

**REGULAR MEETING OF THE TOWN BOARD OF
THE TOWN OF NEW HARTFORD, NEW YORK,
HELD AT BUTLER MEMORIAL HALL ON
WEDNESDAY, FEBRUARY 13, 2008 AT 6:00 P.M.**

The Town Supervisor called the meeting to order at 6:00 P.M. and led those in attendance in the Pledge of Allegiance to the American Flag. The roll was then taken with the following Town Officials and Department Heads being present during the progress of the meeting:

TOWN BOARD MEMBERS: Councilman Robert A. Payne III
Councilwoman Christine G. Krupa (Arrived 6:05 PM)
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Earle C. Reed

OTHER TOWN OFFICIALS: Attorney for the Town Gerald J. Green
Codes Enforcement Officer Joseph A. Booth (Arrived
6:10 PM)
Director of Senior Services M. Eileen Spellman
Highway Superintendent Roger A. Cleveland (Arrived
6:04 PM)
Supervising Public Safety Telecommunicator Jeffrey P.
Madden
Town Clerk Gail Wolanin Young and Deputy
Clerk I Melody K. Fancett

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

MINUTES

January 23, 2008 Town Board Meeting

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

(RESOLUTION NO 37 OF 2008)

RESOLVED that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the *Regular* Town Board meeting held *January 23, 2008* and does further waive the reading of the same.

Upon roll call, the Board members voted as follows:

Councilwoman Krupa	-	Absent
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye

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Councilman Payne - Aye
Supervisor Reed - Aye.

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

PUBLIC HEARING

6:01 P.M. Local Law Introductory “B” of 2008, Public
Nuisance Abatement Law

The Supervisor opened the Public Hearing at 6:01 P.M. Town Clerk Gail Wolanin Young had available the Notice of Public Hearing, Affidavit of Posting and Proof of Publication (January 31, 2008 edition of Observer Dispatch). The purpose of the Hearing was to offer the public an opportunity to speak in favor of, in opposition to, or to comment upon Local Law Introductory “B” of 2008 that, if adopted, would add a new Chapter 86 to the Town Code, entitled Public Nuisance Abatement Law. Chief Philo gave the following presentation:

Problem Identification

The intent of the New Hartford Nuisance Abatement Law is to prevent the degradation of homes and neighborhoods in the Town of New Hartford by holding property owners and residents accountable for individuals residing in homes where nuisances are occurring. Nuisance conditions can drive down adjacent property values and have a domino effect on the property conditions of the entire neighborhood. Municipalities have recognized that these conditions are frequently the precursor to more serious problems and can inhibit a community’s economic vitality.

New Hartford has a significant older housing stock, and many of these older homes have been divided up into apartments. In many cases, the property owner does not live in the house and may not be aware of the recurring violations of the law occurring there. New Hartford also has several mobile home parks where the mobile home is rented out. A significant amount of unlawful activity is occurring at residences where the property owner is not present and may not even be aware of the nuisance conduct by those residing at the property.

Property Maintenance Task Force

After several years of noticing an increasing amount of nuisance crimes at rental properties, I requested that the Town Board authorized the formation of a nuisance abatement committee, otherwise known as a Property Maintenance Task Force. For the

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past two years members of the Task Force examined the scope of the problem, reviewed existing laws, and examined current Nuisance Abatement Laws in other communities. It was determined that the best course of action would be to recommend to the Town Board the enactment of our own Nuisance Abatement Law. To that end, the Committee, with the assistance of the Town Attorney, worked on several drafts of the Law, finally settling on the draft before you. There was a significant effort on behalf of the Task Force to ensure that the law would be fair, provide for due process, and hold-up to judicial review.

[NOTE: Councilwoman Krupa joined the meeting at 6:05 P.M.]

Legislative Intent

The New Hartford Nuisance Abatement Law represents a community-based strategy involving a comprehensive, multi-agency approach to nuisance properties. This strategy includes three basis components: Law enforcement (police and codes), prevention and deterrence, and intervention. Four fundamental principles underlie the New Hartford Nuisance Abatement Strategy: Collaboration, Coordination, Community Participation and Leveraging of resources.

In addition to units of government, the nuisance abatement law seeks to partner with property owners in dealing with problem residents or tenants. The law includes a formal property owner notification procedure to make sure the owner is aware of any problems. Due process is provided at several stages in the law, wherein property owners are provided with a hearing should the nuisance not be properly addressed. This hearing allows for a free exchange of information between the property owner and Town Officials, in an effort to work together to mitigate the problem. Eventually, if the designated nuisance (s) are not resolved, the law provides for a remedy in State Supreme Court, another step in procedural due process.

Conclusion

I believe that the proposed New Hartford Nuisance Abatement law is an example of proactive as well as reactive government. The real benefit of the ordinance lies in its deterrence value. If property owners perceive that there will be a cost to them for allowing continued aberrant behavior, they are more likely to move towards correcting that behavior before it comes to the attention of local government. Essentially, the ordinance will provide for property owners who will be stakeholders in their neighborhood, and therein lays the real purpose of this ordinance.

It is important to remember that the Nuisance Abatement Law can also be an important tool for the property owner who may be seeking solutions for problem residents or tenants. It provides them with a means to partner with local government, and the courts to correct a problem that they might have difficulty dealing with on their own.

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Chief Philo requested that the New Hartford Town Board give due consideration to the proposed [local law] to provide us with the tools necessary to keep our neighborhoods safe and ensure a continued quality of life for our residents.

The Nuisance Abatement Commission had studied this matter since 2006 and has talked with officials of other communities that have enacted such a law. Chief Philo explained that a noise complaint can sometimes turn into another situation – such as a felony for the sale of unlawful drugs - drugs could lead to violence – drug rip offs, money rip offs.

Lloyd Schor and Brent Whittington of the Utica Marshal's Office stated that a list of tenants brought into court in the past is available to a landlord.

The Town Supervisor inquired if anyone present wished to speak in favor of Local Law Introductory "B" of 2008; those who came forth included:

- Dave Valentine – have experienced nuisances for 1 ½ years with adjacent rental property – loud parties late night into dawn, barking dogs, bonfire, leaking gasoline tanks gas fumes and vehicle parked next to it. Ruins the neighborhood. During the 1 ½ years of trouble, the police and animal control offices did a wonderful job for which he commended them. Give them the tools to enforce the law.
- Mary Skorulski cited two (2) examples near her home where parties are held every weekend, cars parked all over, noise, beer cans outside; also, a home with drugs, and drugs buried near the creek
- Ross Sloan – house near his – all women college students, men coming in, tremendous amount of drinking, all over streets, noise was terrible
- Roger Yaddow, Irvin Ave – all the mobile homes in his area have deteriorated, drug activity rampant especially in 2 mobile homes; have made complaints. Broken car windows....outdoor night basketball activity constant. Cars in and out all the time

People with questions included:

- Edward Bradley - what if a landlord is aware of problems and doesn't do anything.

The Police Chief answered that the landlord is notified and a hearing is scheduled.

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- Roberta Barden – would like more information as a landlord what to be looking for..... Could they obtain copies of law, like Chapter 56 dogs and pet nuisances?

The Police Chief responded that copies of the laws would be available in the Town Clerk's Office.

- Councilwoman Krupa – had discussions with some of her constituents, most of who are in favor of the legislation; however, there are a few people who have neighbors that complain about everything. How would the police address someone complaining about a radio outside?

The Police Chief explained that the incident would have to rise to a level of violation, which is explained in the law.

- Melody Fancett – will you be helping the landlord to get the tenant out; it seems the tenants have more rights than the landlord.

Yes, to the point the court/law allows. Chief Philo suggested including the nuisance abatement law in her lease; all landlords should incorporate this in their leases.

- Randy Bogar – initial concern was the content of the law but after reading it, he has no concerns; can support it. The trick is to find good tenants. He's always had a lease and obtained references and now checks a couple websites, one on sexual predators.

There being no one further to speak in the matter, the Public Hearing was closed at 6:40 P.M.

Thereafter, Councilman Woodland moved that Local Law Introductory "B" of 2008 be adopted as Local Law No. One of 2008, as follows:

TOWN OF NEW HARTFORD, NEW YORK LOCAL LAW NO. ONE OF 2008

A Local Law to amend the Code of the Town of New Hartford, by adding a new Chapter 86 entitled Public Nuisance Abatement Law.

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

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§86-1. Title.

This chapter shall be known and cited as the "Town of New Hartford Public Nuisance Abatement Law."

Sec. 86-2. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public nuisance includes, but shall not be limited to:

- (1) Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance or marihuana [marijuana] as defined by the New York State Penal Law.
- (2) Any building, structure or real property used for the purposes of prostitution as defined by the New York State Penal Law.
- (3) Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the New York State Penal Law and this Code.
- (4) Any building, structure or real property used for purposes of illegal gambling activity as defined in the New York State Penal Law.
- (5) Any building, structure or real property used for the purpose of the commission of illegal possession, use or sale of firearms or weapons as defined by the New York State Penal Law.
- (6) Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the New York State Alcohol Beverage Control Law.
- (7) Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the New York State Penal Law.
- (8) Any building, structure or real property used for purposes of loitering as defined by the New York State Penal Law.

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- (9) Any building, structure or real property wherein there exists or has occurred any violation of the Code of the Town of New Hartford, including, but not limited to, Chapter 56, Dogs And Pets; Chapter 118, Zoning, including the New York State Uniform Fire Prevention and Building Code, the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, all of which have been previously adopted and incorporated into said Code of the Town of New Hartford by reference.
- (10) Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.
- (11) Any building, structure or real property wherein an occupant, guest or business invitee conducts or performs activities or behaves in a manner that detrimentally effects the quiet and reasonable use and enjoyment of adjacent or neighboring property as such conduct and activities are defined by the New York State Penal Law.

Sec. 86-3. Nuisance forbidden.

No owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall knowingly conduct, maintain, permit or allow the existence of a public nuisance at the building, structure or real property.

Sec. 86-4. Presumption of knowledge.

Notice by first class mail or personal service of activities entailing a public nuisance to the property owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall be prima facie evidence of knowledge of the public nuisance.

Sec. 86-5. Administrative review hearing.

Whenever there is prima facie evidence of a public nuisance at any building, structure or real property within the Town of New Hartford, the Town Attorney shall initiate an administrative review hearing, before bringing a civil action as described in Sec. 86-6 herein.

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- (a) *Service of notice:* A notice of the review hearing shall be served on one or more owners of the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building. The notice shall be served in the manner required by New York State Civil Practice Law and Rules.
- (b) *Content of notice:* The notice shall allege the facts constituting the public nuisance. The notice shall be accompanied by affidavit(s) for purposes of showing that the owner or his agent had notice of the nuisance, had an opportunity to abate the nuisance and failed to do so. The notice shall further contain a time, date and place for the review hearing to be held before a panel.
- (c) *Hearing panel:* The panel shall consist of a member to be appointed by the chief code enforcement officer, a member to be appointed by the chief of police and a member to be appointed by the Town Board. Each appointing authority shall be authorized to appoint himself/herself or any member of his/her staff or department to the hearing panel.
- (d) *Hearing:* At the time, date and place designated in the notice, the Town Attorney or his/her designee shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the building, structure or real property, the presumption of knowledge of the subject nuisance(s), proper service of sufficient notice on one or more owners, the failure or refusal of the owner(s) of the building, structure or real property to fully and properly abate said nuisance, despite notice and opportunity to do so. The owners of the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross-examine any witnesses presented by the Town Attorney or his/her designee. The owners of the building, structure or real property, or their representatives, may present any relevant evidence and/or witnesses in their defense. The Town Attorney, or his/her designee, shall have the right to examine such evidence and cross-examine any witnesses presented by the owners of the building, structure or real property, or their representatives.
- (e) *Panel's finding and recommendation:* Within five (5) business days of the review hearing, the panel shall provide a written decision to the Town Supervisor for presentment to the Town Board at or before the next regularly scheduled Town Board meeting.

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Within five (5) business days of the review hearing, the panel shall provide a copy of its decision to the Town Board, Town Attorney, the Code Enforcement Officer, the Police Chief and to the owner(s) of the subject building, structure or real property. The written decision shall state whether or not the panel determined there is prima facie evidence of the existence of a public nuisance at the building, structure or real property. If a public nuisance is found to exist, the panel shall further state in its decision the remedial measures the owner(s) of the subject building, structure or real property are to perform or undertake to abate the public nuisance, along with a specified time frame within which the nuisance is to be abated.

Responsibility for monitoring the abatement of the identified nuisance shall rest with the Police Department and/or the Code Enforcement Office. Upon satisfactory abatement of the subject nuisance within the designated time frame, the Police Chief and/or the Code Enforcement Officer shall provide written notification of compliance to the panel, the Town Board, the Town Attorney and the owner(s) of the building, structure or real property.

In the event of non-compliance with the decision of the panel, the Police Chief and/or the Code Enforcement Officer shall provide written notification of non-compliance to the panel, Town Board, Town Attorney and owner(s) of the building, structure or real property and expressly request the Town Attorney to seek Town Board authority to bring a civil action as described in Sec. 86-6 herein.

Sec. 86-6. Summons and complaint for civil action.

- (a) The Town Attorney may bring and maintain a civil action in the name of the Town to abate a public nuisance and shall commence the civil action by the filing and serving of a summons and complaint in the manner required by New York State Civil Practice Law and Rules.
- (b) The summons and complaint shall name as defendants the building, structure or real property by describing it by tax map number and/or street address and shall name as defendants at least one of the owners of some portion of or some interest in the property.
- (c) The summons and complaint may also name as defendants any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property.

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- (d) The complaint shall allege the facts constituting the public nuisance.
- (e) The complaint shall be accompanied by affidavit(s) for purposes of showing that the owner or his agent had notice of the nuisance, had opportunity to abate the nuisance and failed to do so.
- (f) The venue of the action shall be in the New York State Supreme Court (“Supreme Court”) located in the County of Oneida where the public nuisance is being conducted, maintained, permitted or allowed.
- (g) In the event personal jurisdiction cannot be obtained over a proper party, in rem jurisdiction over the building, structure or real property shall be completed by affixing the summons to the building, structure or real property and by mailing the summons and complaint by certified or registered mail, return receipt requested, to the person in whose name the real property is recorded at the office of the Town Assessor.
- (h) With respect to any action commenced or to be commenced, the Town Attorney shall file a notice of pendency pursuant to the New York State Civil Practice Law and Rules.

Sec. 86-7. Civil penalty.

If, upon the trial of an action in Supreme Court for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed \$1,000.00 for each day it is found that defendants conducted, maintained, permitted or allowed the public nuisance after first notice to abate had been given by the Town. Upon recovery, such penalty shall be paid into the general Town fund.

Sec. 86-8. Permanent injunction.

- (a) If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted as ordered by the Court.
- (b) A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the New York State Civil Practice Law and Rules and for the actual costs, expenses and disbursements of the Town in investigating, bringing and maintaining the civil action.

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Sec. 86-9. Preliminary injunction.

Upon a motion or order to show cause from the Town Attorney and pending an action for a permanent injunction, a preliminary injunction enjoining the public nuisance may be granted for any of the relief obtainable by a permanent injunction.

Sec. 86-10. Temporary restraining order.

Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendants, for any of the relief obtainable by a permanent injunction.

Sec. 86-11 No act of ownership.

Injunctive action taken by the Town police department or Code Office in accordance with any Court order shall not constitute an act of possession, ownership or control by the Town, and shall not relieve the owner(s) of his/her/their duties, responsibilities and legal obligations as relate to the building, structure or real property.

Sec. 86-12 Severability.

If any clause, sentence, paragraph, word, section or part of this Code shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved in the controversy in which said judgment shall have been rendered.

Sec. 86-13 Exclusivity.

Nothing within this Section of the Code of the Town of New Hartford shall preclude the New Hartford Police and/or the New Hartford Code Enforcement Officers from prosecuting and/or enforcing the very same acts of public nuisance against the same owner(s), occupiers, tenants or lessees of the subject building, structure or real property under any other applicable section of the Town Code or laws of the State of New York.

Sec. 86-14 Effective Date.

This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

The Town Board voted upon roll call, resulting as follows:

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

Local Law Introductory “B” was then declared unanimously carried and duly adopted as Local Law No. One of 2008.

PRESENTATIONS

Upon questioning by the Town Supervisor, there was no one present wishing to address the Board.

REPORTS OF TOWN OFFICIALS

HIGHWAY SUPERINTENDENT:

Highway Advisory Signs – Deer Crossing

Upon request of the Highway Superintendent, Councilman Payne introduced the following Resolution for adoption; seconded by Councilman Woodland:

(RESOLUTION NO 38 OF 2008)

WHEREAS, problems have occurred recently with the number of deer crossing a certain area of Oxford Road; and

WHEREAS, since 1992 there have been twenty-five (25) deer-car accidents along this particular section of Oxford Road;

NOW, THEREFORE, BE IT RESOLVED that, in an effort to warn motorists of a potential hazard, the New Hartford Town Board does hereby authorize and direct the Highway Department to erect Deer Crossing signs at the following locations on Oxford Road:

- 3/10ths of a mile south of Snowden Hill Road for southbound traffic
- at the Oxford Road-Oneida Street intersection for northbound traffic.

The Resolution was voted upon by roll call, resulting as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye

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Councilman Payne - Aye
Supervisor Reed - Aye.

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

Hazard Mitigation Plan Approval

Upon presentation by the Highway Superintendent, Councilman Payne offered the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO 39 OF 2008)

WHEREAS, the Town of New Hartford, with the assistance from the Oneida County Hazard Mitigation Planning Committee, the Oneida County Department of Emergency Services and the Oneida County Soil & Water Conservation District, has gathered information and prepared the ***Oneida County Hazard Mitigation Plan***; and

WHEREAS, the ***Oneida County Hazard Mitigation Plan*** has been prepared in accordance with the Disaster Mitigation Act of 2000; and

WHEREAS, the Town of New Hartford has participated in the planning process for development of this ***Plan***, providing information specific to local hazard priorities, encouraging public participation, identifying desired hazard mitigation strategies, and reviewing the draft ***Plan***; and

WHEREAS, the ***Plan*** has been widely circulated for review by the County's residents, municipal officials, and state, federal, and local review agencies and has been revised to reflect their concerns; and

WHEREAS, the Town of New Hartford has review the ***Plan*** and affirms that the ***Plan*** will be updated no less than every five years;

NOW, THEREFORE, BE IT RESOLVED by the Town Board that the Town of New Hartford adopts the ***Oneida County Hazard Mitigation Plan*** as the Town's official Natural Hazard Mitigation Plan, and resolves to implement the recommendations of this ***Plan***.

The Town Board voted upon roll call as follows:

Councilwoman Krupa - Aye
Councilman Reynolds - Aye
Councilman Woodland - Aye
Councilman Payne - Aye

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Supervisor Reed - Aye.

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

Training School

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

(RESOLUTION NO 40 OF 2008)

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 Roger A. Cleveland, Highway/Sewer Superintendent to attend the “Upgrading Sanitary and Sewer Maintenance Program” Conference from March 17 through March 29, 2008 in Madison, Wisconsin, with expenses to be borne by said Town as budgeted.

The Resolution was voted upon by roll call as follows:

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

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

Engineering Service Agreement – The Hartford

Upon recommendation of the Highway Superintendent, the following Resolution was introduced for adoption by Councilwoman Krupa and duly seconded by Councilman Payne:

(RESOLUTION NO. 41 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute a three-party Agreement among the Town of New Hartford, the Ryan Companies US, Inc. in behalf of The Hartford [insurance company], and Shumaker Engineering, to ensure compliance with the approved

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construction plans for The Hartford. Said Ryan Companies shall pay the \$7,500 fee associated with this Engineering Service Agreement.

The Town Board voted upon roll call as follows:

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

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

Engineering Service Agreement – New Hartford Business Park

Upon recommendation of the Highway Superintendent, the following Resolution was introduced for adoption by Councilwoman Krupa and duly seconded by Councilman Payne:

(RESOLUTION NO 42 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute a three-party Agreement among the Town of New Hartford, the Ryan Companies in behalf of the New Hartford Business Park, and Shumaker Engineering, to ensure compliance with the approved plans for said Business Park. Said Ryan Companies shall pay the \$14,400 fee associated with this Engineering Service Agreement.

The Town Board voted upon roll call as follows:

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

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

Consumer Square – Traffic Study/Bond

The Highway Superintendent and other Town Officials have met with the owners of the Consumer Square Shopping Center to discuss traffic flow [ingress/egress], to quantify problems, options, and improvements that could be done. Upon presentation by the

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

(RESOLUTION NO 43 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford does hereby allow Benderson to reduce its \$100,000 Bond and/or Letter of Credit with the Town on the Consumer Square project by \$16,500 with the understanding that Benderson will pay \$16,500 as and for the **CONSUMER SQUARE CENTER INTERSECTION / TRAFFIC STUDY** performed by Clark Patterson Lee, as outlined in CPL letter dated January 10, 2008; and be it

FURTHER RESOLVED that, upon proof of this Town Board approval, Benderson is to provide the Town Planner with proof that the subject Bond and/or Letter of Credit has been reduced to \$83,500 and a check made payable to Clark Patterson Lee in the sum of \$16,500 to be held in escrow by the Town pending completion of the Study.

A roll call vote was duly held as follows:

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

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

SUPERVISING PUBLIC SAFETY TELECOMMUNICATOR:

Appointment – Part-Time Public Safety Telecommunicator

Upon request of Supervising Public Safety Telecommunicator Jeffrey Madden who indicated that a background check had been performed, the following Resolution was offered for adoption by Councilman Payne and duly seconded by Councilwoman Krupa:

(RESOLUTION NO 44 OF 2008)

WHEREAS, a vacancy exists for a Part-time Public Safety Telecommunicator due to the resignation of Melissa Stanton effective September 15, 2007;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby appoint John Libby to fill said vacancy of Part-time Public Safety Telecommunicator at the hourly rate of Ten Dollars and Sixty-six Cents (\$10.66),

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payable bi-weekly. Civil Service approval was granted effective January 25, 2008; however, Mr. Libby's first day of work shall be February 18, 2008.

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

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

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

POLICE CHIEF:

Appointment – Full-time Police Officer

Upon request of Police Chief Philo, the following Resolution was introduced for adoption by Councilman Woodland and duly seconded by Councilwoman Krupa:

(RESOLUTION NO 45 OF 2008)

WHEREAS, a vacancy has existed for a full-time Police Officer due to the resignation of Steve Snyder in August 2007;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby appoint Part-time Police Officer Jarod Petrie to fill the vacancy of Full-time Police Officer, said position having been formerly held by Steve Snyder; said appointment is effective Sunday, March 2, 2008, with his salary being consistent with the current collective bargaining agreement.

The Town Board voted upon roll call as follows:

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

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

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Appointment – Part-time Police Officer

Upon request of Police Chief Philo, the following Resolution was introduced for adoption by Councilman Reynolds and duly seconded by Councilman Payne:

(RESOLUTION NO 46 OF 2008)

WHEREAS, a vacancy will exist for a part-time Police Officer due to the promotion of Jarod Petrie to Full-time Police Officer, effective March 2, 2008;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby appoint Patrick Sacco to fill the vacancy of Part-time Police Officer, said position having been formerly held by Jarod Petrie; said appointment is effective Sunday, March 2, 2008, with his salary being consistent with the current collective bargaining agreement.

The Resolution was voted upon by roll call as follows:

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

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

Agreement – 2008 Animal Shelter Services

Upon recommendation of the Police Chief, Councilman Reynolds offered the following Resolution for adoption; seconded by Councilwoman Krupa:

(RESOLUTION NO 47 OF 2008)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute an Agreement between the Town of New Hartford and the Stevens-Swan Humane Society, the latter of whom shall provide shelter services for dogs and cats that are picked up within said Town for calendar year 2008; a fully executed copy of said Agreement shall be filed in the Town Clerk's Office.

A vote upon roll call was duly held as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye

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Supervisor Reed - Aye.

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

TOWN CLERK:

Training School – Planning Board

In behalf of Planning Board members, the Town Clerk presented the following Resolution that was introduced for adoption by Councilwoman Krupa and duly seconded by Councilman Payne:

(RESOLUTION NO 48 OF 2008)

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 members Hans G. Arnold, Rodger Reynolds and Robert Wood to attend training for Planning Boards and Zoning Boards of Appeal on March 5, 2008 in the Town of Schuyler, New York, with expenses to be borne by said Town as budgeted.

The Resolution was voted upon by roll call as follows:

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

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

Training – Records Management

With regard to Resolution No. 334, adopted December 28, 2007, the Town Clerk will be attending a half-day workshop addressing records management/electronic records in Utica, New York on March 10, 2008.

Training School – Deputy Town Clerk I

The Town Clerk presented the following Resolution that was introduced for adoption by Councilman Payne and duly seconded by Councilman Reynolds:

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(RESOLUTION NO 49 OF 2008)

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 Deputy Town Clerk I Melody K. Fancett to attend the 26th Annual New York State Town Clerks Conference from April 27 through April 30, 2008 in Saratoga Springs, New York, with expenses to be borne by said Town as budgeted.

The Resolution was voted upon by roll call as follows:

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

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

Highway Law, Section 142 –County DPW Commissioner Approval for Equipment Purchases

The Town Clerk noted that Resolution No. 29, adopted January 23, 2008, recited [statute] Highway Law, Section 142 and the approval of the County Commissioner of Public Works for certain equipment purchase by towns. Oneida County Deputy Commissioner Dennis Davis has confirmed that Highway Law, Section 142 has been changed and no longer requires County approval when a town purchases equipment. Therefore, future Resolutions for Highway equipment purchase will not contain language that County approval is necessary.

FOIL – Appeal

Referring to an e-mail to the Town Clerk and Town Board from Frank Montecalvo on February 12, 2008, the Town Clerk acknowledged the opinion of the Committee on Open Government that persons have the right to use a digital camera to make copies of disclosable documents. Mr. Montecalvo was reviewing Planner files on the New Hartford Business Park when a staff member told him that he couldn't use his camera. It needs to be determined whether the documents were disclosable documents and a response be given to Mr. Montecalvo.

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County Elections - Procedures

Upon questioning by Councilman Reynolds, the Town Clerk confirmed that the entire election process is the responsibility of each County in New York State, the State Election Law having been amended effective November 2005. Town Clerk Young also confirmed that Oneida County took possession of the Town's voting machines with no reimbursement to the Town.

Councilman Reynolds had been approached during the 2007 Election and 2008 Presidential Primary by (County) Election Inspectors who do not want to return the election supplies late election night to the County Board of Elections located in the Utica train station. Town Clerk Young had contacted the Oneida County Town Clerks who indicated that election supplies are returned election night by:

- election inspectors
- County voting machine custodian
- Constable
- County Deputy Sheriff
- Police (town)

Town Clerk Young suggested that the County Board of Elections might consider designating a Deputy Sheriff, as in past years, to meet the Election Inspectors at Butler Memorial Hall, or possibly at the Kellogg Road Police Station.

MATTERS SUBMITTED BY COUNCILMEN/ATTORNEY

COUNCILWOMAN KRUPA:

New Hartford Adult Dining & Activity Center - Passports

In behalf of the Director of Senior Services, Councilwoman Krupa announced that on March 12, 2008 from 10:00 A.M. to 12:00 Noon the Oneida County Clerk's Office would receive passport applications at the Adult Dining & Activity Center. The County will also provide photographic services. Fees are \$75 to the federal government and \$45.25 for the service and photo; individuals must bring their birth certificate with a raised seal.

Fiscal – Payment to New York Susquehanna & Western Railroad (NYS&WRR)

After the January 23, 2008 Town Board meeting, former Town Supervisor Ralph Humphreys phoned Councilwoman Krupa about the fees allegedly owed to NYS&WRR, indicating that under his administration the fees stopped being paid and he gave his reasons. Councilwoman Krupa then reviewed the matter and talked with the Town Attorney and Highway Superintendent Cleveland, neither of whom was aware of any documentation from conversations that Mr. Humphreys said the Oneida County

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Industrial Development Agency (ODIDA) agreed with him that the Town didn't have to pay. In her January 29, 2008 call to Mr. Humphreys as to whether he had any written information, Mr. Humphreys said he didn't have anything in writing; it was all verbal. He asked Councilwoman Krupa to check whether the agreements had expired; only one is subjective to expiring. The others didn't have an expiration date. After checking the bills, Councilwoman Krupa believes the Town does owe the money to NYS&WRR.

ATTORNEY GREEN:

Executive Session Matters

Attorney Green has the following matters for Executive Session:

- Current litigation Sangertown Square Mall vs Town
- Employment history of a particular employee

MATTERS SUBMITTED BY TOWN SUPERVISOR

FINANCIAL

Audit of bills

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

(RESOLUTION NO. 50 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the payment of the bills itemized on the following Abstracts, that have been duly audited by the Town Board:

General Fund Whole-Town Abstract No. 4	
Vouchers AA181-AA193	\$ 26,533.89
General Fund Whole-Town Abstract No. 5	
Vouchers AA194-AA257; AA265-AA276;	
Vouchers AA279-AA284	\$ 185,446.95
General Fund Whole-Town Abstract No. A (POLICE)	
Vouchers AA258-AA264; AA277-AA278	\$ 36,798.55
General Fund Part-Town Abstract No. 4	
Vouchers BB22-BB23	\$ 1,216.00
General Fund Part-Town Abstract No. 5	
Vouchers BB24-BB39	\$ 13,062.40
Highway Fund Part-Town Abstract No. 5	
Vouchers DB37-DB71	\$ 142,248.48

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Sewer Fund Abstract No. 4	
Voucher SS9	\$ 2,073.10
Sewer Fund Abstract No. 5	
Vouchers SS10-SS15	\$ 6,743.90
Street Light Fund Abstract No. 2	
Voucher SL2	\$ 30.69
Stormwater Capital Project Abstract No. 1	
Vouchers HU1	\$ 1,566.00
Higby Road Water Capital Project Abstract No. 2	
Voucher HF2	\$ 742.50
	TOTAL: \$416,462.46

Whereupon, the Town Board members voted individually as follows:

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

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

EXECUTIVE SESSION

Councilwoman Krupa announced that she would recuse herself from discussion on the Sangertown Square certiorari matter in Executive Session because the owners of Sangertown Mall employ her. Thereafter, Councilman Payne introduced the following Resolution for adoption and Councilwoman Krupa seconded same:

(RESOLUTION NO 51 OF 2008)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss current litigation involving Sangertown Square Mall vs the Town and the employment history of a particular employee.

A roll call vote ensued:

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

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Thereafter, the Resolution was declared unanimously carried and duly **ADOPTED**. All persons present, including the news media, were then excused from the meeting at 7:20 P.M. The Town Clerk and Deputy remained in the event the Board took action after the Executive Session. [NOTE: At 7:24 P.M. during Executive Session, Councilwoman Krupa was excused from the meeting while discussion was held on the Sangertown Square certiorari proceeding.]

END OF EXECUTIVE SESSION

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

(RESOLUTION NO 52 OF 2008)

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

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

Councilwoman Krupa	-	Absent, excused during
discussion on the Sangertown Square matter		
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**; the Executive Session ended at 7:29 P.M. The regular portion of the Town Board meeting was immediately reconvened, at which time Councilwoman Krupa rejoined the meeting.

The public was then invited to return to the Town Board meeting.

Sangertown Square Certiorari

Upon presentation by the Town Attorney, Councilman Woodland introduced the following Resolution for adoption, which was duly seconded by Councilman Payne:

(RESOLUTION NO 53 OF 2008)

RESOLVED that the Town Board of the Town of New Hartford does hereby retain the legal services of special counsel William Ryan to represent the Town's interest in the pending Sangertown Tax Certiorari matter. The legal fees and expenses are to be shared with the School District on the usual 90%/10% arrangement.

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The Supervisor polled the Board members who voted upon roll call:

Councilwoman Krupa	-	Abstained because she is
employed by the Sangertown Square owners		
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

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

Special Counsel - Over-time Pay

Upon further presentation of the Town Attorney, Councilman Reynolds offered the following Resolution for adoption; seconded by Councilman Payne:

(RESOLUTION NO 54 OF 2008)

RESOLVED that the New Hartford Town Board does hereby hire special counsel, Michael Sciotti, from the Syracuse law firm Hancock and Estabrook, to investigate, research and submit written report on the status of over-time pay allegedly due and owing a particular Town employee from 1999 to the present. The proposed cost of this service is to be capped at and not exceed \$2,000, without further approval of the Town Board.

A roll call vote ensued:

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

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

ADJOURNMENT

There being no further business to come before the Board, upon motion of Councilman Reynolds, seconded by Councilman Payne, the meeting was adjourned at 7:31 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk