

**REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON WEDNESDAY, MARCH 27, 2013 AT 7:00 P.M.**

Town Supervisor Patrick Tyksinski called the meeting to order at 7:00 P.M. and led those in attendance in the Pledge of Allegiance to the American Flag. The roll was then taken with the following Town Officials and Department Heads being present during the progress of the meeting.

TOWN BOARD MEMBERS PRESENT:

Councilman Donald C. Backman
Councilman Paul A. Miscione
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Patrick M. Tyksinski

OTHER TOWN OFFICIALS/EMPLOYEES PRESENT:

Assessor Paul E. Smith
Codes Enforcement Officer Joseph A. Booth
Deputy Supervisor Matthew Bohn III
Finance Director Daniel Dreimiller
Highway/Sewer Superintendent Richard C. Sherman
Parks & Recreation Director Michael W. Jeffery
Police Chief Michael Inserra
Town Attorney Herbert J. Cully
Town Clerk Gail Wolanin Young

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

MINUTES

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No action.

PUBLIC HEARING

7:01 P.M. Local Law Introductory “A” of 2013
Telecommunications Facilities amendment

The Town Supervisor opened the Public Hearing at 7:01 P.M. and asked the Town Attorney to explain the legislation that, if adopted, would amend the Town’s Code, Chapter 107B Telecommunications Facilities. Attorney Cully stated that some residents brought to the Town Board’s attention that the existing Chapter 107B would allow the collocation of a telecommunication tower/antenna on an existing structure in a residential area without prior Town approval; the applicant could simply apply to the Codes

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Enforcement Department for a permit, which the Codes Officer would have to issue. After looking into the residents' concerns and based upon the findings, the Town concluded the residents were correct and initiated steps to amend Chapter 107B so that site plan approval would be required from the Town Planning Board, whether the tower/antenna be new or collocated. Attorney Cully read aloud the proposed legislation, noting the specific amendment to Section 107B – 5A, and confirming that the rest of the existing Chapter would remain in place.

[NOTE: The Town Clerk had available for public inspection the Local Law Introductory “A” of 2013, the Notice of Public Hearing, Proof of Publication (published in the March 16, 2013 edition of The Observer Dispatch), and Affidavit of Posting. Of the fifteen (15) agencies and six (6) contiguous municipalities contacted for SEQR review/comment, the following responses had been received and were available for inspection, copies of which had been e-mailed to the Town Board and Town Attorney on March 22, 2013:

- Oneida County Health Department – no concerns or comments at this time
- New Hartford Fire Department – no comment at this time
- Oneida County Department of Public Works – no comment
- Town Planning Board – recommended approval based on review of the five (5) criteria (report by Planning Board) and that the Town Board consider adding a stipulation of public need
- Oneida County Planning Department – no recommendation as to final action.]

In behalf of the Town Supervisor, Attorney Cully asked those who were present to speak in the matter to come forth, provide their name for the record and to limit their comments to five (5) minutes. Those who appeared to speak were:

- James Zalewski – thanked the Town Board and Town Attorney for a quick response to this matter, initially brought forth at the December 19, 2012 Town Board meeting. Mr. Zalewski had a concern about the wording for an applicant with an undue hardship and believed that the word “unless” being replaced with “provided” would close any loopholes.

Councilman Woodland questioned the process of hardship/special use permit and the Town Attorney responded “,,that’s the first thing they {applicant} have to prove...undue hardship or they go nowhere.”

There being no other comments from the public, the Town Supervisor declared the Public Hearing closed at 7:05 P.M.

Adoption of Local Law Introductory “A” of 2013 as Local Law No. One of 2013

The Town Board having considered all of the SEQR comments received by interested agencies, none of which felt the legislation shouldn't be passed, Councilman Reynolds moved that Local Law Introductory "A" of 2013 be adopted as Local Law No. One of 2013 as follows, amending the words "...unless the applicant.." in subparagraph b. to read "...provided the applicant..."; seconded by Councilman Backman:

Town of New Hartford, New York
Local Law No. One of 2013

A Local Law to Amend the Code of the Town of New Hartford, Chapter 107B thereof entitled **TELECOMMUNICATIONS FACILITIES** in the Town of New Hartford.

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

Section 1. Chapter 107B of the Code of the Town of New Hartford, Section 107B-5 is hereby deleted and in its place the following section is inserted Section 107B-5.
Residential Districts.

Residential Districts 107 B-5

- a. Telecommunications towers and antennas shall be permitted in all districts except for residential or within 750 feet of a residential district, except as set forth in Subsection B below, subject to the requirements of this Chapter.
- b. Towers and antennas shall not be permitted in residential districts or within 750 feet of a residential district unless a special use permit is granted pursuant to Section 107 B-6 and 107 B-7 and site plan review as set forth in Article V of the Town Zoning Law provided the applicant can show an undue hardship in that:
 - (1) The applicant would not be able to provide service to the area without locating in the described area.
 - (2) The applicant has demonstrated that it is unable to collocate on an existing tower or structure, nor can it locate a new or second tower on a nonresidential property where there is an existing tower or structure.
- c. Where the applicant seeks to locate in a residential district or within 750 feet of a residential district, an applicant must prove that it cannot utilize a current tower, structure, utility pole, building or land area for an additional structure because of technical reasons which would make the provision of service not possible. Proof of the extraordinary additional cost may be

presented by the applicant on the issue of proof of inability to collocate or otherwise utilize a current tower, structure, utility pole, and building or land area. However, the fact that additional cost is involved and additional antenna may be required is not conclusive as to the finding of an inability to so collocate. Additional costs may be reasonable and rational costs of doing business, particularly where locations, in particular residential areas, are considered "prime".

- d. In the event the applicant meets the criteria of Subsections **B** and **C** above, subject to all other requirements of this Chapter, the facility located in a residential district must meet the following additional criteria:
 - (1) If the tower is less than 50 feet in height or the antennas are to be located on a structure of less than 50 feet, the Planning Board in its discretion may require that the tower and/or antennas be completely camouflaged to blend with the surroundings, including but not limited to:
 - a) The tower being made to look like a tree.
 - b) Camouflage by artificial leaves, painting or other suitable method.
 - c) Enclosed with some modification to the structure or similar screening.
 - (2) If applicant has proved that a tower greater than 50 feet is needed to provide the required coverage, the Planning Board may require that more than one tower being 50 feet or less be built in lieu of a single taller tower in order to provide the required coverage. In such a case, all of the criteria of this Chapter must be fulfilled for each such tower.
 - (3) In all events of facilities located in residential districts, the applicant must provide substantial foliage and landscaping within the vicinity of the tower as well as landscaped buffer areas in keeping with the goal of providing an aesthetically pleasing residential area.

Section 2. Chapter 107B-7 A (1) (d) shall be revised as follows:

- (d) Planned development and important preservation/conservation areas.

Section 3. All other provisions of Chapter 107B 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 with the Office of the Secretary of State.

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

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

Local Law Introductory “A” of 2013 was then declared unanimously carried and duly ***ADOPTED*** as Local Law No. One of 2013.

PUBLIC PRESENTATIONS (Resident Comments)

Wind mills/turbines

Mark and MaryAnn Krasinski questioned the status of the wind tower legislation. Supervisor Tyksinski explained that the Town Attorney and Codes Enforcement Officer are working on draft legislation to present to the Town Board. At the March 13, 2013 Town Board meeting the Town Attorney had estimated the timeframe to complete the legislation would be four to five months.

Beechwood Road Stormwater, Phase 2

David Munsell understood that the Town should have the permits from the NYS Department of Environmental Conservation and the U.S. Army Corps of Engineers for tree removal and questioned the status of the Beechwood Road stormwater project. The Town Supervisor explained that an informational meeting for the residents will be held on Tuesday, April 2, 2013 in Butler Memorial Hall at which time the Town’s engineering consultant and Town Officials will be present and everything will be explained. With the necessity of access to the site from Wills Drive, the Town Attorney has begun the paperwork in the event the property owner(s) refuses to grant the Town an easement; the Town must have public hearing and listen to comments of the people and after receiving same, the Town Board would then decide whether to commence a lawsuit under eminent domain. The Town Supervisor, Highway Superintendent, Councilman Reynolds and Town Attorney had met on this matter, after which Highway Superintendent Sherman volunteered to contact the property owner from whom the easement is needed; the property owner may be interested in working with the Town instead of going through eminent domain proceedings. The engineers have explained various means of remediating stormwater problems and the Town may need additional easements.

REPORTS OF TOWN OFFICIALS BY STANDING COMMITTEE CHAIRPERSON

Public Works & Committee – Councilman Reynolds:

Shredding service to residents

This matter having been discussed at the February 13 and March 13, 2013 Town Board meetings, Councilman Miscione offered the following Resolution for adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 67 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby approve a shredding service to be offered to Town residents by Confidata on Saturday dumpster days during 2013 and that the Town Supervisor be authorized to enter into and to execute any requirement agreement, all subject to the review and approval of the Town Attorney.

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

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

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

Declaration of Surplus Vehicles – Authorization to Sell

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

(RESOLUTION NO. 68 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby declare as surplus the following vehicles, which are of no value to the Town:

<u>Year</u>	<u>Make/Model</u>	<u>Serial/Model No.</u>
N/A	Mohawk car lift, M-413	#0009064
N/A	Brunner Vertical Air Compressor	#W78F09317
	Laser Jet 8000N Printer	#C4086A
	Plotter/Copy Xerox	#3060 (Engineering)

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N/A	Various oil and air filters	n/a
	Onan Natural Gas Generator	
	(from disbanded 9-1-1)	LTEU60L78H
2005	John Deere front-end Loader	DW624JZ604081
2005	John Deere front-end Loader	DW624JZ603305

And be it

FURTHER RESOLVED that the aforesaid equipment shall be placed for sale with Auctions International and once sold, the Town Clerk's office shall be notified and shall arrange to terminate insurance coverage on said equipment.

The foregoing Resolution was voted upon by roll call as follows:

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

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

MATTERS SUBMITTED BY COUNCILMEN AND TOWN ATTORNEY

Councilman Reynolds:

Public Hearing Scheduled – Eminent Domain/Beechwood Road Stormwater, Phase 2

Councilman Reynolds introduced the following Resolution, moving its adoption; seconded by Councilman Backman:

(RESOLUTION NO. 69 OF 2013)

RESOLVED that, pursuant to Article 2 of the Eminent Domain Procedure Law, 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, April 10, 2013 in Butler Memorial Hall, New Hartford, NY, for the purpose of describing the proposed construction of stormwater improvements and the acquisition of a permanent easement approximately across the property located at and known as 28 Wills Drive, New Hartford, NY (portion of Tax Map No. 339.011-1-92) and an additional temporary easement for the purpose of construction of stormwater improvements; and be it

FURTHER RESOLVED that the Town Board does hereby authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in The Observer Dispatch as per requirements in the Eminent Domain Procedure Law.

The Town Clerk questioned whether the Notice of Public Hearing had specific publication requirements, such as being published in numerous editions of the Town's newspaper prior to the Public Hearing and whether declaration of SEQR lead agency applies at this time. Attorney Cully stated no and that SEQR was not needed yet; further, he will need a metes and bounds description and map of the property in the near future. Thereafter, the Town Board voted upon roll call, resulting as follows:

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

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

New Hartford Public Library

Councilman Reynolds reported that:

- the Library Board of Trustees is in the process of receiving applications for the soon-to-be-vacant Library Director position, Hans Plambeck having submitted his retirement notice
- the independent audit of the Library finances has been completed and will come under a separate line in the Town's audit
- different/additional fundraising ideas are being explored.

Councilman Backman:

PILOT allocation agreement

Councilman Backman inquired whether the Town has to make a payment on the bond. Supervisor Tyksinski said "...it's in there but we don't have to." The Town Supervisor stated that the Town is paying off the BAN entirely. The Bond Sale is scheduled for May 29, 2013, the opening on May 30, 2013 and closing documents finalized on June 7, 2013. With the Town converting the BAN to a Serial Bond and having no assurance that Oneida County or the New Hartford Central School will accept the PILOT allocation agreement, Councilman Backman expressed concern that "...this will fall on the residents." The Town Attorney apprised Councilman Backman that the School's attorney

had drafted the allocation agreement. Councilman Backman also expressed concern that the Town might not be able to meet the 2% tax cap for next year's budget. He thought the PILOT allocation agreement was supposed to be in tact before the \$600,000 spent additionally on this project. The Town Supervisor felt confident that the County and School would approve the PILOT allocation agreement. Supervisor Tyksinski informed the Board that a separate letter would be sent to the property owner for PILOT payment (Payment In Lieu of Taxes [bill]). Attorney Cully noted that at the March 13, 2013 Town Board meeting, he distributed copies of the agreement to Board members, asking that they review the document and contact him with any questions or concerns; only Councilman Miscione had contacted him. Councilman Backman stated that "...if this isn't addressed soon, it will be a sad day for New Hartford residents".

Councilman Miscione:

Easement Appraisals - Rayhill Memorial Trail Extension

The Town Attorney reported that the Town had received temporary easements from property owners that allowed the Town to remove some trees. Upon recommendation of the Town Attorney, Councilman Miscione introduced the following Resolution, moving its adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 70 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Town Attorney to extend offers to the Massoud, O'Grady and McCraith property owners for easements, based and contingent upon final appraisals to be submitted for each property by Frank Donato in connection with the 1.25 mile extension of the Rayhill Memorial trail extension project; the cost of the easements shall be paid from grant funds.

Parks and Recreation Director Michael Jeffery stated that the easements should be coming in next week. A roll call vote was duly held as follows:

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

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

Engineering Proposal – Mud Creek permits to start project

Councilman Miscione and the Highway Superintendent met last week with John Dunkel of Dunn & Sgromo Engineers, PLLC, about stormwater issues and the completion and cost of the engineering and bidding phase for Mud Creek; the total cost for that phase of the project is \$24,000. The Highway Superintendent had the “bat” trees cut down last week, ahead of the end of the Indiana bat hibernation period. Of the \$80,000 previously approved in 2012, subtract from that \$13,200 for engineering costs and \$10,800 for survey work for Phase 1. Phase 2 will include clean up at the corner of Royal Brook Lane and Henderson Street, as well as stabilization of the creek banks. Finance Director Dreimiller stated there would be a balance of about \$67,000 in mitigation fees after this project is completed and he noted that monies had been set aside in 2012 for this project. Thereafter, Councilman Miscione introduced the following Resolution for adoption; seconded by Councilman Woodland:

(RESOLUTION NO. 71 OF 2013)

WHEREAS, on December 19, 2012 the New Hartford Town Board accepted the Dunn & Sgromo proposal, Option 1 in the Drainage Study for Mud Creek Basin, dated December 14, 2012, authorized and directed the Town Supervisor to enter into and to execute all required and necessary legal documents with regard to this project, and approved and authorized that the project cost (\$70,000 including soft costs, plus an additional \$10,000 for the competitive bid process) be paid from mitigation fees;

NOW, THEREFORE, BE IT RESOLVED that the said Town Board does hereby retain the engineering services of Dunn & Sgromo Engineers, PLLC, at a not-to-exceed cost of Twenty-four Thousand Dollars (\$24,000) for the competitive bid/engineering phase of the Mud Creek Drainage project and that the Town Supervisor be, and he hereby is, authorized and directed to enter into and to execute any additional documents related thereto.

The foregoing Resolution was duly voted upon by roll call:

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

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

MATTERS SUBMITTED BY TOWN SUPERVISOR

Update of 2007 Comprehensive Plan

The Town Supervisor reported that a couple problem areas were encountered with the work being done by RiverStreet and he will be meeting with RiverStreet representatives the week of April 1, 2013. The Town is concerned with the speed at which RiverStreet has been moving and scope of work also.

EXECUTIVE SESSION

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

(RESOLUTION NO. 72 OF 2013)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss a pending codes violation and the Sangertown Square Mall assessment/tax certiorari against the Town.

A roll call vote ensued:

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

Thereafter, the Resolution was declared unanimously carried and duly **ADOPTED**. All persons present, including the news media and Department Heads, were then excused from the meeting at 7:48 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

END OF EXECUTIVE SESSION

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

(RESOLUTION NO. 73 OF 2013)

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

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

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

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Councilman Backman - Aye
Supervisor Tyksinski - Aye.

The Supervisor declared the Resolution unanimously carried and duly *ADOPTED*; the Executive Session ended at 8:27 P.M. The regular portion of the Town Board meeting was immediately reconvened and the public re-invited to the meeting.

ADJOURNMENT

There being no further business to come before the Town Board, upon motion of Councilman Reynolds and seconded by Councilman Miscione, the meeting was adjourned at 8:28 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk