

**REGULAR MEETING OF THE TOWN BOARD  
OF THE TOWN OF NEW HARTFORD, NEW YORK  
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN  
ON WEDNESDAY, FEBRUARY 10, 2010 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 A. Booth  
Deputy Supervisor Matthew Bohn II  
Dispatch Supervisor Jeffrey P. Madden  
Highway Superintendent Richard C. Sherman  
Parks and Recreation Director Michael W. Jeffery  
Senior Engineering Technician John Meagher  
Town Attorney Herbert J. Cully  
Town Clerk Gail Wolanin Young

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

MINUTES

**January 27, 2010 Town Board minutes**

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

**(RESOLUTION NO. 58 OF 2010)**

**RESOLVED** that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the Regular Town Board meeting held January 27, 2010 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 PRESENTATIONS (Public Comment)

**2010 Budget Issues**

Resident David Corr asked the Town Board to consider the importance of quality of life issues as they review the 2010 Budget, including the safety and security of the community and the schools provided by the Police Department and the Highway Department. He said that currently, the Police Department is understaffed and he urged the Board to consider the quality of life before any changes are made long-term, expressing concern that if the Town consolidates with Oneida County, the Town might save Fifty Cents (\$.50) per thousand on assessments but then the County rate increases by Fifty Cents (\$.50) per thousand. Mr. Corr cited the importance of the Town's central dispatch, noting that in a recent motor vehicle accident on Higby Road, 9-1-1 contacted National Grid for assistance as the driver was under the vehicle with hot wires lying around. He doesn't want to see anyone get hurt because enough employees or equipment weren't available.

REPORTS OF TOWN OFFICIALS BY STANDING COMMITTEE CHAIRPERSON

Public Works & Sewers Committee – Councilman Backman:

**Bridge – Elm Street, Chadwicks (BIN 2205890)**

Since the December 30, 2009 Town Board meeting, due to a possible misunderstanding of what the Town might have wanted, Delta has since reduced their engineering costs for replacement of the Elm Street bridge to \$46,000 and should the Town desire extra services, Delta has an hourly rate. Councilman Backman assumed the bridge would be built to 2000 standards and probably state-of-the-art construction. If this revised contract is awarded to Delta tonight, it is possible the project can proceed with competitive bid and construction between the summer school seasons. Thereafter, upon recommendation of the Highway Superintendent, Councilman Backman introduced the following Resolution for adoption and Councilman Reynolds seconded same:

**(RESOLUTION NO. 59 OF 2010)**

**WHEREAS**, the Town Board adopted Resolution No. 323 on December 30, 2009, accepting the Request for Proposal from and awarding the engineering contract to Delta Engineers, Architects and Land Surveyors, PC, Vernon, New York 13476, with regard to

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the replacement of the bridge on Elm Street, Chadwicks, at a cost not to exceed Fifty Thousand Dollars (\$50,000); and

**WHEREAS**, in response to the Town’s selection notification letter dated January 13, 2010 and subsequent conversations, said Delta Engineers, Architects and Land Surveyors, PC, submitted a Project Description, Scope of Services, Time Schedule, Proposal Assumptions, Compensation and miscellaneous matters to provide professional engineering services for this project at a cost not to exceed Forty-six Thousand Dollars (\$46,000);

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board does hereby accept the revised RFP from and award the contract to Delta Engineers, Architects and Land Surveyors, PC, as per their written proposal dated February 5, 2010 at a not-to-exceed amount of Forty-six Thousand Dollars (\$46,000), thereby superseding Resolution No. 323 adopted December 30, 2010; and be it

**FURTHER RESOLVED** that the Town Board does hereby authorize and direct the Town Supervisor to execute the contract between the Town of New Hartford and Delta Engineers, Architects and Land Surveyors, PC, for professional engineering services with regard to replacement of the Elm Street bridge, Chadwicks.

Highway Superintendent Sherman stated that no part of the new bridge would be in the Sauquoit Creek. Delta will provide environmental processing and material testing, data collection and preliminary design, right-of-way services, final design and bidding, construction support and inspection services. The Town Board 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***.

**Arlington Terrace Pump Station**

Councilman Backman reported that bids should be received by February 26, 2010 and ready for award at the March 10, 2010 Town Board meeting.

**Highway Department Report**

Councilman Backman gave the following figures from the Highway Superintendent’s February 8, 2010 report:

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- Miles traveled (snow plows and sanders) - 6,311 miles
- Salt totals – Sanger Public Works Garage - 831.5 ton
- Salt totals – Washington Mills Salt Barn - 350 ton
- Mixed Salt and Sand - both locations - 145 ton.

### **NYSERTA Grant Application**

Councilman Backman referenced a grant application being put together by Highway Superintendent Richard Sherman. The Highway Superintendent stated the grant application is for a three-phase energy conservation project:

- Lighting at the Sanger Public Works Garage
- Furnace at the Sanger Public Works Garage
- Street lighting to replace existing street light lamps with LED lamps thereby gaining a substantial reduction in street light district charges.

Highway Superintendent Sherman will keep the Town up-to-date on this matter.

### **Year-To-Date Usage**

Councilman Backman noted that over one-third (1/3) of the Town's salt supply has been used and its mid-February and the Town needs to consider the weather in March and April. Highway Superintendent Sherman commented that whether it snows one inch (1") or six inches (6"), the same amount of salt is used. Councilman Backman and the Highway Superintendent are working on a salt-sand combination to be used in the hill areas of the Town.

### **Sewers in commercial district (especially with restaurants)**

The Highway Superintendent has obtained some guidelines from Erie County with regard to sewers and the discharge of grease by restaurants and has referred these guidelines to the Town Attorney for his review and possible drafting legislation to control this problem in commercial areas and if unable to control it, how to remediate it.

*[NOTE: Article IV (Grease Trap Operation and Maintenance) of the Town Code, Chapter 98 thereof entitled Sewers, adopted in 2001 might address this problem.]*

Town Clerk Committee – Councilwoman Krupa:

### **Competitive Bids – Bid Specification Deposits transfer from Trust & Agency Account**

Upon information from the Town Clerk, Councilwoman Krupa offered the following Resolution for adoption; seconded by Councilman Woodland:

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**(RESOLUTION NO. 60 OF 2010)**

**WHEREAS**, in August 2009 the Town of New Hartford received bid specification deposits for the New Hartford Office Park Rte 5/5A Highway Improvements project; and

**WHEREAS**, the legal notice stated that the Seventy-five Dollar (\$75) bid specification deposit was a non-refundable fee;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of New Hartford does hereby authorize and direct the Town Bookkeeper to transfer the sum of Three Hundred Dollars (\$300) from the Trust and Agency Account TT641 to the General Fund Whole-Town Account AA1289.0 for deposits received in 2009 from:

- Hanson Aggregates - \$75.00
- Power Line Constructors - \$75.00
- Barrett Paving Materials - \$75.00
- Ocuto Blacktop and Paving - \$75.00.

A roll call vote ensued:

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

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

**Competitive Bids – Refund Bidders for Bid Specification Deposits; transfer “forfeited” deposit from Trust & Agency to General Whole-Town**

Upon information from the Town Clerk, Councilwoman Krupa offered the following Resolution for adoption and Councilman Woodland seconded same:

**(RESOLUTION NO. 61 OF 2010)**

**WHEREAS**, in 2009 the Town of New Hartford received bid specification deposits for the Bituminous Concrete Paving of Woods Highway; and

**WHEREAS**, three (3) prospective bidders had returned the full specifications in accordance with the legal notice and one (1) prospective bidder purchased a second set of specifications and did not return them;

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**NOW, THEREFORE, BE IT RESOLVED** that the New Hartford Town Board does hereby authorize and direct the Town Bookkeeper to issue the following refunds from the Trust and Agency Account to the following bidders on the aforementioned project:

- Barrett Paving Materials Co. - \$20.00
- Hanson Aggregates - \$20.00
- Ocuto Blacktop & Paving Co. - \$20.00

And be it

**FURTHER RESOLVED** that the Town Bookkeeper is hereby authorized and directed to transfer the forfeited amount of Twenty Dollars (\$20) deposited by Hanson Aggregates for a second set of specifications from the Trust and Agency Account TT641 to the General Fund Whole-Town Account AA1289.0.

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***.

***New Regulations – Retirement Reporting & Establish Workday for Retirement***

***Purposes***

Councilwoman Krupa is continuing work on this matter.

**Parks and Recreation Committee – Councilman Reynolds:**

***Railroad Crossing at Washington Mills Athletic Park***

Councilman Reynolds acknowledged receipt of a letter from Town Attorney Cully to the New York Susquehanna & Western Railroad with regard to the railroad charging fees for a railroad crossing at the Athletic Park. Attorney Cully cited an Agreement dated May 1990 with regard to responsibility of normal maintenance of the railroad crossing and signals that he had discussed with Dick Hensel of the railroad, who acknowledged the Town shouldn't have to pay the crossing fees; Mr. Hensel will review this matter with his boss.

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### **52 Slusser Ave – Road/Tree**

With regard to a complaint received by Councilman Reynolds from a resident of 52 Slusser Avenue, the Highway Superintendent responded that he and Working Foreman Christopher Moran had made an on-site inspection and found a small divot in Slusser Avenue where someone might have done something but stated that the Highway Department did not remove any tree in that area; this is no issue involving the Town.

### **REPORTS OF SPECIAL COMMITTEES**

#### **Stormwater Management Improvement (Advisory) Committee**

The next meeting of the Stormwater (Advisory) Committee will commence at 6:00 P.M. on Tuesday, February 23, 2010 in Butler Memorial Hall.

### **MATTERS SUBMITTED BY COUNCILMEN/ATTORNEY**

#### **Councilman Backman:**

#### **Sidewalk plowing in First Ward**

Councilman Backman had discussed with Parks and Recreation Director Michael Jeffery that some sidewalks were not being plowed in the First Ward and that some people are walking in the roads. The Parks and Recreation Director explained that, upon recommendation of the Sidewalk Advisory Committee, the Town Board had adopted a Sidewalk Comprehensive Plan (November 19, 2008), the mission of which was to create a functional sidewalk system within the Town to enhance the quality of life and improve pedestrian safety by using Federal Highway Administration guidelines for route selection and design standards to achieve connectivity and linkages to and between public uses, residential and commercial destinations, while providing maintenance of the sidewalks and enforcement of any regulations related thereto. In this Plan is an explanation of what sidewalks would be plowed and the process people must follow to get a street added to the “plow” list. The Parks and Recreation Director further explained that the Parks and Recreation employees would plow sidewalks during the weekdays only, with the program limited by manpower and with the understanding that no overtime be incurred and that no other Parks and Recreation work would suffer; however, the property owner is ultimately responsible for keeping sidewalks clear of snow and ice (NOTE: Town Code, Chapter 102, Streets and Sidewalks, Article III, Sidewalk Maintenance; adopted 2001). In response to the Town Supervisor’s question, Town Attorney Cully said this could open the Town for liability. The Parks and Recreation Director will forward copies of the Sidewalk Comprehensive Plan to the Town Attorney and Town Board members to familiarize themselves with this Plan.

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### **Status of Donovan Community Center, Elm Street, Chadwicks**

Councilman Backman noted that this facility had been closed to the public and the Animal Control Office had been moved to Sherrillbrook Park. He noted that the late Senator Donovan had arranged for a prison crew to rehabilitate the building, which is in good condition. He questioned what the Town's plans were for this building that had been used by various organizations and residents. After some discussion, it was the Town Board's consensus to form a committee of not more than five (5) individuals to make some recommendations.

### **Update on Kellogg Road Community Center Building**

A BOCES official thought replacing the roof at the Kellogg Road Community Center Building would be a good project for their construction students; however, the Town would need to buy the materials. Options discussed included whether to sell the structure, or to replace the roof using BOCES students and then re-open the building to the public, and whether BOCES students would be able to work with mold remediation. Councilman Backman will submit a report of associated costs. The Alesia & Crewell study indicated the mold could be cleaned up with some topical cleanser and by diverting water away from the building. There is a test that can be done to determine mold and the amount; if 4 sq.ft. or more of mold exists, and then remediation must be done.

### **NYS Superfund Program: DEC "Proposed Remedial Action Plan" in Chadwicks; Public Hearing**

Councilman Backman announced that the NYS Department of Environmental Conservation will conduct a Public Hearing to commence at 7:00 P.M. on Thursday, February 25, 2010 in the American Legion Post 1000, 3454 Oneida Street, Chadwicks to address contamination related to the 3456 Oneida Street Site (fka Central Steel) and remediation of construction and demolition (C&D) debris, Polychlorinated Biphenyls (PCBs), Semi-volatile Organic Compounds (SVOCs) and metals.

### **Business Park Bond Status**

There are some overcharges and the Town Supervisor is putting a report together.

### **Higby Road Water District – Lewis Property, Sessions Road**

Councilman Backman said he was on the Town Board at the time the Higby Road Water District was created and he and then-Supervisor Humphreys knew what the intent was. However; some property owners had been included when they shouldn't have and vice versa; refunds were granted where applicable. A report and list of recommendations came forth and which included the Martin & Gail Lewis property on Sessions Road. The Lewis' owned one (1) parcel for their residence and are being charged 1 EDU, but they own another parcel (rental) upon which three (3) homes are situated and he's being charged 3 EDUs even though the Mohawk Valley Water Authority will only allow one (1) water service to this rental property. After further discussion, Councilman Reynolds

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and Councilwoman Krupa acknowledged that the past Town Board had reviewed the report and recommendations and made no changes with regard to the Lewis property. Councilman Backman and Councilwoman Krupa will work on this and meet with Mr. Lewis; the matter will be placed on the Agenda for the March 10, 2010 Town Board meeting.

Councilman Reynolds:

### **Jordan Road-Glen Street drainage, paper street**

Councilman Reynolds asked Attorney Cully for his report on a “paper” street between Jordan Road and Glen Street. Attorney Cully reported that the “paper” street had never been accepted as a public road by any municipality and is actually owned by William Morris and is private property. The Town Attorney will explain the situation in writing with copies to be provided to the Messrs. Dean Kelly and Kenneth Circelli, adjacent property owners.

Town Attorney:

### **Competitive Bid (2009): Sanitary Sewer Replacement on Route 5A; Sanitary Sewer Relocation on Jordan Road - Sewer & Stormwater Easement on Pauley Property**

As a result of meeting(s) with former Town Attorney Gerald Green and Highway Superintendent Richard Sherman, Attorney David Rapke forwarded to Town Attorney Cully a proposed stormwater and sewer easement for work to be performed on the Theresa Pauley property located at ½ Jordan Road. The easement would give the Town the right to construct and install Town sewer lines and underground drainage pipe across a portion of her property and would require the Town to restore the property to its condition prior to construction, including groundcover, nine (9) foot blue spruce trees and reinstallation of any stone pillars removed during the course of construction, among other stipulations. Highway/Sewer Superintendent Sherman said this is part of the 2-phase sewer project for the Commercial Drive & Jordan Road areas. The relocation of the existing sewer line will eliminate stormwater run-off from flooding and popping the sewer manhole cover in Jordan Road; each time this occurs, the Town must notify the NYS Department of Environmental Conservation. Ms. Pauley wants the Town to pay \$150 in attorney fees and she reserves the right to approve the number of trees once the contractor and landscaper meets with her about the placement of the blue spruce trees. Councilman Reynolds offered the following Resolution for adoption; seconded by Supervisor Tyksinski:

### **(RESOLUTION NO. 62 OF 2010)**

**RESOLVED** that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute the Sewer and Stormwater Easement

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between Theresa Pauley, ½ Jordan Road, New Hartford, NY and the Town of New Hartford, NY as same relates to the “Sanitary Sewer Relocation on Jordan Road” project conditioned upon the following:

- The Town would plant nine foot (9’) blue spruce trees, instead of the six foot (6’) trees originally proposed, and
- The Town would not disturb the stone pillars during construction.

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

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

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

**MATTERS SUBMITTED BY TOWN SUPERVISOR**

Financial and other routine reports:

**Audit of Vouchers**

Councilman Woodland presented the following Resolution for adoption; seconded by Councilman Backman:

**(RESOLUTION NO. 63 OF 2010)**

**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:

Fire District Abstract #2	
Voucher SF2	\$ 14,711.25
Street Lighting Abstract #2	
Voucher SL3	\$ 9,593.83
Highway Fund Part-Town Abstract #2	
Voucher DB1	\$ 1,992.84
General Fund Part-Town Abstract #2	
Vouchers BB6-BB19	\$ 7,131.62
General Fund Whole-Town Abstract # 3	
Vouchers DB4-DB76	\$ 210,166.33

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General Fund Whole-Town Abstract #2 Voucher AA33	\$ 640.03
General Fund Whole-Town Abstract #3 Vouchers AA34-AA39	\$ 1,520.45
General Fund Whole-Town Abstract #4 Vouchers AA42-AA48	\$ 25,947.70
General Fund Whole-Town Abstract #5 Vouchers AA49-132; AA134AA152	\$ 223,797.72
General Fund Whole-Town Abstract #6 Vouchers AA154-AA156	\$ 242.87
General Fund Whole-Town Police Abstract #2 Vouchers BP17-BP25; BP27-BP39	\$ 52,025.55
General Police Fund Whole-Town Abstract #3 Voucher BP26	\$ 299.70
Sewer Fund Abstract #2 Voucher SS3	\$ 1,556.44
Sewer Fund Abstract #3 Voucher SS4-SS10	<u>\$126,312.63</u>
TOTAL:	<b>\$675,938.96</b>

Upon roll call, the Board members voted as follows:

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

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

**Pre-Development Agreements – Fees In Lieu of Mitigation (FILM) 2010**

The Town Supervisor reported he is still working on this report that would include fees needed to be paid out by December 31, 2009 had been utilized by December 31, 2009. He is now working to categorize these expenditures and get them in the correct categories.

**2010 Annual Budget**

Supervisor Tyksinski asked the Council members to look at the various committees and to review the budget.

**Unfinished Business:**

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**Letter from Glens Falls Attorney (Pre-Development Agreements, Fees In Lieu of Mitigation (FILM))**

The Town Board discussed a Freedom of Information (FOIL) request for a copy of the opinion letter received from the Glens Falls law firm of *Miller, Mannix, Schachner & Hafner, LLC* with regard to what can be done with FILM. Town Attorney Cully explained that this letter was a document prepared based upon attorney-client relationship with the expectation if a lawsuit were to be filed, the Town stands by the opinion letter. However, the Town Board does have the right to waive that privilege if they wish; and if so, the document is "FOIL able". Town Board members had been provided copies of the letter. Councilwoman Krupa expressed concern that if this letter were to be disclosed to the general public, would the Town disadvantage itself. Councilman Backman said if the 2010 money has truly been spent and accounted for, he had no problem releasing the attorney's letter; but if there were any question whatsoever about the 2010 money (to have been spent by December 31, 2009), he would not support release of the letter. Supervisor Tyksinski noted that the Bookkeeper is busy with other projects but he can assure the Board that the money has been spent and he's putting together a report. The Town Supervisor was of the opinion that once the report has been completed, that a copy of the report be released to people owed refunds. Town Attorney Cully agrees with the opinion of the Glens Falls attorney; he doesn't see anything earth shattering....it's contract law ....contracts speak for themselves, he said, adding that the Town didn't do anything they wouldn't have without the opinion. The Supervisor said if there's an amount not spent, it would be minimal. Supervisor Tyksinski then offered the following Resolution for adoption; seconded by Councilman Reynolds:

**(RESOLUTION NO. 64 OF 2010)\*defeated**

**RESOLVED** that, in response to a Freedom of Information request, the New Hartford Town Board does hereby authorize and direct the release of an opinion letter received in Autumn 2009 from the law firm of *Miller, Mannix, Schachner & Hafner, LLC*, Glens Falls, New York with regard to the Town's Pre-Development Agreements and Fees In Lieu of Mitigation (FILM).

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

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

The Resolution was declared **DEFEATED** and tabled until the next Town Board meeting.

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New Business:

**Contract - ISSYS**

Supervisor Tyksinski said additional time is needed to review this contract.

**Agreement - ACS Government Systems, Inc.**

Supervisor Tyksinski offered the following Resolution for adoption; seconded by Councilman Backman:

**(RESOLUTION NO. 65 OF 2010)**

**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 an Agreement between said Town and ACS Government Systems, Inc. for customer support relating to the Town's budgeting, payroll and fixed assets programs, at a cost of \$6,881.33.

The 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**.

**Police Commission - Abolish**

Supervisor Tyksinski stated that over the past couple days while looking into the process of appointing a police chief to replace retiring Chief Raymond Philo, Town Attorney Cully reviewed NYS Town Law, Article 10, Section 150 that explains the Town Board's authority to establish a town police department and to appoint a police chief and such officers and patrolmen as may be needed and to fix their compensation. Section 150 further explained that a town board which established a police department by resolution may also establish a board of police commissioners and appoint one (1) or three (3) police commissioners which can be done in different ways – statute after that says the board of police commissioners can be amended to five (5) members, which was basically done in New Hartford in June 2000. The town board may also by resolution designate the Town Supervisor as police commissioner, and when so designated, the Town Supervisor shall have all the powers of and perform the duties of such board of police commissioners. Further, when either of such boards of police commissioners have been established or Supervisor designated as police commissioner, such board of police commissioners or police commissioner shall have and exercise all the powers relative to

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police matters conferred upon the town board pursuant to Article 10 of the Town Law. The town board may by resolution at any time abolish such police commission or revoke the designation of such Supervisor as police commissioner and thereupon the town board only shall exercise the powers conferred upon it by Article 10, including the right to appoint police personnel. Town Attorney Cully verified with the New York State Association of Towns that once a police commission is established, the police commission has full powers, including the power to select a police chief. In March 1983, the Town Board adopted Resolution No. 75 accepting and approving the charter responsibility of the police chief. Subsequently, a resolution was adopted in October 1984 (No. 292) with regard to the Village of New Hartford holding a referendum to abolish the Village Police Department; and the Town would operate a police department and the Town Board would establish a police commission in accordance with Section 150 of Town Law. Attorney Cully stated, ...so now what were the duties and responsibilities of the police commission; this is where the problem comes in. Once the Town Board established by resolution the police commission said commission has all rights that the Town Board would have had. The Town Board cannot limit the police commission's authority; if the police commission had been established by local law in 1984, their powers could have been restricted but that wasn't the case. In 2000 a set of by-laws refers to the New Hartford Police Commission charter that was adopted April 26, 2000. Attorney Cully stated that the bottom line is we sit here today, it appears without any doubt that the decision relating to appointment of a new police chief would lie with the police commission.

Supervisor Tyksinski addressed the Board, saying we cannot sit here like other Town Boards did and sign a form that would be in violation of law and union negotiations. The Town Supervisor then introduced the following Resolution for adoption; seconded by Councilwoman Krupa:

### **(RESOLUTION NO. 66 OF 2010)**

**WHEREAS**, the New Hartford Town Board by Resolution No. 292 in 1984 did establish a Board of Police Commissioners pursuant to Section 150 of the Town Law of the State of New York; and

**WHEREAS**, the Town Board of the Town of New Hartford does desire to maintain direct responsibility for supervision of the New Hartford Police Department; it is

**RESOLVED** that the Board of Police Commissioners, also known as the New Hartford Municipal Police Commission, be and it hereby is **DISSOLVED** effective February 11, 2010 and that the New Hartford Town Board will assume all responsibilities set forth in Town Law Section 150.

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Discussion ensued. New Hartford Mayor Donald Ryan noted that the Village of New Hartford adopted Local Law No. 1 of 1983 turning over the village police department and protection to the Town of New Hartford and that a police commission would run the town police department. He asked that the Town Board take this into consideration before abolishing the police commission. At that time it was the intention of a police commission to act as a buffer between the municipal board and the police department and to determine the needs of the department and field any complaints and avoid lawsuits. Don would like to look at this further before the town votes on a position like this. The 1983 Village of New Hartford referendum refers to the Village's local law that said the police department would be operated by a police commission.

Patrick Cardinale, Chairman of the Police Commission, agreed with Village Mayor Ryan and asked the Town Board not to rush into this but to look at it historically before any decision is made to abolish the police commission. He gave the Town Attorney a copy of a Memorandum of Understanding dated 1982 that appeared to be signed by William Keiser III/Trustee Police Commissioner, wherein parties agreed to contract and establish a police department before February 1, 1983 and look at a consolidation project to be done by January 1, 1984 and not reduce patrols in the village. The Memorandum of Understanding was good until December 31, 1983 unless otherwise prior termination notice was given.

Rodger Reynolds, a former Village Trustee, also stated it was the intent of the Village of New Hartford to operate the police department by a police commission.

Councilwoman Krupa questioned that the police commission, non-elected persons, have the power to appoint the police chief and other officers and set their salaries. Town Attorney Cully reiterated that if the police commission had not been established by a Local Law, then the police commission has full authority to appoint a chief and officers, set salaries and negotiate contracts. So why is the Town Board even trying to negotiate union contractors when their power has been given to the police commission.

Councilman Reynolds believed the police commission provided a balance – a buffer – between the police department and town board; if we want to modify the police commission, the Town Board would have to do it by local law. Attorney Cully clarified that the Town Board would have to abolish the police commission first and then adopt a local law to create a police commission and limit the duties. Councilman Reynolds believes a group should sit down and meet with the police commissions and table this tonight.

Town Supervisor Tyksinski said, we're good people not the bad guys; I'm tired of hearing a buffer is needed. He said the Board would hear two (2) additional comments from the public. Newly appointed Police Commissioner David W. Butler expressed

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concern with the rush that happened within 48 hours; sounds like documentation the Village has that might shed light on the consolidation should be reviewed; the Police Chief is not retiring until March 2010. The Town Attorney said that the Town Board wants to discuss appointment of an acting police chief, an interim police chief but he must tell the Town Board they have no authority. Supervisor Tyksinski responded to Councilman Reynolds that this police contract (union) has been pending since December 31, 2008 and that he considers this an urgent matter; we don't have the luxury of waiting.

Edmund Wiatr, Jr. said he has a Town Board and Councilwoman Krupa to represent him and that he doesn't want a police commission that would have the authority of a town board.

Councilman Reynolds commented that we're not the bad guys and neither is the Police Commission; what the Police Commission has proposed is an interim police chief and unless there's some objection, there is no need to abolish the Police Commission tonight. He believes representatives from both boards need to meet. I have faith in them, and the Town Board just appointed a new commissioner and he believes the commission should be kept in tact until there is a much clearer understanding of where we're going. The Town Supervisor said the Town Board couldn't change (Town Law) Section 150. Councilwoman Krupa reiterated her concern that the police commission has the authority to control the salaries and everything, but Councilman Reynolds said nobody knew about this until today and it's not right.

The Town Attorney then read a 1959 opinion of the State Comptroller with regard to this matter. No further comment having been received, the Town Supervisor polled the Board members who voted as follows:

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

The Resolution was declared carried and duly **ADOPTED** and the New Hartford Police Commission **ABOLISHED effective February 11, 2010.**

**Proposed Police Advisory Committee**

Discussion followed on creating a police advisory committee to consist of the members of the former police commission and/or a search committee to consist of Patrick Cardinale (former Chairman of the Police Commission), David W. Butler (former Police Commissioner), Donald Ryan (New Hartford Village Mayor), and Town Board members

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Christine Krupa and Richard Woodland. Action was withheld until the February 24, 2010 Town Board meeting.

**EXECUTIVE SESSION**

Supervisor Tyksinski introduced the following Resolution for adoption and Councilwoman Krupa seconded same:

**(RESOLUTION NO. 67 OF 2010)**

**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 Police Chief.

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 8:37 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

\* \* \* \* \*

The Town Attorney provided the following transcription on Wednesday, February 24, 2010.

**END OF EXECUTIVE SESSION**

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

**(RESOLUTION NO. 68 OF 2010)**

**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 9:04 P.M. The regular portion of the Town Board meeting was immediately reconvened and the public invited to rejoin the meeting.

**Appointment of Acting Police Chief**

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

**(RESOLUTION NO. 69 OF 2010)**

**RESOLVED** that the New Hartford Town Board does hereby ratify the Police Commission Resolution of February 8, 2010 appointing Timothy O'Neill as Acting Police Chief, effective March 14, 2010.

The Supervisor polled the Town Board members who 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***.

**ADJOURNMENT**

There being no further business to come before the Town Board, upon motion of Councilman Backman and duly seconded by Councilwoman Krupa, the meeting was adjourned at 9:07 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk