills and Town of New Hartford.

The Town Board then voted upon roll call:

| | | |
|---------------------|---|-----|
| Councilman Miscione | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |

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Councilman Backman - Aye
Supervisor Tyksinski - Aye.

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

Agreement Proposal - Playground

Regarding a proposed agreement between the Town and Village of New Hartford and the New Hartford Central School District, the Town Attorney had some concerns that the Village and the Town agree that the School may exclusively use and occupy a portion of a playground including equipment during school hours that the school is in session; he will distribute copies to the Town Board members. While the Village of New Hartford owns the land, the Town owns the equipment. The Town Attorney will consult with the Parks & Recreation Committee and the Parks and Recreation Director.

Peddling & Soliciting, proposed amendment – Local Law Introductory “F” of 2012

In a follow-up to the request of the Mr. Ding-a-Ling ice cream vendor at the April 4, 2012 Town Board meeting, the Town Attorney presented language to amend Chapter 89 of the Town Code to allow ice cream vendors to sell their product beyond the current hours/days limitation. Thereafter, Councilman Miscione introduced the following legislation for the Town Board’s consideration at a future public hearing; co-sponsored by Councilman Woodland:

Town of New Hartford, NY
Local Law Introductory “F” of 2012

A Local Law to amend the Code of the Town of New Hartford, Chapter 89 thereof entitled PEDDLING AND SOLICITING, by amending Section 89-7. Hours Limited.

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

Section 1. Section 89 of the Town Code of the Town of New Hartford, Section 89-7, is hereby amended as follows:

Section 89-7. Hours Limited

Omit the existing paragraph and **replace** it with the following language:

The hours for the sale by peddlers of goods, wares and merchandise shall be limited to the period from 11:00 A.M. to 4:30 P.M., Mondays through Fridays, exclusive of holidays except that peddlers of ice cream products for immediate consumption shall be allowed to operate until 8:00 P.M. on weekdays and as well on Saturdays and Sundays from 11:00 A.M. through 8:00 P.M.

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Section 2. All other provisions of Chapter 89 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.

Public Hearing scheduled – Local Law Introductory “F” of 2012

Councilman Miscione then offered the following Resolution for adoption and Councilman Woodland seconded same:

(RESOLUTION NO. 110 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, **May 23, 2012 at 7:00 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 “F” of 2012** which, if adopted, would amend the Code, Chapter 89 thereof entitled **PEDDLING AND SOLICITING**, by amending Section 89-7, hours limited; 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:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

Cristiano Subdivision – Lindale Ave Extension/Cul-de-sac

Attorney Cully explained that in the approved Cristiano Subdivision a cul-de-sac exists and was approved as a “hammer-head” road to service three (3) different houses; the Planning Board records show that the developer will convey title of the “hammer-head” to the Town but that the developer is responsible for plowing, maintaining, etc. the “hammer-head”. The Town Attorney met on-site with developer Mr. Cristiano who hopes the Town Board, upon acceptance of the road to be built according to Town specifications, would take over maintenance of this road. [NOTE: Refer to Page 1 and 2 of the July 20, 2005 Town Board minutes on this same matter.]

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FOIL Appeal

With regard to Mr. Wiatr's FOIL request and subsequent Appeal for e-mails between the Town Supervisor and the Finance Director, the Town Supervisor explained that he couldn't get the documents off the computer and had the Deputy Supervisor look at it a couple months ago. Supervisor Tyksinski has arranged for the Town's IT company to look at this matter on Monday, April 30, 2012. The Town Attorney asked if that was acceptable to Mr. Wiatr, who replied he "could tell when I see them".

Stormwater – Mud Creek

Councilman Miscione, who said he wants a true engineering study done to include possible solutions not necessarily to be done now but in the future, inquired if some engineering money could be used for a report on Mud Creek near Royal Brook Lane. Councilman Backman concurred that the Town should obtain intelligent advice on this matter. At the next Town Board meeting, the Town Attorney will render an opinion as to whether GEIS money can be expended on this area. The Town Supervisor asked Councilman Miscione to work with the Highway Superintendent to determine the scope of the project, come up with dollars for an RFP and Councilman Reynolds suggested that the Sauquoit Creek Basin Intermunicipal Commission be contacted.

Retention Pond/City of Utica - Status

The Town Attorney has not received a response from the City of Utica. He will give a report at the May 9, 2012 Town Board meeting.

Police Commission, creation

Councilman Reynolds met with the Town Attorney and Town Supervisor after the Town Board meeting of April 4, 2012 and developed by-laws for a police commission to be created under Town Law, Section 150. Discussion included:

- no member can serve more than 10 years
- Town Board selects chairperson and serve at pleasure of town board
- all members serve at the pleasure of the town board who can remove them
- each board member to sponsor one police commissioner/member with background checks, giving each Ward representation
- in event of vacancy, that Town Board member picks the replacement; if not done within 30 days, then that Councilman fills the vacancy until an appointment is made
- process for commissioners be open and accept applications from the Town
- stagger initial appointments and initial term limits by lottery or by some other method to be determined by the Town Board, then have 5 year terms.

Consensus of the Town Board was to go forward with preparing a local law to create a police commission including by-laws.

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MATTERS SUBMITTED BY TOWN SUPERVISOR

Finance Director Report

Audit of 2011

Finance Director Dreimiller reported that the audit report by D’Arcangelo had been completed on March 30, 2012 and hw submitted copies to the Town Board for review and comment. D’Arcangelo has agreed to appear before the Town Board at any time the Board desires. Finance Director Dreimiller then reviewed the summary of revenues (budget to actual), summary of expenditures (budget to actual) and fund balances, showing a total of \$3.3 million.

Monthly Report

Director Dreimiller then distributed copies of the March 2012 financial reports

Release of Retainage – Clifford Nice ‘n Easy

Upon presentation by the Town Supervisor, Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Miscione:

(RESOLUTION NO. 111 OF 2012)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Finance Department to release to the Clifford Fuel Company, Inc., P O Box 378, Utica, NY 13503-0378, their retainer in the amount of Ten Thousand Dollars (\$10,000) that had been deposited with the Town to ensure completion of the Burrstone Road Nice ‘n Easy convenience store; said retainer amount to be written from the Trust and Agency Account.

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

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

2012 Budget Transfer

Upon presentation by the Town Supervisor, Councilman Backman then offered the following Resolution for adoption; seconded by Councilman Miscione:

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(RESOLUTION NO. 112 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Finance Department to transfer the sum of Twenty Thousand Four Hundred Seventy-five Dollars (\$20,475) from Capital Project #H71620.4 (for the roof on the two community center buildings) into General Fund Whole-Town Account A1620.4 for reimburse for expenditures made.

The Resolution was duly put to a vote upon roll call, resulting as follows:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Backman | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Supervisor Tyksinski | - | Aye. |

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

EXECUTIVE SESSION

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

(RESOLUTION NO. 113 OF 2012)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss the Town's litigation strategy in the Assessment Certiorari proceeding of Markwood versus the Town of New Hartford.

A roll call vote ensued:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | 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 10:20 P.M. The Town Attorney, Deputy Supervisor and Assessor remained for the Executive Session.

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[NOTE: The Town Attorney provided the following transcription on Thursday, April 26, 2012.]

END OF EXECUTIVE SESSION

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

(RESOLUTION NO. 114 OF 2012)

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:

| | | |
|----------------------|---|------|
| Councilman Miscione | - | Aye |
| Councilman Reynolds | - | Aye |
| Councilman Woodland | - | Aye |
| Councilman Backman | - | Aye |
| Supervisor Tyksinski | - | Aye. |

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**; the Executive Session ended at 10:36 P.M., after which the regular portion of the Town Board meeting was immediately reconvened and the public re-invited to the meeting.

ADJOURNMENT

There being no further business to come before the Town Board, upon motion of Councilman Reynolds and seconded by Councilman Miscione, the meeting was adjourned at 10:38 P.M.

Respectfully submitted,

Gail Wolanin Young
Town Clerk