

**REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON WEDNESDAY, APRIL 24, 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
Director of Finance Daniel Dreimiller
Highway/Sewer Superintendent Richard C. Sherman
Police Chief Michael Inserra
Town Attorney Herbert J. Cully
Town Clerk Gail Wolanin Young

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

MINUTES

Town Board Meeting – April 10, 2013

As the Board members had just received the minutes via e-mail, action was deferred until the May 8, 2013 Town Board meeting by which time the Board members could review same.

PUBLIC PRESENTATIONS (Resident Comments)

Windmills/Turbines

Charles Newell of the Town of Litchfield had questions relating to a timeline for adoption of legislation to regulate windmills/turbines. Councilman Reynolds stated that the Town Attorney would be addressing this matter later during the meeting.

REPORTS OF TOWN OFFICIALS BY STANDING COMMITTEE CHAIRPERSON

Public Works & Sewer Committee – Councilman Miscione

Agreement for Roadside Mowing – Oneida County and Town

Upon recommendation of the Highway Superintendent, Councilman Miscione introduced for adoption the following Resolution, seconded by Councilman Backman:

(RESOLUTION NO. 85 OF 2013)

RESOLVED that the New Hartford Town Board does hereby authorize and direct the Town Supervisor and Highway Superintendent to enter into and to execute the Roadside Mowing Agreement between the Town and the County of Oneida wherein the Town agrees to mow town and county roads within the Town of New Hartford from May 2013 through September 2013 and the County agrees to furnish the tractor with mower that is to be operated by a town employee, and as more fully defined in said Agreement.

The Town Board voted upon roll call as follows:

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

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

Lighting Upgrade – Sanger Public Works Garage

Upon recommendation of the Highway Superintendent, Councilman Miscione offered the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 86 OF 2013)

RESOLVED that the New Hartford Town Board does hereby accept and approve the proposal submitted by Eastern Energy Solutions, P O Box 37, 20 Pleasant Ave., Afton, NY 13730, for the upgrade of all exterior and interior lights at the Sanger Public Works Garage, 111 New Hartford Street, and does hereby authorize and direct the Town Supervisor to enter into and to execute all necessary documents related to the lighting upgrade. The project cost would be \$32,380.41 with an estimated \$16,006.00 incentive from National Grid, leaving a net cost to the Town of \$16,374.40 that would be paid off in approximately fourteen (14) months.

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

Councilman Miscione - Aye

Councilman Backman inquired whether this expense would be paid from the 2013 budget; the Town Supervisor said it would, noting that the Highway Superintendent had recently sold two (2) surplus loaders for a total of \$107,000. Supervisor Tyksinski will have the budget adjustment finalized at the May 8, 2013 Town Board meeting.

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

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

Town Clerk Committee – Councilman Woodland

Raffle Consent – Kids Oneida, Inc.

Upon presentation of the Town Clerk, Councilman Woodland introduced the following Resolution for adoption, seconded by Councilman Reynolds:

(RESOLUTION NO. 87 OF 2013)

RESOLVED that the New Hartford Town Board does hereby grant permission to Kids Oneida, Inc., 310 Main Street, Utica, NY 13501, an organization duly granted a Games of Chance Identification Number by the New York State Racing and Wagering Board, to sell raffle tickets in the Town of New Hartford, New York, in accordance with all rules and regulations of said Racing and Wagering Board; and be it

FURTHER RESOLVED that the Town Clerk be, and she hereby is, authorized and directed to execute Form GC-RCF, Raffle Consent Form.

Upon roll call, the Town Board voted as follows:

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

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

MATTERS SUBMITTED BY COUNCILMEN / TOWN ATTORNEY

Town Attorney Cully:

Windmill/Turbines (Wind Energy)

Councilman Reynolds acknowledged that the Town Attorney is working very hard on the windmill legislation. Town Attorney Cully stated he has reviewed the Town of Litchfield legislation, which is very detailed. References and problems with regard to noise would be helpful. Litchfield's legislation deals with large wind energy conversion infrastructure that require more than 50,000 watts – they are not permitted. 50,000 watts is considered commercial. There are exemptions in an agricultural district conditioned on height and set back to nearest property line. The New Hartford Town Board would have to decide height, size of acreage, etc., no interior lighting, no shocks, fence, height of blades, set back requirements. The biggest item Attorney Cully saw was the decommissioning fund. In the Litchfield legislation, an applicant needs to establish a fund (letter of credit, bond) for decommissioning. The Town Attorney designated the Town Attorney and Councilmen Reynolds and Miscione to review the legislation and report specifics at the May 22, 2013 Town Board meeting.

NYS Route 840, Right-in/Right out; Removal of Restrictions

The Town Attorney reported that the New York State Department of Transportation (DOT) has removed their restrictions on the Route 840 Right-in/Right out ramps and has given the Town a release for access to the Town. He needs to record this document and others, which the Town Supervisor must sign; upon inquiry of whether a resolution was needed, the Town Attorney said no, DOT is removing their restriction.

Euthanasia Order/Dangerous Dog

Town Justice James VanSlyke's April 1, 2013 Order to euthanize a dog that had bitten a young child has been appealed by the dog's owner; meanwhile, the Stevens-Swan Humane Society has the dog confined.

Inter-municipal Agreement – Codes Enforcement Services

The Town of Paris had a situation where their Codes Officer had been called out of town and the Town of Paris attorney contacted New Hartford Town Attorney, Herbert Cully, about the possibility of the New Hartford Codes Officer providing codes enforcement services. Codes Enforcement Officer Joseph Booth was willing to help them out but would need an agreement – luckily, the emergency situation was resolved and the Paris Codes Officer returned and didn't need Officer Booth's assistance. In the event this situation should arise in the future, Attorney Cully is drafting an inter-municipal agreement that the Town Board can review for possible action.

REGULAR TOWN BOARD MEETING

April 24, 2013

Page 5 of 10

Leggs Diamond Zoning Violation

The Town Attorney noted that the owners of Leggs Diamond have requested a hearing with regard to the Town citing them for a zoning violation at 4754 Commercial Drive; specifically, Section 118.C (2). Sign Violation. (an inflatable Santa Claus).

FOIL appeals

The Town Attorney stated that the Town had received three (3) appeals under the Freedom of Information Law and that the Town Board, the appeals body, must address each appeal and render a detailed report on the denial within ten (10) business days of the filing.

- denial of Cathy Lawrence' March 8th FOIL relating to the Consolidated Sewer district, taxpayers paying \$.41 per/M on 2013 Town and County tax bills. Asked for proof of capital expenses (official statement, notice of sale, general ledger showing bond and interest) and if none, requested a certification as such. Finance Director Dreimiller stated that only the Woodberry and Clinton Road sewer districts are paying off bonds. The Town Board agreed that, in the absence of the Consolidated Sewer District paying off a bond, a certification must be provided as requested. Ms. Lawrence stated that she had contacted Oneida County about the Town's database and that the County said the Town Board would have to fix it. The Town Supervisor, Assessor Paul Smith and the Finance Director will meet next week to review her concerns and make suggestions at the May 8, 2013 Town Board meeting. Ms. Lawrence said "ok" and thinks people are owed a refund. "Yes, if that's the case," said Supervisor Tyksinski.
- denial of copies of Sewer Department budget estimates for 2012 and 2013 – The Town Supervisor said that he had initially not understood what Ms. Lawrence was requesting. He then gave copies of the 2013 sewer budget estimates to the Town Clerk to give to Ms. Lawrence.
- denial of Edmund Wiatr's request for a copy of the Town Attorney's opinion with regard to ownership of the New Hartford Public Library. Attorney Cully cited the attorney-client privilege with regard to disclosing information from a client's file and that unless a client waives the privilege, the Attorney is not allowed to disclose any communication nor can be compelled to release any communication/information. Attorney Cully noted that the request of Councilman Backman in October 2012 was in behalf of the Town Board, not himself as an individual. There was no retainer agreement with Councilman Backman and no services to him as an individual. Attorney Cully noted that Councilman Backman had asked that he submit his written opinion to the Town Board, which he did on December 10, 2012, and that the Town Board had been kept apprised of his progress; Attorney Cully said he stands by his assertion that

this is a privileged legal opinion subject to attorney-client privilege. Further, Attorney Cully took issue with reference to several of Mr. Wiatr's allegations in his FOIL appeal...reference to Attorney Cully being an attorney for Oneida County, which is inaccurate; while he used to be an Assistant County Attorney, he resigned that position because of a potential conflict when he was appointed Town Attorney three (3) years ago. Attorney Cully stated there were serious discrepancies in Mr. Wiatr's FOIL appeal and he takes strong issue to those statements and accusations, and indicated he would pursue whatever action is needed. Discussion ensued whether the release of the Attorney's opinion could be detrimental to the Town in the future and whether release of the opinion would be precedent setting; the Town Attorney said that waiving the attorney-client privilege would be...not good...and could come back to hurt the Town in the future.

The following Resolution was then introduced by Councilman Reynolds and seconded by Councilman Woodland:

(RESOLUTION NO. 88 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby deny the Appeal of Edmund Wiatr, Jr. under the Freedom of Information Law for a copy of the Town Attorney's written opinion with regard to ownership of the New Hartford Public Library, said denial being based upon the attorney-client privilege as enumerated in the Civil Practice Law and Rules.

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

Councilman Miscione	-	Aye
Councilman Backman	-	Nay, stating his disagreement
about the attorney-client privilege		
Councilman Reynolds	-	Aye, while agreeing with
Councilman Backman, he did not believe this would be precedent setting.		
Councilman Woodland	-	Aye
Supervisor Tyksinski	-	Aye.

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

Authorization for Competitive Bid – Consumer Square North Drive Traffic Signal Project

Upon presentation of the Town Supervisor, Councilman Miscione presented the following Resolution and moved its adoption, which was seconded by Councilman Reynolds:

(RESOLUTION NO. 89 OF 2013)

RESOLVED that the New Hartford Town Board shall receive sealed bids for the ***Consumer Square North Drive Traffic Signal Project (NYS Route 5A)***, in accordance with bid specifications prepared by Lochner Engineering; all bids are to be received by the Town Clerk's Office no later than 10:45 A.M. on Thursday, May 30, 2013 and then shall be publicly opened and read aloud at 11:00 A.M. on said date and in said Office; and be it

FURTHER RESOLVED that the said Town Board does hereby authorize and direct the Town Clerk to publish the legal requisite Advertisement-Invitation to Bid in The Observer Dispatch.

The Town Board voted upon 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***.

Eliminate off-center intersection/Consumer Square North Drive Traffic Signal Project

Various officials from the Town, State Farm Insurance and the NYS Department of Transportation (DOT) had discussed DOT's recommendation to line-up the exit/entrance lanes in order to eliminate an off-center intersection near Panera Bread and where to relocate telephone pole(s) and still allow parking and two (2) driveways. Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilman Miscione:

(RESOLUTION NO. 90 OF 2013)

RESOLVED that the New Hartford Town Board does hereby accept the proposal from National Grid to relocate one (1) utility pole to accommodate a new traffic signal light at Consumer Square North Drive (Panera Bread) and Commercial Drive [NYS Route 5A], the cost of which is \$5,276.93 which shall be paid from mitigation fees.

The Supervisor polled the Town Board which voted 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**.

Authorization to purchase telephone poles – Consumer Square North Drive Traffic Signal Project

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

(RESOLUTION NO. 91 OF 2013)

WHEREAS, in an effort to expedite the project and have the new traffic signal operational by November 2013, the Highway Superintendent has recommended that the utility pole be ordered now by the Town of New Hartford rather than after the bid opening when the project contractor has been award and the delivery time would be twelve (12) to sixteen (16) weeks;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby authorize and direct the Highway Superintendent to purchase the required utility pole for the traffic signal improvement at the Consumer Square/North Drive/Panera Bread intersection at Commercial Drive (NYS Route 5A).

The resolution was voted upon by roll all, 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**.

Bonding – Business Trip to New York City

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

(RESOLUTION NO. 92 OF 2013)

REGULAR TOWN BOARD MEETING

April 24, 2013

Page 9 of 10

WHEREAS, the Town of New Hartford will be going out to bond in late June/early July 2013 and need to meet with Moody's Investors Service, Inc., 99 Church Street, New York, NY 10007;

NOW, THEREFORE, BE IT RESOLVED that the Town Board does hereby approve the Town Supervisor, Deputy Town Supervisor and Town Attorney to travel to New York City for a one-night stay on May 17, 2013, the cost of which would be equivalent to a one-night stay had they attended the February 2013 Association of Towns meeting in New York. The three (3) officials will travel together in one vehicle.

Upon roll call, the Board members voted 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***.

EXECUTIVE SESSION

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

(RESOLUTION NO. 93 OF 2013)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss matters relating to removal of a particular employee/person.

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 7:47 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

END OF EXECUTIVE SESSION

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

(RESOLUTION NO. 94 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
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**; the Executive Session ended at 8:15 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 duly made by Councilman Miscione and seconded by Councilman Reynolds, the meeting was adjourned at 8:17 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk