

**SPECIAL MEETING OF THE TOWN BOARD OF
THE TOWN OF NEW HARTFORD, NEW YORK,
HELD AT THE NEW HARTFORD PUBLIC LIBRARY,
1 LIBRARY LANE, NEW HARTFORD ON
TUESDAY, OCTOBER 7, 2008 AT 7:00 P.M.**

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

OTHER TOWN OFFICIALS: Codes Enforcement Officer Joseph A. Booth
Highway Superintendent Roger A. Cleveland
Sr. Engineering Technician John Meagher
Town Attorney Gerald J. Green
Town Clerk Gail Wolanin Young

Thereafter, a quorum was declared present for the transaction of business. Supervisor Reed stated that the order of business would be as follows:

- Town Attorney Gerald Green would speak on the agreement allocating pilot payments with regard to the New Hartford Business Park
- John Shehadi of Fiscal Advisors would address the debt service schedule
- Highway Superintendent Roger Cleveland would address improvements to the NYS Route 5/Woods Highway intersection
- Time for public comment.

Attorney Green addressed the Board; before you tonight is a resolution to adopt, and approve for authorized signature the Agreement Allocating PILOT Payments (“Allocation Agreement”) being entered into by and between the *New Hartford School District*, the *County of Oneida*, the *Town of New Hartford* and the *OCIDA*. The sum and substance of the Allocation Agreement is as follows:

1. The Town will incur debt in the amount of \$2.3 million by and through the issuance of Bond Anticipation Notes. Tentative issuance date is November 2008.
2. The debt service on the \$2.3 million BAN has been calculated and determined for the Town by John Shehadi of *Fiscal Advisors and Marketing, Inc.* John’s amortization schedule has been attached to the Allocation Agreement as Exhibit G.

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 2

3. The Town's annual debt service will be paid first with monies received by the Town from the **OCIDA** from monies collected by the **OCIDA** from and pursuant to its PILOT Agreement with The Hartford and Ryan (1 agreement)
4. When the property owned by Ryan and occupied by The Hartford is fully assessed for real property tax purposes, the amount of PILOT revenue the Town can reasonably expect from the PILOT Agreement has been calculated and determined by the Town's Assessor Paul Smith. Paul's affidavit has been attached to the Allocation Agreement as Exhibit K.
5. Any shortfall in, or difference between, the Town's annual debt service on the subject \$2.3 million and the PILOT monies received by the Town from the **OCIDA** pursuant to its PILOT Agreement with The Hartford and Ryan or other later PILOT agreements approved by the **OCIDA** and Affected Tax Jurisdictions as referenced in the sixth WHEREAS clause of the Allocation Agreement shall be paid by the developer, its members, successors and assigns, by, through and with a Letter of Credit. Said Letter of Credit has been calculated and determined for the Town by Bond Counsel, **Orrick, Herrington & Sutcliffe, LLP** out of Manhattan, Thomas Myers, Esq., of counsel. The attorney approved Letter of Credit has been/or will be attached to the Allocation Agreement as Exhibit J.
6. With said \$2.3 million, the Town will perform work and make public improvements in accordance with:
 - Bid Contract #1 "as is" without change or deletion. (Roads C and D – Approximate price \$1.4 million with paving and work extras). The Town shall remain free of liability and obligation on the subject contract until (a) all of the land upon which Roads C and D are to be constructed are legally transferred to the Town with good and proper title (this includes the land at or near the Cell Tower and National Grid parcel); (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #1 has been attached to the Allocation Agreement as Exhibit A. Any work performed under Bid Contract #1 before these prerequisites are met is at the Developers' risk and assumption of liability; and
 - Bid Contract #2 "as is" without change or deletion (Route 5 Int. – Approximate price \$.9 mil.) The Town shall remain free of liability and obligation to commence work until (a) said contract has been legally and properly awarded; (b) the 3 taxing authorities have fully executed the

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 3

corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #2 has been attached to the Allocation Agreement as Exhibit B. Any work performed under Bid Contract #2 before these prerequisites are met is at the Developers' risk and assumption of liability.

[The Developers have shared the reality that these costs may escalate. There is no way of knowing where these bid contracts might end up – costs rise. To protect the Town, the Developers have, in Attorney Green's opinion, extended another \$200,000 for more or less cost overruns. Bid Contract #2 involves work realigning Woods Highway with NYS Route 5, turn lanes and traffic signal to make it safe for entry into and out of the Business Park. These improvements were designed by the State DOT.]

7. In connection with Bid Contract #1 and Bid Contract #2, the developer and its principals, members, successors and assigns, by and through a separate 'Agreement and Individual Guaranty' with the Town also agrees to be responsible for and pay any incidental costs related to Bid Contracts #1 and #2 that may arise from or in connection with the performance of those contracts, but which may not be expressly stated or contained therein. Such incidental costs would include, but not necessarily be limited to, escalation costs, inspection fees, engineering costs and paving costs. Said Agreement and Individual Guaranty has been/will be attached to the Allocation Agreement as Exhibit I.

[So, in essence, the Attorney continued, you are voting tonight first to approve the Allocation Agreement subject to the following conditions:]

1. That the other 2 taxing authorities will also approve and sign said Allocation Agreement in the same form as presented to you tonight without change or modification;

[Attorney Green noted that the New Hartford Central School Board was meeting tonight to act on the Allocation Agreement and that the Oneida County Board of Legislators is expected to take action on this Allocation Agreement at their meeting on October 15, 2008. Oneida County Legislator James D'Onofrio will address the Board later during this meeting.]

2. The Developers provide the Town with a satisfactory letter of credit as determined by Bond Counsel Tom Myers;

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 4

3. The Developers execute the above-referenced Agreement Individual Guaranty;
and
4. Town Attorney is given opportunity for final review and approval.

The **OCIDA** has entered into a PILOT Agreement with The Hartford and Ryan Companies; instead of paying taxes, the company/developer will make pilot payments. The **OCIDA** will turn money over to the Town to offset debt service on the borrowing.

Upon request of **Councilman Reynolds**, Attorney Green addressed the amortization schedule, offering a disclaimer that he is not well versed in these types of matters; he had worked closely with John Shehadi of **Fiscal Advisors** and Bond Counsel **Thomas Myers**. Attorney Green then reviewed the amortization schedule prepared by **Fiscal Advisors** with the Town Board. It is expected that when March 1, 2009 arrives and The Hartford is fully occupied, the Assessor will inform us that a full assessed value for the property will be somewhere between \$9.5 million – \$11.5 million; to that assessed value the tax rate of \$34 and some odd cents will generate the revenue shown on the amortization schedule. The Hartford is obligated to pay only 1/3 of it for the first five (5) years, as shown. An expected reasonable payment would be \$107,000 for each of the first five (5) years; then the payment would increase to 2/3rds for the next 6-10 years and full payment would come in years 11 through 15. Mr. Shehadi will explain spreading that last payment over a period of years.

Councilman Woodland inquired about/had concerns with:

- Length of time for the PILOT Agreement
- Obligation of developer to generate new jobs
- What happens if the developer/The Hartford doesn't hold up their end of the bargain

Attorney Green responded that if The Hartford doesn't meet its obligation, The Ryan Companies are responsible; then, if the Ryan Companies fails to meet its obligations and sells the property, the **Oneida County Industrial Development Agency (OCIDA)** must approve any transfer. The property cannot be "flipped" without **OCIDA** approval. The PILOT Agreement will end February 28, 2023; the debt service schedule has been revised accordingly as Mr. Shehadi will explain.

John Shehadi of Fiscal Advisors agreed that the taxpayers would not be responsible under these agreements. In the first five (5) years the developer has agreed to pay the shortfall.

SPECIAL TOWN BOARD MEETING

October 7, 20085

Page 5

Highway Superintendent Cleveland stated that the NYS Route 5/Woods Highway intersection improvement Project is a project that provides for a slightly relocated intersection, approximately seventy (70) feet further to the west. This relocation provides for a Tee-intersection, rather than the skewed intersection that currently exists. The project also includes a widening of NYS Route 5, all to be accomplished on the north side of the road. With the widening of NYS Route 5, it will accommodate an east-bound lane, heading towards the Jay-K intersection, a stacking lane for vehicles turning left (north) onto Woods Highway, a west-bound through lane and a combination westbound through/merge/turn lane for vehicles primarily desiring to turn right onto Woods Highway. Traffic control at the NYS Route 5/Woods Highway intersection will be accomplished via traffic signals with the signal controller driven by detector loops buried in the pavement. The transition on Woods Highway from the newly relocated interface of Woods Highway with NYS Route 5 will be accomplished in the first three hundred (300) feet of Woods Highway, and will not impact any existing yards or driveways. The project work on NYS Route 5 will be more visible. To accommodate the widening of the payment and the relocation of the power poles, land clearing will need to take place to the extent of the northern Highway Right-of-Way line of NYS Route 5. We have already spoken with some of the property owners about replacing what buffers they currently have and we will be talking with everyone along the length of this project on NYS Route 5 who suffer extensive buffer loss, or who has significant buffer issues. The design for this project was done by a private consultant, and reviewed by both the Town and the New York State Department of Transportation (DOT). It was bid as unit price rather than a lump sum bid. The low bidder is the CCI Companies. The Town has been in negotiations for scope revisions and in furthering DOT requirements. The original low bid from CCI was \$875,867.52. With the delay in the award of this contract, the contractor has had the opportunity to revisit bid quantities as well as certain components of the design and has found that increases in price were needed to compensate for the revised quantities required. With the revisions, the cost from CCI is now \$908,690.10. This includes an open drainage plan that both the Town and DOT prefer, one that reduced some of the quantities as originally bid. If the Town Board elects to move forward with approvals tonight, three (3) documents will need to be acted on. One is SEQR, the next is Perm 1, an undertaking permit issued by the New York State Department of Transportation, and the last is Perm 33, for which you will need to authorize the Town Supervisor to execute the Highway Work Permit on behalf of the applicant, the Town of New Hartford.

Attorney Green thanked co-counsel Jeff Saunders for putting in a lot of time and helping draft this resolution and also extend thanks to Attorney Shields.

Oneida County Legislator James D'Onofrio acknowledged that the Town and New Hartford Central School District approached the County about foregoing taxes for The Hartford – it was desirous to keep The Hartford in New Hartford. There is a lot of

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 6

competition and he believed it's the least the County can do for the Town for economic development. The County has a minor role in taxes; the School District plays a major role with the opportunity to collect more money than the County and Town. Directing his comments to the Town Board, Legislator D'Onofrio stated that the County Board of Legislators hasn't passed the Allocation Agreement yet because some details had to be worked out. In caucus, they agreed to support the Town in this effort for jobs; the County is very much on board. Legislator D'Onofrio is confident this will pass the County Board of Legislators the week of October 13, 2008.

Public Comments:

Frank Monetalvo expressed concerns with:

- Compliance with SEQR – believes Town is relying on a 1999 SEQR that addressed manufacturing and believes the Planning Board assumed it met SEQRA.
- The 1999 Findings cited loss of manufacturing jobs, the original purpose of the Business Park but he believes these Findings don't relate to the project today
- He believes the envelope of the Business Park is totally different; the boundary of the map shows an area of study – but where The Hartford was built was never subject to SEQRA review – it was in an orchard. The EIS doesn't include changes that have occurred since the 1999 impact statement. He believes the EIS doesn't analyze community effects on another business park.
- Not looking into potential school bus garage and what it will mean to environment and entire project. Cumulative effects should be looked at.
- New Hartford Central School must consider if school is found to be illegal to participate in this type of financing scheme...nothing in NYS Education Law that would allow their participation in a PILOT Agreement
- Fees-in-lieu of mitigation – the Town's been collecting for years for project on-site related impacts but projects can cause problems offsite, like road improvement. Why isn't the Town collecting from this development also?

Joseph Bolton – here because he pays taxes and is father of children attending New Hartford Central School:

- After listening to Legislator D'Onofrio explain that the Town, County and School District would forego taxes, he was concerned with what risks would be involved for the School District. He understood assisting the developer for good reason(s) but doesn't want to see his taxes increase.
- He looks regionally, he works at Griffiss Air Force Base (Business Park) and felt it wouldn't be a bad thing for the move to that Business Park

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 7

- He looked for confirmation that if the owner goes bankrupt, the taxpayers would not be responsible.

John Shehadi of Fiscal Advisors responded there is an instrument issued by the bank; they stand behind it. They review the developers' finances and, for a fee, stand by his agreement. If the developer fails to pay, the bank pays in his behalf.

John Shaw – not against the Business Park and concept but has serious issues with traffic on NYS Route 5:

- Why wasn't he and his neighbors told of this and how this project would affect them. Was any traffic impact study done on this recently?

Highway Superintendent Cleveland stated that a series of studies had been done about 2001, 2002 or 2003 to justify or study the impact that traffic and circulation would have because of the Business Park but also the wholeglomeration of traffic in that area. The last study was done in the Summer of 2007 by the NYS Department of Transportation (DOT).

- In 1992 there was mention of realignment of Woods Road to be about 790 feet west of the Shaw residence; this isn't what is proposed now

The Highway Superintendent responded that the cost of acquiring property to get to that point had increased immensely – it had been envisioned at the crest of the hill not where it is now. NYS DOT representative Steve Zywiak stated that usually a study is done after the improvement is made to determine the effects of more traffic.

Margaret Silverman – concerned that the original plans to straighten Woods Highway are not within the project scope:

- Curves in the road and no shoulders in the “pink” area on the plans, difficult for pedestrians
- How protected are water lines because the rain washes away the dirt
- Motorists end up in the ditch fronting her property many times during winter months and all summer long this year
- How will she exit her driveway with the increased traffic to and from the Business Park

The Highway Superintendent stated that a T-intersection was designed with a traffic light at NYS Route 5 to facilitate the increase in traffic and turning movements.

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 8

Catherine Lawrence, representing the Concerned Citizens group – there was no real notice to the taxpayers.

- Stated that with a TIF Agreement, a public hearing and legal notice are required; this is a \$2.3 million project, part of a bond issue approved in April or May 2008.

James Cehonski – was present strictly due to traffic related concerns because they live in close proximity to Woods Highway and their backyard faces the orchard. He was concerned with:

- Whether the County intended to widen Middlesettlement Road from Zebb's (at Jay-K Intersection) northerly to Lowe's.
- As access road from the intersection of Lowe's connecting with the Business Park/proposed by Mr. Adler could be five (5) or ten (10) years from now; traffic problem today might be small compared to the future.
- Are traffic needs being addressed for future; what about the BOCES expansion impact on traffic.

NYS DOT official Steve Zywiak fielded a few questions from Mr. Cehonski and Mrs. Silverman.

Lisa Britt – had questions on the road improvements proposed and believed the Town Board was not prepared for a vote on this matter.

Catherine Dougherty – wasn't in favor of a light for PAR. Will this join up with the Woods Hwy entrance/exit. She has difficulty getting in and out of her driveway off Seneca Turnpike. Ms. Dougherty wasn't opposed to progress but opposed to having a light to control activities at the Business Park.

Councilman Woodland had a question about SEQRA. The Town Attorney thought SEQRA had been addressed and by time it reached his desk, it was not an issue. There's no one here from the Planning Board or the Town Planner to address this question.

Councilman Reynolds asked the Town Attorney to again review the contingencies that must be met with the Allocation Agreement. *Attorney Green* explained that the Allocation Agreement is a

- Funding tool by which the project comes to fruition. Moneys from the Allocation Agreement coupled with shortfalls allegedly covered by the Letter of Credit, make it of no impact to taxpayers. Understanding that he is relying on those who passed information to him – that the entire Business Park as it sat generated about \$6500 in revenue for the School District; if that represents 72% of total annual

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 9

taxes, the Town at 6% would not be sacrificing huge dollars – an investment upside, financial prudent move. The Letter of Credit is fashioned in a way that John Shehadi and he said covers all shortfall. Bond Counsel Thomas Myers says it will be fashioned that way. The Town's not moving unilaterally – moving with two (2) other taxing authorities. If they don't vote in favor, the whole allocation pilot agreement fails.

- Understanding this is a jump start to come: The Hartford, a hotel, light manufacturing was mentioned
- Became cost ineffective to improve to NYS Route 840
- The Town Board will need to vote on approving the agreement and approving Bid Contract #2 to install the traffic light and make road improvements
- Three (3) taxing entities need to sign on
- Obtain Letter of Credit from the developer
- Obtain Individual Guarantee from the developer.

Catherine Lawrence – what effect will the Business Park have on the Police Department, will the roads become town owned. Highway Superintendent Cleveland responded that the roads, to be built according to Town specifications, would be dedicated as public roads and the Town will plow them.

Lisa Britt – how much money did the Town spend already [on the Business Park]. The Highway Superintendent stated that going back to 1992, including zoning, ½ million dollars. This past year, the Town hasn't paid the contractor one cent. Ms. Britt inquired about the amount of money owed to the contractor; the Highway Superintendent said Bid Contract #1 is worth \$1.3; however, most work has been done on private property, and done at the contractor's risk.

Edmund J. Wiatr, Jr. – had attended tonight's New Hartford Village Zoning Board meeting and he returned to the Town Board meeting, stating that the structure at 19 Champion Road was being built for the Town and Mr. Wiatr believed the taxpayers shouldn't have to pay for a new building and the Business Park. He claimed that TIFs are not legal in New York State and he also questioned the lack of sufficient notice to the public on tonight's meeting. At the request of the Town Supervisor, the Town Clerk explained that when she was informed on Friday, October 3, 2008 of the special meeting for October 7, 2008, she e-mailed the Town Board and Department Heads, the Observer Dispatch and the Observer Dispatch reporter (Dan Miner) for New Hartford and posted the notice on the Bulletin Board and Town's website.

Councilman Woodland was concerned if the building remained vacant and the owner asked for a lower assessment; Attorney Green responded there's nothing to preclude the owner from grieving their assessment. Councilman Woodland also was not satisfied with the SEQR issue.

SPECIAL TOWN BOARD MEETING
October 7, 2008
Page 10

Councilwoman Krupa expressed concern that the New Hartford Central School District and Oneida County had not made a resolution to sign the PILOT Agreement at the time the Town Board would be voting.

APPROVAL – NEW HARTFORD BUSINESS PARK AGREEMENT
ALLOCATING P.I.L.O.T. PAYMENTS

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

(RESOLUTION NO. 251 OF 2008)

RESOLVED that the New Hartford Town Board does hereby adopt and approve for authorized signature the Agreement Allocating PILOT Payments (“Allocation Agreement”) being entered into by and between the *New Hartford School District*, the *County of Oneida*, the *Town of New Hartford* and the *OCIDA*. The sum and substance of the Allocation Agreement is as follows:

1. The Town will incur debt in the amount of \$2.3 million by and through the issuance of Bond Anticipation Notes. Tentative issuance date is November 2008.
2. The debt service on the \$2.3 million BAN has been calculated and determined for the Town by John Shehadi of *Fiscal Advisors and Marketing, Inc.* John’s amortization schedule has been attached to the Allocation Agreement as Exhibit G.
3. The Town’s annual debt service will be paid first with monies received by the Town from the *OCIDA* from monies collected by the *OCIDA* from and pursuant to its PILOT Agreement with The Hartford and Ryan (1 agreement)
4. When the property owned by Ryan and occupied by The Hartford is fully assessed for real property tax purposes, the amount of PILOT revenue the Town can reasonably expect from the PILOT Agreement has been calculated and determined by the Town’s Assessor Paul Smith. Paul’s affidavit has been attached to the Allocation Agreement as Exhibit K.
5. Any shortfall in, or difference between, the Town’s annual debt service on the subject \$2.3 million and the PILOT monies received by the Town from the *OCIDA* pursuant to its PILOT Agreement with The Hartford and Ryan or other later PILOT agreements approved by the *OCIDA* and Affected Tax Jurisdictions as referenced in the sixth WHEREAS clause of the Allocation Agreement shall be paid by the developer, its members, successors and assigns, by, through and with a Letter of Credit. Said Letter of Credit has been calculated and determined for the Town by Bond Counsel, *Orrick, Herrington & Sutcliffe, LLP* out of

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 11

- Manhattan, Thomas Myers, Esq., of counsel. The attorney approved Letter of Credit has been/or will be attached to the Allocation Agreement as Exhibit J.
6. With said \$2.3 million, the Town will perform work and make public improvements in accordance with:
 - Bid Contract #1 “as is” without change or deletion. (Roads C and D – Approximate price \$1.4 million with paving and work extras). The Town shall remain free of liability and obligation on the subject contract until (a) all of the land upon which Roads C and D are to be constructed are legally transferred to the Town with good and proper title (this includes the land at or near the Cell Tower and National Grid parcel); (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #1 has been attached to the Allocation Agreement as Exhibit A. Any work performed under Bid Contract #1 before these prerequisites are met is at the Developers’ risk and assumption of liability; and
 - Bid Contract #2 “as is” without change or deletion (Route 5 Int. – Approximate price \$.9 mil.) The Town shall remain free of liability and obligation to commence work until (a) said contract has been legally and properly awarded; (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #2 has been attached to the Allocation Agreement as Exhibit B. Any work performed under Bid Contract #2 before these prerequisites are met is at the Developers’ risk and assumption of liability.
 7. In connection with Bid Contract #1 and Bid Contract #2, the developer and its principals, members, successors and assigns, by and through a separate ‘Agreement and Individual Guaranty’ with the Town also agrees to be responsible for and pay any incidental costs related to Bid Contracts #1 and #2 that may arise from or in connection with the performance of those contracts, but which may not be expressly stated or contained therein. Such incidental costs would include, but not necessarily be limited to, escalation costs, inspection fees, engineering costs and paving costs. Said Agreement and Individual Guaranty has been/will be attached to the Allocation Agreement as Exhibit I.

SPECIAL TOWN BOARD MEETING

October 7, 2008

Page 12

8. That the other 2 taxing authorities will also approve and sign said Allocation Agreement in the same form as presented to you tonight without change or modification;
9. The Developers provide the Town with a satisfactory letter of credit as determined by Bond Counsel Tom Myers;
10. The Developers execute the above-referenced Agreement Individual Guaranty; and
11. Town Attorney is given opportunity for final review and approval.

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

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

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

ADJOURNMENT

There being no further business to come before the Board, upon motion of Councilman Reynolds and duly seconded, the meeting was adjourned at 8:48 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk