

**SPECIAL MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON THURSDAY, JUNE 21, 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:

Codes Enforcement Officer Joseph A. Booth
Deputy Supervisor Matthew Bohn III
Highway Superintendent Richard C. Sherman
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.

Creation of Police Commission; Property Maintenance Issue

The Town Supervisor announced that the Town Board's consideration of Local Law Introductory "G" of 2012 (creation of a Police Commission) and action on a property maintenance matter at 2 Tibbitts Road would be deferred until the regular Town Board meeting scheduled for July 11, 2012.

Insurance Renewal

Supervisor Tyksinski noted that Bailey, Haskell & LaLonde had submitted the sole quote for renewal of the various Town insurance policies that will expire June 30, 2012.

[NOTE: Refer to minutes of the June 13, 2012 Town Board meeting.] Although another insurance company had contacted the Town, they were unable to submit a quote prior to the June 30th expiration date. Therefore, Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 165 OF 2012)

RESOLVED that the Town Board of the Town of New Hartford does hereby approve and accept the quote submitted by Bailey, Haskell & LaLonde for renewal of the following insurance policies for the period June 30, 2012 through June 30, 2013:

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 2

- Package Policy
 - Property
 - Inland Marine
 - General Liability
 - Law Enforcement
 - Auto
 - Liability
 - Physical Damage
 - Public Officials
 - Employment Practices Liability
 - OCP
 - Umbrella

in the amount of One Hundred Fifty-three Thousand One Hundred Eighty-four Dollars and Sixty-two Cents (\$153,184.62), which includes the NY Fire Fee and NY Motor Vehicle Fees and excludes terrorism coverage.

The foregoing Resolution was subject to a vote upon roll call, resulting 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***.

TOWN OFFICIAL REPORTS BY STANDING COMMITTEE CHAIRMAN

Senior Citizen Committee – Councilman Reynolds

Appointment – Substitute Part-time Clerk

Upon request of the Director of Senior Services, Councilman Reynolds offered the following Resolution for adoption and Councilman Miscione seconded same:

(RESOLUTION NO. 166 OF 2012)

RESOLVED that the New Hartford Town Board does hereby appoint Bernard Green as a substitute Part-time Clerk for the New Hartford Adult Dining and Activity Center, effective June 29, 2012 at an hourly wage of Seven Dollars and Seventy-five Cents (\$7.75), payable bi-weekly.

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 3

The Board acknowledged that Mr. Green is currently a part-time school traffic officer and that the Oneida County Personnel Department has approved his application for the substitute part-time clerk position. The appointment of Mr. Green would not impact the Town’s budget as he would work only when Part-time Clerk Camille Fuks is unavailable.

A roll call vote ensued:

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

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

Zoning (Codes) and Planning Committee – Councilman Miscione

Local Law Introductory “J” of 2012 (Repeal of Town Code, Chapter 94 entitled Property Maintenance and replacement with new language)

Councilman Miscione and Codes Enforcement Officer Booth had discussed The Town Code, Chapter 94 entitled Property Maintenance and specifically, the length of time involved to abate/eliminate a public nuisance. Councilman Miscione proposed legislation that, if adopted, would bring the current 60-day timeframe down to a 7-day process, giving the Codes Department authority to proceed after a 5-day window. The Town Attorney had also reviewed the proposed legislation. Thereafter Councilman Miscione introduced the following Local Law Introductory for the Town Board’s consideration at a future Public Hearing; co-sponsored by Councilman Reynolds:

Local Law Introductory “J” of 2012

A Local Law to amend the Code of the Town of New Hartford by repealing Chapter 94 entitled “PROPERTY MAINTENANCE”, initially adopted by the Town Board on September 21, 1994 and subsequently amended in its entirety on December 29, 2008, and replacing Chapter 94 with new language.

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

Section 1. The Code of the Town of New Hartford, Chapter 94 entitled PROPERTY MAINTENANCE, is hereby amended by repealing the existing Chapter 94 and replacing it with the following new language:

Sec. 94-1. - Purpose and intent.

It is hereby declared to be the purpose of this chapter to protect public safety, health and welfare and enhance the environment for the people of the Town by making it unlawful

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 4

for property owners and occupants to allow an environmental public nuisance or any public nuisance as defined in chapter 86 of the Town of New Hartford Code to exist.

Sec. 94-2. - Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them in this section. The word "shall" is always mandatory and not merely directory.

Authorized individual means the director of the department of code enforcement or one of his designees.

Environmental public nuisance means:

- (1) Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of ten (10) inches or more;
- (2) Vegetation, trees or woody growth on private property that, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or that has been allowed to become a health or safety hazard;
- (3) A drainage or stormwater management facility as defined in Chapter 101 of the Town of New Hartford Code on private or governmental property, which facility has not been maintained as required by that chapter; or
- (4) Property that has accumulated litter or waste products, unless specifically authorized under existing laws and regulations, or that has otherwise been allowed to become a health or safety hazard.
- (5) Any property that constitutes a threat to health, safety and general welfare of the residents of the Town of New Hartford or represents a public nuisance as defined in chapter 86 of the Town of New Hartford Code

Equipment means such equipment as trucks, tractors, bulldozers and similar motor vehicles and hand-operated equipment such as weed trimmers and similar equipment.

Excluded property means:

- (1) Cultivated land in commercial, domestic, agricultural or horticultural use;
- (2) An existing natural or developed forest that does not create a health or safety hazard;
- (3) Vacant, open lands, fields or wooded areas more than one hundred fifty (150) feet from an occupied property;
- (4) A nature habitat area more than one hundred fifty (150) feet from an occupied structure on adjacent property and determined by state and/or local governmental health authorities not to be a health or safety hazard;

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 5

(5) A wetland area designated by the United States Department of Interior Fish and Wildlife Division on a National Wetlands Inventory Map and/or determined to be a wetland area by the Department of public works;

Governmental property means real estate that is owned, leased, controlled or occupied by the United States, the State of New York, or any political subdivision thereof.

Occupant means the person, firm, partnership, association, corporation, business trust, joint stock company, unincorporated organization, religious or charitable organization, or entity who is from time to time in possession or exercising dominion and control over the real estate or any house or other structure located thereon. *Occupant* shall include any lessee of the property.

Owner means the record owner or owners as reflected by the most current records in the county assessor's office.

Private property means all real estate within the Town except governmental property.

Recipient means the owner or occupant to whom notice of violation has been directed.

Repeat violation occurs when a property owner or occupant who has previously been issued notice of a similar environmental public nuisance for the same property or who has been found by a hearing or judicial officer to have allowed a similar environmental public nuisance to exist at the same property allows a subsequent similar environmental public nuisance to exist at that property within eighteen (18) months of the date of the previous notice or finding of violation, whichever is later. A repeat violation does not occur when multiple violations of subsection (4) of the definition of environmental public nuisance are alleged and:

(1) The owner or occupant can demonstrate that illegal dumping was the cause of the underlying violations; and

(2) The owner or occupant has made a reasonable effort to prevent illegal dumping from recurring.

Sec. 94-3. - Application of chapter.

(a) Each department or agency of the United States, the State of New York, or political subdivision thereof shall be required to keep governmental property within the Town free from environmental public nuisances.

(b) All owners, occupants, or other persons in control of any private property within the Town shall be required to keep the private property free from environmental nuisances.

Sec. 94-4. - Prohibited activity.

It shall be unlawful for any property owner or occupant to allow an environmental public nuisance to exist. This provision shall not apply to excluded property.

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 6

Sec. 94-5. - Determination of violation; notice of violation.

(a) Any department of the Town that receives a complaint regarding an environmental public nuisance on any property within the Town shall forward that complaint to the department of code enforcement, which shall make a record of such complaint. An authorized individual shall visually inspect the property in question. If the authorized individual determines that a violation exists, the department shall issue a notice of violation to the owner if the Town intends to proceed under the provisions of section 94-7 of this chapter and, in the department's sole discretion, to the occupant. A notice of violation issued for vegetation of a height of ten (10) inches or more remains in effect for the calendar year in which it is issued if the Town abates the environmental public nuisance under the provisions of section 94-7 of this chapter. After such abatement by the Town, without issuance of further notice, the Town may continue to reinspect the subject property and may abate subsequent violations of vegetation of a height of ten (10) inches or more and may recover its abatement costs under this chapter.

(b) Notice of violation described in subsection (a) shall be issued either by personal service or by first class United States mail, postage prepaid. Such notice shall state the nature of the alleged environmental public nuisance and the action deemed necessary to correct the condition, and shall fix a date not sooner than five (5) days from the date of the notice for vegetation of a height of ten (10) inches or more, and ten (10) days from the date of the notice for all other violations under this chapter, when the property will be reinspected. The notice shall inform the recipient that, if the condition is not corrected upon reinspection, the Town has the right to enter on the property to abate or correct the condition and bill the recipient for costs incurred in so doing. A notice to the occupant at the real estate or to the owner at the address to which property tax statements are sent as these addresses are shown by the most current records in the county assessor's office shall be sufficient notice under this subsection.

Sec. 94-6. - Correction upon reinspection.

If, upon reinspection, it is determined that the environmental public nuisance has been corrected, the recipient shall not be liable for any charges under section 94-7(b)(1) of this chapter.

Sec. 94-7. - Failure to abate after notice; abatement by Town.

(a) ***Abatement by Town.*** If, upon reinspection, it is determined by the authorized individual that abatement has not occurred, or if vegetation of a height of ten (10) inches or more is present on a property in the same calendar year in which the Town previously abated a violation of a similar nature on that property, then the director of the department of code enforcement, or his or her designee, may enter upon the premises and order that the environmental public nuisance be abated. The recipient shall be liable for the costs of abatement. After abatement is completed, the department shall, either by personal service or first class United States mail, postage prepaid, send the recipient a bill for the costs of abatement.

(b) ***Responsibility of occupant or owner for costs of abatement.***

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 7

(1) **Abatement costs.** As reimbursement to the department of code enforcement for its costs, the recipient shall, within ten (10) days of the date of the bill, pay to the department the following fees and charges:

- a. An administrative fee of \$250.00, for such administrative tasks as inspecting the property to determine compliance, determining ownership and preparing and mailing notices;
- b. Any disposal fees actually incurred to dispose of litter and waste products removed;
- c. Any other reasonable fees actually incurred in abating an environmental nuisance; and
- d. Administrative, labor and equipment fees may be changed or established by regulation of the board of code enforcement as necessary to assure that such fees are adequate to reimburse the department.

(2) **Unpaid costs become lien upon affected property; perfecting of lien.** Upon the failure of the owner who was sent a bill to pay the appropriate fees and charges within the ten-day time period, the department of code enforcement shall have a lien upon the property on which the environmental public nuisance was abated for the amount billed in accordance with the fee schedule listed above. In addition, there will be a twenty-five dollar (\$25.00) charge for services necessary in order to perfect such lien. Such liens may be perfected in the following manner:

- a. By the adoption by the code enforcement at any regular or special meeting thereof of an assessment resolution, which shall give the name of the owner or owners, a description of the property on which the environmental public nuisance was abated, and the amount of the charges being assessed;
- b. The certification of such assessment resolution to the county auditor, who by special assessment shall cause the amount thereof to be placed on a tax duplicate for the property on which the environmental public nuisance was abated for collection as in the nature of a real property tax; and
- c. Upon receipt of a written verified request from the purchaser, the department shall release liens perfected after the recorded date of conveyance of the property. The request must state that the purchaser was not an owner or occupant of the property at the time of the notice of violation or at the time of the Town's abatement without notice of a subsequent violation of a similar nature in a calendar year as provided in this chapter, had no knowledge of the notice of violation and has not been paid by the seller for the costs of abatement billed.

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 8

(3) ***Civil action to recover costs of abatement.*** Upon the failure of the recipient who was sent the notice of violation and bill to pay the appropriate fees and charges within the ten-day period, the department of code enforcement may bring a civil action in court against such recipient to recover the amount billed, plus reasonable attorney's fees.

Sec. 94-8. - Existence of violation; court action or administrative adjudication for ordinance violation; court action or administrative adjudication for repeat violation.

(a) In addition to or in lieu of the foregoing, if, upon inspection, it is determined by the authorized individual that a public nuisance exists, the department of code enforcement may initiate a civil court action or administrative adjudication for ordinance violation against the owner or occupant of the property. A court action shall be initiated in accordance with the Town of New Hartford Code sections 94-5, and 65-17B.

(b) Regardless of whether later abatement by the recipient has occurred, the department may initiate an administrative adjudication or a civil court action for any violation of this chapter.

Sec. 94-9. - Penalty.

Penalties shall be assigned in accordance with the Town of New Hartford Code 118-80

Sec. 94-10. - Release of liens.

The Town Board of the Town of New Hartford release any liens for abatement costs or judgment liens for any other amount due pursuant to this chapter if it finds that the benefit to the Town outweighs the detriment caused by such a release. The board may require parties affected by the release to agree to whatever conditions the board deems appropriate; provided, however, all conditions shall be set forth in a conditional release of the lien and shall be recorded in the office of the county recorder. If the board finds that an affected party has failed to comply substantially with the conditions imposed by the board, the release shall be void and the lien affecting the property may be reinstated by the board.

Sec. 94-11. - Provisions of chapter declared severable.

In the event any section, subsection, clause, phrase, or portion of this chapter is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of this chapter. It is the legislative intent of the council that this chapter would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 2. Effective date.

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 9

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

Public Hearing Scheduled – Local Law Introductory “J” of 2012 (Property Maintenance)

Councilman Miscione then offered the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 167 OF 2012)

RESOLVED that the New Hartford Town Board shall conduct a Public Hearing on Wednesday, July 11, 2012 commencing 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, NY to consider Local Law Introductory “J” of 2012 which, if adopted, would repeal the existing Chapter 94 (Property Maintenance) of the Town Code and replace Chapter 94 with new language to protect the public health, safety and welfare and enhance the environment for the people of the Town by making it unlawful for property owners and occupants to allow an environmental public nuisance or any public nuisance as defined in Chapter 86 of the Town of New Hartford Code to exist; and be it

FURTHER RESOLVED that the Town Clerk be, and she hereby is, authorized and directed to publish the requisite notice of public hearing in The Observer Dispatch.

The Town Board then voted by roll call, resulting 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**.

Local Law Introductory “H” of 2012 – Zone Map Amendment Application; 129 Oxford Road; Low Density Residential (LDR) to High Density Residential (HDR)

Mark Levitt, attorney for Hogeboom and Canfield (Philip Husted, Jr.) and developer (Liberty Affordable Housing) acknowledged the Town residents’ comments at the June 13, 2012 Public Hearing with regard to the request that property at 129 Oxford Road be rezoned to High Density Residential. Attorney Levitt then announced that, on behalf of the owner and prospective developer, the Zone Map Amendment application is withdrawn; he submitted a written withdrawal of this rezoning request. Attorney Levitt thanked the Town Board and staff for all their time and effort in this matter.

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 10

[ASIDE: The Town Clerk distributed copies to the Town Board of a June 21, 2012 e-mail from Julie Rimbault of the U.S. Army Corps of Engineers and which e-mail had been prompted after Town resident, Ms. Simpson, had contacted that agency with her “..concerns about drainage in the vicinity of Bromwich Road and further concerns over a proposal to make zoning changes to allow for the development of a parcel of land located east of Bromwich Road and West of the railroad tracks in the Town of New Hartford...”.]

EXECUTIVE SESSION

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

(RESOLUTION NO. 168 OF 2012)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss the employment history of a particular employee.

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 7:08 P.M. The Town Attorney, Deputy Supervisor and Highway Superintendent remained for the Executive Session.

[NOTE: The Town Attorney provided the following transcription on Monday, June 25, 2012.]

END OF EXECUTIVE SESSION

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

(RESOLUTION NO. 169 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.

SPECIAL TOWN BOARD MEETING

June 21, 2012

Page 11

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 7:20 P.M. The regular portion of the Town Board meeting was immediately reconvened and the public invited to re-join 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 7:21 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk