

**REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON WEDNESDAY, MAY 11, 2011 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
Councilwoman Christine G. Krupa
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Patrick M. Tyksinski

OTHER TOWN OFFICIALS/EMPLOYEES PRESENT:

Assessor Paul E. Smith
Codes Enforcement Officer Joseph Booth
Deputy Supervisor Matthew Bohn III
Engineering Department Coordinator Elisabetta DeGironimo
Parks and Recreation Director Michael W. Jeffery
Police Chief Michael Inserra
Town Attorney Herbert J. Cully
Town Clerk Gail Wolanin Young

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

MINUTES APPROVAL

April 13, 2011 Town Board meeting

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

(RESOLUTION NO. 109 OF 2011)

RESOLVED that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the Regular Town Board meeting held *April 13, 2011* and does further waive the reading of the same.

Upon roll call, the Board members voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye

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

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

PUBLIC HEARING

7:01 P.M. Local Law Introductory “D” of 2011
 Planning Board (Village residency requirement)

At 7:01 P.M. the Town Supervisor opened the Public Hearing on Local Law Introductory “D” of 2011 which, if approved, would amend the Town Code, Chapter 23 thereof entitled PLANNING BOARD by eliminating the requirement that one (1) of the seven (7) Planning Board members live in the Village of New Hartford and that a second (2nd) member reside in the Village of New York Mills. The Town Attorney stated that the Public Hearing was an opportunity for the public to express their opinions on this proposal, that the Public hearing was not a question-and-answer session. He hoped that the comments would be creative and respectful in nature and not intended to point fingers or negative comments. Attorney Cully reiterated that the proposed legislation would delete the requirement of Planning Board membership to include one member from the Village of New Hartford and one from the Village of New York Mills; the Planning Board would still consist of seven (7) members.

[The Town Clerk had available Local Law Introductory “D”, the Notice of Public Hearing, proof of publication (April 30, 2011 edition of The Observer Dispatch), and proof of posting.]

Those speaking in favor of Local Law Introductory “D” were:

- Ralph Humphreys thinks this is a good idea, commenting that the Villages of New Hartford and New York Mills have their own planning boards.
- [The Town Clerk had received a letter from Jerome Donovan who could not attend this meeting due to a prior commitment, and who supported the proposed legislation. He stated that for more than fifty (50) years prior to 1996, appointments to the Planning Board were made on the basis of a candidate’s qualifications with no restriction on a member’s place of residence in the Town. However, the Town in 1996 adopted a “Planning Process Streamlining” task and process protocol which called for beginning a dialogue with the villages of New Hartford and New York Mills for the purpose of “consolidating” the village Planning Boards into a Town-Wide Planning Board and required membership to include a representative from each of the villages; the abolition of those village planning boards never materialized.

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Planning Board member Donovan said the appointment restriction enacted in 1996 has precluded the Town Board from appointing candidates whose background and experience would best serve the Town.]

There being no one further to speak in the matter, the Town Supervisor declared the Public Hearing closed at 7:04 P.M.

Adoption of Local Law Introductory "D" of 2011 as Local Law No. Three of 2010

Councilman Backman moved that Local Law Introductory "D" be adopted as Local Law No. Three of 2011; seconded by Councilman Woodland, as follows:

**Town of New Hartford, New York
Local Law No. Three of 2011**

A Local Law to amend the Code of the Town of New Hartford, **Chapter 23** thereof entitled **PLANNING BOARD**, by amending the title and body of said Chapter to omit a representative from each Village within the Town.

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

SECTION 1. Chapter 23 of the Code of the Town of New Hartford, Title, is hereby amended as follows:

Delete from Title:

"...which shall include a representative from each respective Village within the Town."

SECTION 2. Chapter 23 of the Code of the Town of New Hartford is hereby further amended as follows:

Delete from Section 1. (1st Paragraph)

"Membership to include a representative from each respective Village in the Town."

Delete from Section 1. (2nd Paragraph)

"...including a representative from each respective Village within the Town."

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SECTION 3. All other provisions of Chapter 23 of the Code of the Town of New Hartford, and amendments thereto, are hereby affirmed except to the extent that this Local Law shall modify or amend.

SECTION 4. This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State.

Discussion ensued. Councilman Reynolds believes that activity in the Town has an impact on the village, such as stormwater, traffic and especially the storms the area had recently – water from the hills flow into the village, which is surrounded by the Town. While the Town Supervisor agreed with Councilman Reynolds’ comments, he said the legislation would not preclude that a village resident serve; it just would not be a requirement. Councilwoman Krupa noted that in 1996 when the Local Law was adopted, the planning board membership was increased by two (2) positions, for a total of seven (7) members, and the additional positions were required to be filled by a resident of the New Hartford Village and New York Mills Village. Councilwoman Krupa believed that if representation from the two (2) villages is eliminated, then the Town Planning Board should be decreased by two (2) positions, leaving a five-member board. While Councilman Backman agreed with her comments, he said that the issue tonight is removing the requirement of village residency. The Supervisor agreed that there needs to be a working relationship with both villages; with his office near the Village of New Hartford offices, he is in contact more with that office than New York Mills and if the Village has concerns, he brings those matters before the Town Board. Thereafter, the Town Board voted upon roll call:

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

Local Law Introductory “D” of 2011 was thereafter declared carried and duly ***ADOPTED*** as Local Law No. Three of 2011.

MATTERS SUBMITTED BY TOWN SUPERVISOR

Engineering Services – Beechwood/Woodberry Road area

Kenneth Knutsen, P.E., of the Barton & Loguidice engineering firm, summarized the scope of work details for the Beechwood Road/Woodberry Road drainage study, to include, but not be limited to:

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- will review available existing drainage studies (studies/models performed by others) specific to the Beechwood Road and Woodberry Drive study area
- will perform two (2) site visits to become familiar with the project study area, local site and drainage conditions, existing utilities, to map existing closed/open drainage systems serving the area, and to walk the entire upland drainage basin (part of the effort to check the validity of models/reports prepared by others)
- will evaluate two (2) alternative routes for installation of new drainage infrastructure
 - Alternative No. 1 – “Partial Back-lot” – Beechwood Road downhill to the existing roadside channel along Woodberry Road
 - Alternative No. 2 – Convey drainage from back of 23 Beechwood Road out to Beechwood Road right of way, then continue down Beechwood Road to about 15 and 13 Beechwood and from this location, this alternative would follow the same alignment as Alternative No. 1 above.

They will also use comments from the residents to make recommendations to the Town Board. Mr. Knutsen expected to have the work done in 2011. Thereafter, Councilman Backman introduced the following Resolution, which was duly seconded by Councilman Reynolds:

(RESOLUTION NO. 110 OF 2011)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute an engineering agreement between the Town of New Hartford and Barton & Loguidice, P.C., with regard to the Beechwood Road/Woodberry Road Drainage Study, the scope of service fully detailed in said Agreement dated May 10, 2011, at a cost not to exceed Twenty Thousand Nine Hundred Dollars (\$20,900).

Upon questioning of Councilman Backman, the Supervisor confirmed the \$20,900 would be paid from the Stormwater bond. A roll call vote was duly held:

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

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The Resolution was declared unanimously carried and duly adopted.

Engineering Consultant – Developments/Subdivisions

Supervisor Tyksinski noted that the Town does not have an engineer and that it appears that work in the Engineering and Highway Departments is well above what had been anticipated when he discussed with Elisabetta DeGironimo her part-time appointment as Engineering Department Coordinator. After subsequent meetings with the Deputy Supervisor and Ms. DeGironimo, Supervisor Tyksinski reported the following needs in order to get work done:

- a packet of “do’s” and “don’t’s” for developers, outlining Town requirements for various submittals, to be paid by the developer
- set up computerized system that would tie all departments together and have access to packages and where they start.

The Town Supervisor said the Town needs technical advisory recommendations for stormwater, sewer and highways, as well as specifications; and he asked Kenneth Knutsen of Barton & Loguidice to review a proposal that the Town Board had been copied on in December 2010. The Town Supervisor said the advantage of having an engineering consultant rather than an engineer, includes the elimination of benefits of a salaried person and that the consultant is a specialist. If Barton & Loguidice is retained for about the last seven (7) months of 2011, it would cost the Town \$25,000; under the Master Service Agreement, Barton & Loguidice would, among other tasks, attend meetings of the Town Board, Planning Board and Zoning Board of Appeals and interact with Town department heads. The Town Attorney said that under the Town’s Site Plan development process, the Town has the right to make the developer pay for these services. Thereafter, Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 111 OF 2011)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Town Supervisor to enter into and to execute a Master Services Agreement between the Town of New Hartford and Barton & Loguidice, P.C., the latter of which will provide consulting and/or professional engineering services from time to time in 2011 as more fully described in one or more Scope of Service agreements (individual assignments that may include but are not limited to the Planning Board, Town Board and Highway Department, and in accordance with the terms defined in said Master Services Agreement. A maximum fee not-to-exceed Twenty-five Thousand Dollars (\$25,000) is hereby authorized.

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

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

The Resolution was declared unanimously carried and duly adopted.

PUBLIC PRESENTATIONS (Resident Comments)

The Supervisor inquired if anyone present wished to address the Town Board with what's going on in the Town, noting that each person would have three (3) minutes to speak. The Town Attorney stated that a couple months ago a person spoke accusatory, rude, and derogatory remarks, which will not be tolerated.

FOIL Appeal

Catherine Lawrence addressed the Town Board regarding her request for a copy of the 2011 tentative assessment database and her subsequent appeal. She stated that the Town Attorney had interfered with a very routine FOIL request that she viewed as a deliberate attempt to prevent her from making the database available online so that residents could, if they wished, use that information to file a grievance. Committee on Open Government Executive Director Robert Freeman was clear that Ms. Lawrence's request should not have been denied and Ms. Lawrence, pointing to the Town Attorney's "misstep", said he should be advising the Town Board of the law and guide them in the right direction, not putting up "roadblocks". Town Supervisor Tyksinski emphasized that the Town Attorney doesn't work on his own; that he had asked Attorney Cully to look into this request, that if the Town makes the record available on line, does the Town have an obligation to provide the same information in another form.

Edmund Wiatr, Jr. – called the Supervisor's remarks as arrogant – don't argue with me. She stated her opinion. The First Amendment is alive and well; and Robert Freeman did not say the Town didn't have to provide the database in another form.

Stormwater Matters

The following residents appeared with regard to remediation of their long-time stormwater problems on **Beechwood Road**:

- Robin Kennedy – thanked Town Board for their efforts on Beechwood Road; concerned if some Beechwood Road property owners refuse to grant the Town easements. [Response: if we go out to the street, easements won't be needed]

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- Mike Kennedy – thanked Councilman Backman (who was given short notice) and Highway Superintendent Sherman for showing up at his residence after the recent storm to discuss the stormwater problems. Felt there could be more clear line of communication among the aforesaid Town Officials and Stormwater Committee Chairman Elisabetta DeGironimo. [Response: Town Supervisor said he is working on a policy along these lines.]
- David Munsell – wants to be assured there's enough stormwater bond money to cover the remediation on Beechwood Road
- Joseph Luker – he acknowledged that Councilman Backman visited Beechwood Road on a Saturday after the recent storm. While he feels bad about the people in Chadwicks, he noted that this Beechwood Road problem has been going on for at least 18 years. Wants to make sure this remediation is finalized in 2011.

South Hills Drive:

- Mrs. Nappi stated that water flows from Wadsworth Road onto South Hills Drive and that about five (5) years ago a neighbor had their open ditch converted to a closed ditch. At some point a pipe had been removed and run-off water flowed into her cellar. She claimed that other drainpipes were plugged and she couldn't understand why, after contacting the Highway Department, no one came to clean out the pipes, clean the streets, or fixed the cracks in the road. [Response: Supervisor Tyksinski and a Highway Department representative will perform an on-site inspection this week.] Mrs. Nappi questioned whether any stormwater study had ever been performed in the South Hills area.

Chapman Road:

- Brian Boshart who resides at the bottom of Chapman Road said there are two (2) feeder creeks behind his home that fed into the Sauquoit Creek. Near his property someone placed mesh over a drain that caught debris and water backed up, overflowed into his basement. Mr. Boshart said his two (2) uphill neighbors were also flooded. The Town Supervisor will contact Oneida County Legislator James D'Onofrio to make an on-site inspection since Chapman Road and its right of way is owned by Oneida County.

Mallory Road:

- David Maier of 9293 Mallory Road would like to see some type of program with regard to Palmer's Creek that flows behind some Mallory Road homes and the disintegration of the retaining walls behind the Creekside Café property near the Oneida Street-Mallory Road intersection. He believes the uphill development of the Christopher Circle area generates a significant amount of debris that is carried downhill by rain.

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Grange Hill Road:

- Ann Falvey of Grange Hill Road thanked the Town for helping at her home after the April 28th rainstorm and flooding of her basement and property, and stated that she had signed an easement today that would allow the Town access to her property. She said that the 3-foot wide culvert near her property during her childhood is now 20-feet wide. Ms. Falvey spoke to Highway Superintendent Sherman about past floodings, the first occurring about six (6) years ago, a mini-flood three (3) years ago and the April 28, 2011 storm – the latter of which ruined her water heater, dryer, and furnace. Ms. Falvey said she was going to try to do something to make this better but didn't know what yet. She referred to uphill retention basins that she believed are filled with silt and need to be cleaned out. The innards of a washing machine and a tree stump had washed into the culvert near her property.

The Town Supervisor apprised those present that he and the Highway Superintendent will be meeting with the Chadwicks-area residents at 7:00 P.M. on Thursday, May 19, 2011 at the Donovan Community Center on Elm Street, Chadwicks; an article will be published in the Observer Dispatch to announce this meeting.

- Judy Cusworth – said that on the top of Grange Hill Road and Red Hill there are all kinds of feeder streams – people call in loggers and clear-cut the land and leave tree limbs and all this blocks feeder creeks including the three (3) basins on her property.

REPORTS OF TOWN OFFICIALS SUBMITTED BY STANDING COMMITTEE CHAIRPERSON

Zoning (Codes) and Planning Committee – Councilman Woodland:

Training

Upon request of the Zoning Board Chairman, the following Resolution was introduced for adoption by Councilman Woodland and duly seconded by Councilwoman Krupa:

(RESOLUTION NO. 112 OF 2011)

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 Randy Bogar, Zoning Board of Appeals' Chairman, to attend the Continuing Education Program for Planning and Zoning Board

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members on June 1, 2011 in the Town of Schuyler, NY, with expenses to be borne by said Town as budgeted.

The Resolution was voted upon by roll call as follows:

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

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

Parks and Recreation Committee – Councilman Reynolds:

Seasonal appointment - Parks laborer

Upon request of the Parks and Recreation Director, Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilwoman Krupa:

(RESOLUTION NO. 113 OF 2011)

RESOLVED that the New Hartford Town Board does hereby appoint Jeffery DeGironimo as a Seasonal Park Laborer effective May 17, 2011 and ending August 31, 2011, to fill the vacancy created by an employee who declined his appointment; the Board set Mr. DeGironimo's hourly rate at Eight Dollars and Fifty Cents (\$8.50), payable bi-weekly.

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

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

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

Public Works & Sewer Committee – Councilman Backman:

Stormwater Management (Advisory) Improvement Committee – vacancies

Many good applications have been received and Councilman Backman wants the interview process to start moving; Elisabetta DeGironimo stated that the Advisory

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Committee had met a lot last year but due to health problems of some members not everyone was present at all meetings. The matter of filling vacancies to this Advisory Committee was deferred until the May 25, 2011 Town Board meeting.

MATTERS SUBMITTED BY COUNCILMEN AND TOWN ATTORNEY

Councilman Backman:

Hydraulic Fracturing (aka Hydrofracking) – Local Law Introductory “E” of 2011

Discussion ensued on hydrofracking and the Town Attorney agreed that establishing a moratorium on this matter would allow the Town to study this activity. Attorney Cully reported that the New York State Department of Environmental Conservation was performing a supplemental EIS and may extend the State moratorium beyond June 2011. Thereafter, Councilman Backman introduced the following legislation for the Town Board’s consideration at a future Town Board meeting; co-sponsored by Councilwoman Krupa:

Town of New Hartford, New York Local Law Introductory “E” of 2011

Section 1. Title

This Local Law shall be referred to as the “Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of New Hartford 2011.”

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of New Hartford to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of New Hartford declares a six-month moratorium on the process known as hydraulic fracturing and/or hydrofracking, as well as a moratorium on any activity associated therewith or intending to support such process including the establishment, implementation, placement, or construction of such process or activity in the Town of New Hartford.

Section 3. Legislative Findings

Pursuant to its legislative powers and the Comprehensive Plan for the Town, the Town of New Hartford Town Board proposes to enact a “Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of New Hartford.”

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The issues which led to the decision have not abated, and the issues have also not ripened to the point that the town has been able to address or enact appropriate and comprehensive legislation to address this highly controversial issue. This Board is mindful that a moratorium of an extended period is not generally advisable, however, not only is the issue hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town of New Hartford and also the State of New York is an ongoing matter of great concern and controversy throughout the State.

As of this date, there is an Executive Order put in place by the former Governor of the State of New York, which has suspended permits for hydrofracking in the State of New York. It is currently unknown as to the exact date that Order may be lifted. And, it is not yet clear as to what safeguards are anticipated to be put in place by the NYDEC and/or NY Legislature to protect New York waters, properties and people, nor exactly how long such regulation may take to enact. Accordingly, it is difficult for the Town to determine the type or extent of legislation that would be necessary, required or permitted, until well after the State clarifies its position. Without preliminary legislation in place by the State, the drafting of comprehensive legislation in the Town at this time would be unnecessarily time consuming with the possibility of some or all of it being rendered moot.

Although there are various sections of the Town of New Hartford Code, which regulate some issues relating to energy production as well the export of energy off site, these regulations may not be sufficient cover some hydrofracking issues. This Board is desirous of utilizing this extended moratorium period to continue to monitor and review state legislation, legislation of other towns and municipalities relating to this subject and gathering the continuing mass of information that is becoming available on this subject; including possible legislative language for towns as suggested by experts in the field. Particularly, when and if the permit prohibition by the state is lifted, this Board wants to have sufficient additional time to put appropriate legislation in place.

At this point it is important to note that there are no applications for hydrofracking pending in the Town, nor do there appear to be any potential applicants. Therefore, there does not appear to be any person or party substantially prejudiced by this moratorium at this time. Nonetheless, the Town Board determines that while the review and monitoring of and in consideration of the significant environmental issues surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on is appropriate and necessary in order to preserve the status quo until the new regulations can be adopted.

Section 4. Scope of Controls

A. During the effective period of this Local Law:

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1. The Town Board of the Town of New Hartford shall not grant any approvals that would have as the result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of New Hartford.

2. The Town Planning Board shall not grant any preliminary or final approval to a site plan, special use permit, specific use permit or other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of New Hartford.

3. The Town Zoning Board of Appeals shall not grant any variances, special use permits, specific use permits or any other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of New Hartford.

4. The Codes Department shall not issue any permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of New Hartford.

B. The Town Board of the Town of New Hartford reserves the right to direct the Codes Officer to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

Section 5. No consideration of New Application

No applications for construction affected by this Local Law or for approvals for a site plan, variance, specific use permit, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

Section 6. Term

This moratorium imposed by this Local Law shall be in effect for a period of 180 days from the effective date of this local law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board.

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Section 7. Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct the process known as hydraulic fracturing and/or hydrofracking, including the establishment, implementation, placement or construction of any activity associated therewith or intending to support such process in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town for violations; and

B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or reconstruction that may have taken place in violation of this Local Law.

Section 8. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 9. Hardship

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variation from the strict compliance with this Local Law upon submission of proof of such unnecessary hardship.

For the purposes of this Local Law, unnecessary hardship shall not be mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, specific use permit, site plan or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of said Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If

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the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 10. Definitions

A. The terms Hydraulic fracturing and/or Hydrofracking shall mean the process of recovering and/or developing natural gas trapped behind shale or rock and which generally is accomplished by a gas well that is drilled vertically into the ground and then horizontally from the well head, after which water, sand and/or chemicals are injected into the well the breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground.

B. The term “Town” when used in this Local Law shall mean the Town of New Hartford.

C. The terms “Town Board,” “Planning Board” and “Zoning Board of Appeals” when used in this Local Law shall refer to the appropriate boards established in the Town of New Hartford.

D. The term “Development and Operations” when used in this Local Law shall refer to the Department of Development and Operations of the Town of New Hartford as established by Local Law No. 1 of the year 1983 of the Town of New Hartford and set forth in Chapter 15 of the Code of the Town of New Hartford.

11. Effective Date

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

Public Hearing Scheduled – Local Law Introductory “E” of 2011

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

(RESOLUTION NO. 114 OF 2011)

RESOLVED that the Town Board of the Town of New Hartford does hereby schedule a Public Hearing to commence at 7:00 P.M., or as soon thereafter as reached in the regular course of business, on Wednesday, June 15, 2011 in Butler Memorial Hall, New Hartford, NY to consider Local Law Introductory “E” of 2011 which, if adopted, would

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impose a six-month moratorium on the activity known as hydraulic fracturing (or hydrofracking) in said Town; and be it

FURTHER RESOLVED that the Town Clerk be, and she hereby is, authorized and directed to publish the legal requisite Notice of Public Hearing in The Observer Dispatch.

Upon roll call, the Board voted as follows:

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

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

Stormwater – April 28, 2011 (100-year storm)

Mike Ambrose inquired about stormwater run-off on Taber Road and Attorney Cully apprised him that Board members Krupa and Backman were working on obtaining an easement from the Cragolin estate and this may help his situation.

Councilman Backman acknowledged the many volunteer fire departments, some as far away as Sylvan Beach, NY who came to aid the Chadwicks residents with their flooding on April 28, 2011; he requested that the Town Board send a letter of gratitude to all those who volunteered.

Councilman Reynolds:

Recreational burning – fire pits

Attorney Cully had investigated complaints received by Councilman Reynolds from Compton Road residents who complained a neighbor burning some type of fire pit that generated some type of smoke that in their mind was questionable. Attorney Cully checked with the Oneida County Health Department and found that people can't burn household items, etc. but there is nothing that regulates recreational burning, so this would be a civil matter (civil nuisance, offensive odor). If the Town wants to regulate those types of fire pits, the Town Board would need to adopt a local law. Upon request of Councilman Reynolds, the Town Attorney will put his findings in writing so they can be presented to the complainant.

Town Attorney:

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Julian Zone Map Amendment Application – Close SEQR; Adoption of Local Law No. Four of 2011

The Town Attorney noted that the Public Hearing on the Julian Zone Map Amendment application had been held on April 13, 2011; however, because Councilman Woodland was not present at that meeting and Councilwoman Krupa would abstain from voting on this matter, the legislation would have to pass by the affirmative vote of three (3) Board members. Andrew Kowalczyk, attorney for the Julians, asked that the vote be deferred until such time that the full Town Board was present. Attorney Cully said the Town Board needs to close the SEQR process and act on the Zone Map Amendment application. With regard to the SEQR process, the Oneida County Department of Planning had submitted one comment with regard to the NYS Route 840 right of way and the applicant complied with that request.

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

**(RESOLUTION NO. 115 OF 2011)
SEQR PROCESS CLOSED**

WHEREAS, a resolution was duly adopted by the Town Board of the Town of New Hartford for a public hearing to be held by said Town Board on April 13, 2011 at 7:00 P.M. at Butler Memorial Hall, New Hartford, New York, to hear all interested parties on a proposed Local Law entitled Local Law Introductory “C” of 2011, A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 4752 – 4756 Middlesettlement Road (aka County Road 30), a description of which is set forth in Section 2, and changing the designation of property from Office Business District [RB3] to Planned Development Mixed Use District [PDMU]; and

WHEREAS, notice of said public hearing was duly published in The Observer Dispatch, the official newspaper of the Town of New Hartford, on March 30, 2011, and posted on the Town Clerk’s Bulletin Board, Butler Memorial Hall on March 29, 2011; and

WHEREAS, said public hearing was duly held on April 13, 2011 at 7:19 P.M. at Butler Memorial Hall and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof; and

WHEREAS, the Oneida County Department of Planning on February 22, 2011, pursuant to Section 239-m of the General Municipal Law, issued a “recommended modification” that the legal description of the property in the proposed Local Law should include properties along NYS Route 840 owned by the New York State Department of Transportation; and

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WHEREAS, the applicant has complied with the “recommended modification” by updating the metes and bounds description to include properties along NYS Route 840 owned by the New York State Department of Transportation; and

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

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of New Hartford does hereby close the SEQR process and does hereby issue a Negative Declaration in this matter.

A roll call vote was duly held and resulted as follows:

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

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

Thereafter, Councilman Reynolds offered the following Resolution and Councilman Woodland seconded same:

(RESOLUTION NO. 116 OF 2011)

WHEREAS, the Town Board of the Town of New Hartford, after due deliberation, finds it in the best interest of the Town of New Hartford to adopt Local Law Introductory “C” of 2011, a Zone Map Amendment submitted by Harold and James Julian;

NOW, THEREFORE, the Town Board of the Town of New Hartford hereby adopts said Local Law Introductory “C” of 2011 as Local Law No Five of 2011 entitled “A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 4752-4756 Middlesettlement Road (aka County Road 30), a description of which is set forth in Section 2, and changing the designation of property from Office Business District [RB3] to Planned Development Mixed Use District [PDMU], a copy of which is set forth herein as Schedule “A” and made a part hereof, and the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law

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Book of the Town of New Hartford, and to give due notice of the adoption of said Local Law to the Secretary of State.

Schedule "A"

Local Law No. Five of 2011

A Local Law to amend the Code of the Town of New Hartford, **Chapter 118** thereof entitled **ZONING**, and map coincidental thereto, as it pertains to property located at 4752-4756 Middle settlement Road (aka County Road 30), a description of which is set forth in Section 2, and changing the designation of property from Office Business District [RB3] to Planned Development Mixed Use District [PDMU].

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

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

Section 118-8. Zoning Map.

(Change the designation of approximately thirteen point twenty-five [13.25] acres, more or less, situate at 4752-4756 Middle settlement Road (aka County Road 30), and identified as Tax Map Parcel Nos. 316.016-6-64.1; 316.016-6-65 and 316.020-1-3, owned by Harold A. and James E. Julian, and acreage including the NYS Route 840 right-of-way, from Office Business District [RB3] to Planned Development Mixed Use District [PDMU]).

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

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate within the Town of New Hartford, County of Oneida and State of New York, as shown on the map entitled "Zoning Map showing lands designated as PDMU – Planned Development Mixed Use", dated March 8, 2011, prepared by D. L. Mowers Land Surveyors & Associates; said parcel more particularly described as follows:

BEGINNING at a point located at the intersection of the northerly curved boundary of lands of the People of the State of New York-N.Y.S.D.O.T. (owner), Map No. 10, Parcel No. 8, formerly New York Central Railroad – West Shore and Buffalo Railroad with the existing centerline of Middle Settlement Road (County Route #30);

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Thence southeasterly, along said former northerly railroad boundary, on a curve having a radius of 2,914.93 feet, curving to the right, a distance of 1,785.77 feet to a point of tangency;

Thence South 50 degrees 39' 45" East continuing along said former railroad boundary, a distance of 614 ± feet to a point; said point located at the intersection of said former railroad boundary with the southerly highway boundary of NYS Route 840 – People of the State of New York-N.Y.S.D.O.T. (owner) Stanwix – Utica, Part 1, Map no. 27 Parcel 35, extended northeasterly;

Thence South 82 degrees 10' 10" West, along the last mentioned division line a distance of 1,940 ± feet to the centerline of aforesaid Middle Settlement Road;

Thence North 08 degrees 05' 40" West, along said centerline of Middle Settlement Road, a distance of 1,319 ± feet, to the point of beginning, containing 1,602,289 ± square feet or 36.783 acres, more or less.

Section 3. All other provisions of Chapter 118 of the Code of the Town of New Hartford, and amendments thereto, are hereby affirmed except to the extent that this Local Law shall modify or amend.

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

Discussion ensued. Councilman Backman noted that the Liberty Street residents are not in favor of this rezoning; however, other uses of the property could be more offensive. We hear pros and cons about traffic. Councilman Reynolds noted that under the current zoning classification of the instant property it could be used for unreasonable activity – for example, restaurants, etc. He said that the Jay-K rezoning in January 2011 was different – the Jay-K Lumber business had existed at the same site for 75 years and the rezoning just clarified the activity that had been going on. With a rezoning to a planned development district, the uses might be less offensive. Town Attorney Cully clarified that this rezoning is tacking on to an existing Planned Development district and expands it. Codes Enforcement Officer Booth emphasized that Planned Development zoned properties require Planning Board review for each and every use. Thereafter, the Town Board voted, resulting as follows:

Councilwoman Krupa	-	ABSTAINED, as she
had a conflict of interest		
Councilman Woodland	-	Aye
Councilman Reynolds	-	Aye
Councilman Backman	-	Aye

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Supervisor Tyksinski - Aye.

The Resolution and Local Law No. Four of 2011 were declared carried and duly **ADOPTED**.

Standard Work Day – Police Department; Parks & Recreation Department

The Town Attorney reported that, after the state audit had been completed, the NYS Retirement System requested that the Town establish a standard work day for members of the Police Department and for employees in the Parks and Recreation Department. Neither of the union contracts for these departments specifies what constitutes a work day for retirement purposes. Thereafter, Councilwoman Krupa introduced the following Resolution for adoption and Councilman Woodland seconded same:

(RESOLUTION NO. 117 OF 2011)

RESOLVED that the Town Board of the Town of New Hartford hereby establishes the following as standard work days for the designated departments and will report the following days worked to the New York State and Local Employees' Retirement System for retirement purposes:

Police Department

Standard work day is 8 hours for Police Chief, Lieutenant, Sergeant and Police Officers

Parks and Recreation Department

Standard work day is 7 hours for Clerk Typist and Laborer

Standard work day is 8 hours for all other Parks and Recreation employees, including Director of Recreation Programs.

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

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

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

New Hartford Business Park – Shumaker Engineering Invoice (Woods Highway Reconstruction)

Councilman Backman said that Shumaker Engineering is being held up by the non-payment of their invoice and he wants developer Larry Adler to pay this invoice, not the

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Town taxpayers. [NOTE: Refer to Town Board minutes of February 9 and February 23, 2011; March 23, 2011; April 13 and April 27, 2011.] The Town Supervisor stated that some charges do not coincide with how the agreement (entered into between the Town and Larry Adler) reads. Councilman Backman wants in writing the specific costs, etc. at a future meeting.

Receiver of Taxes & Assessments – Outsource duties,

With regard to the pending outsource of the Receiver of Taxes & Assessments position, Councilman Backman wants a cost comparison, including salaries and benefits, support in mailing bills, equipment, etc. so the Town Board can contact Oneida County and assign a cost per parcel of what it will cost the Town and have the County give us an answer. The Town Supervisor estimated the Receiver’s budget for 2011 was about \$63,000, which doesn’t include benefits – add about \$10,000. Councilman Backman said the Receiver has health and dental coverage at about \$15,000 a year. Supervisor Tyksinski has talked to the Oneida County Executive and they will not take on this task. The Deputy Supervisor and Supervisor are looking into and will have options to present. If the position is outsourced, it will include a mandatory referendum because the Receiver is an elected position.

MATTERS SUBMITTED BY THE TOWN SUPERVISOR

Financial:

Audit of Vouchers

Upon presentation of the Town Supervisor, Councilman Backman presented the following Resolution for adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 118 OF 2011)

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, which had been duly audited by the Town Board:

Elm Street Bridge Repair Fund Abstract #3	
Vouchers HB5	\$ 2,375.00
Street Lighting Abstract #5	
Vouchers SL6	\$ 7,709.81
Fire District Abstract #3	
Vouchers SF5	\$ 395.80
Communications Capital Project Abstract #1	
Vouchers HL1	\$ 866.00
Trust & Agency Abstract #15	

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Vouchers TT66-TT73	\$ 15,985.01
Trust & Agency Abstract #16	
Vouchers TT74-TT80	\$ 16,114.06
Trust & Agency Abstract #17	
Vouchers TT81-TT82	\$ 2,034.82
Highway Fund Part-Town Abstract #6	
Vouchers DB467-DB510	\$ 86,498.74
General Fund Part-Town Abstract # 6	
Vouchers BB79-BB92	\$ 9,896.96
General Fund Part-Town Abstract # 8	
Vouchers BB124-BB158	\$ 74,442.28
General Fund Part-Town Police Abstract # 9	
Vouchers BP159	\$ 36.13
General Fund Whole-Town Abstract #12	
Vouchers AA583	\$ 40.00
General Fund Whole-Town Abstract #13	
Vouchers AA593-AA600	\$ 17,237.90
General Fund Whole-Town Abstract #14	
Vouchers AA601-AA679	\$ 108,684.75
Sewer Fund Abstract #8	
Voucher SS35	\$ 2,469.54
Sewer Fund Abstract #9	
Voucher SS36-SS40	\$ <u>6,427.37</u>
TOTAL:	\$582,112.97

After having reviewed the various vouchers, Councilman Backman said he knew of ways to save money and he referred to one voucher from the Town Clerk’s Office for computer back-up tapes. He said this was a “staple” item and it could have been found on Google. Supervisor Tyksinski could not see Department Heads spending time “googling” when they had more important jobs to perform. The Town Clerk noted that her office had contacted three (3) companies for quotes [one of which was more expensive than ESI and the other said it was not a commonly used product and would be difficult to acquire the tapes but could if absolutely needed and be more than ESI’s quote]. Thereafter, the Town Board voted upon roll call:

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

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

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Bond Resolutions

The Town Supervisor stated that two (2) proposed bond resolutions are being amended, one to include a new roof on the Records Retention building and the second to include renovations to the Kellogg Road Community Center building. The Kellogg Road building will be converted for use by the Town Police Department and the Town will then terminate the lease of the mobile trailer that costs \$300 a month. Police Chief Inserra said this would be a good use of the Kellogg Road building; his department is short of space now and he has some ideas on how he'd use the building to make it work. The matter will be on the agenda for the May 25, 2011 Town Board meeting.

Budget adjustments - 2011

The Town Supervisor recommended a budget adjustment to cover the Master Service Agreement entered into with Barton & Loguidice earlier in the evening. Thereafter, Councilwoman Krupa offered the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 119 OF 2011)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the following 2011 Budget adjustments for the purpose of paying for the Master Services Agreement entered into between the Town of New Hartford and Barton & Loguidice, at the Town Board meeting of May 11, 2011:

Increase:

General Whole-Town Fund

Engineering Contractual Account No. AA1440.04 - \$20,000

Decrease:

General Whole-Town Fund

Engineering Services Account No. AA1440.44 - \$ 5,000

Contingent Account No. AA1990.04 - \$15,000

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

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

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

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Curbside trash collection

Supervisor Tyksinski said residents are calling his office with regard to the curbside trash collection that is no longer offered and he said there are many people such as single people, the elderly, and people who do not have trucks to deliver their items to the Sanger Public Works Garage. He'd like to bring this matter up at the end of summer to bring back some type of program.

EXECUTIVE SESSION

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

(RESOLUTION NO. 120 OF 2011)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss matters leading to the appointment of a particular person, the status of union contract(s) negotiations, matters leading to the discipline of a particular employee, update on the Adelman litigation against the Town, and new notices of claim filed.

A roll call vote ensued:

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

Thereafter, the Resolution was declared unanimously carried and duly **ADOPTED**. All persons present, including the news media and Department Heads, were then excused from the meeting at 9:10 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

[NOTE: The Town Attorney provided the following transcription on Monday, May 23, 2011.]

END OF EXECUTIVE SESSION

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

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(RESOLUTION NO. 121 OF 2011)

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

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

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

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**; the Executive Session ended at 9:58 P.M. The regular portion of the Town Board meeting was immediately reconvened and the public invited to re-join the meeting.

Stormwater Committee/Consultant

Councilwoman Krupa then introduced the following Resolution that was seconded by Supervisor Tyksinski:

(RESOLUTION NO. 122 OF 2011)

RESOLVED that the New Hartford Town Board does hereby appoint Brian E. Sanders as Consultant on stormwater and does further authorize him to head up the Stormwater Management (Advisory) Improvement Committee for a stipend of Five Thousand Dollars (\$5,000) for 2011.

Upon roll call, the Board voted as follows:

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

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

MS4 Legislation – Public Hearing

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

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(RESOLUTION NO. 123 OF 2011)

RESOLVED that the New Hartford Town Board does hereby schedule a Public Hearing for June 15, 2011 for the MS4 legislation.

A roll call vote ensued:

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

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

ADJOURNMENT

There being no further business to come before the Town Board, upon motion of Councilwoman Krupa and seconded by Councilman Reynolds, the meeting was adjourned at 10:00 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk

[NOTE: As of June 9, 2011, the Town Clerk had not been provided with the MS4 legislation to be adopted by local law; therefore, could not meet the requirements for a public hearing on June 15, 2011.]