

REGULAR meeting of the Hornell Common Council was held on Tuesday, Nov. 23, 2004, at 7 p.m. in Council Chambers, 82 Main St., Hornell, N.Y.

PRESENT: Honorable Shawn D. Hogan, Mayor; Aldermen Flaitz, Koehler, Norton, Testani, Shepard, Lewis and W. Hogan; City Attorney Joseph Pelych; and City Clerk Robert J. Roberts.

ALSO PRESENT: Kyle Torok of The Evening Tribune; Bill Dubensky of WLEA radio station; the Rev. Mike Childs of First Baptist Church; Fred Tarantino of 177 River St.; and Hornell High School students Kori Dunn, Briana Dunn and Jaime Wilson.

ABSENT: Aldermen Sciotti, Foreman and Smith, and Stenographer Karen Schu.

INVOCATION: The Rev. Mike Childs of First Baptist Church.

PLEDGE TO THE FLAG: Alderman Norton.

By Shepard/W. Hogan:

RESOLVED, that the minutes of the last meeting, held Nov. 8, 2004, be approved as read.

Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

By Flaitz/Norton:

RESOLVED, that the Reports of Officers be accepted and placed on file.

Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

REPORTS OF COMMITTEES:

Nov. 18. 2004

TO: The Honorable Shawn D. Hogan, Mayor
And Members of the Common Council

Ladies and Gentlemen:

The Audit Committee met on Wednesday, Nov. 17, 2004, at 7:00 p.m. Members present were Jean Shepard, Joseph Testani and Christopher Koehler, Chairman.

Bills audited and approved:

CC		\$278,171.10
CD		22,330.94
	PAYROLL	<u>84,065.01</u>
	TOTAL	\$384,567.05

Respectfully submitted,
Christopher Koehler, Chairman
Audit Committee

By Shepard/Flaitz:

RESOLVED, that the Reports of Committees be accepted and placed on file.
Carried – Ayes all (7)
Absent – Aldermen Sciotti, Foreman, Smith (3)

RESOLUTIONS:

#1 – CANCEL TAXES ON 211 SEYMOUR ST. – HN-04-68

By Flaitz/Koehler:

WHEREAS, Blue Moon Capital has deeded property located at 211 Seymour St., Hornell, N.Y., to the City of Hornell;

NOW, THEREFORE, BE IT RESOLVED that the 1999 and the 2001 City taxes levied against said property in the amount of \$829.49 be hereby canceled.

1999 -- \$405.63

2001 -- 423.86

Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

ON THE QUESTION: Mayor Hogan said the Seymour Street house was one of three properties acquired from Blue Moon Capital. The properties at 437 S. Division St. and at 78-80 will be razed, the mayor said, but “the jury still is out on 211 Seymour St.”

#2 – WAIVE AGENDA –HN-04-69

By Hogan/Norton:

RESOLVED, that the Common Council waive the agenda in order to discuss a resolution regarding a purchase agreement for 187-189 Main St., Hornell, N.Y.

Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

#3 – AUTHORIZE MAYOR TO NEGOTIATE PURCHASE PRICE FOR 187-189 MAIN ST. – HN-04-70

By W. Hogan/Koehler:

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Hornell authorize Mayor Shawn D. Hogan to negotiate a purchase price for the property at 187-189 Main St., Hornell, N.Y., and to execute documents necessary to effectuate the sale.

Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

ON THE QUESTION: Mayor Hogan said this property might be sold by the City of Hornell to facilitate a new retail business at an adjoining property. Alderman Koehler asked if the business could be identified, but Mayor Hogan said it is unknown what the status of negotiations is with the owners of the other property in what is a private real estate transaction. The City of Hornell will have final site plan approval of any business that opens there.

PETITIONS: None

CLAIMS:

By Shepard/Koehler:

NOW, THEREFORE, BE IT RESOLVED, that claims in the amount of \$384,567.05, as audited by the Audit Committee of the Common Council of the City of Hornell, be approved and authorized paid as audited.

Common Council	\$278,171.10
CD	\$ 22,330.94
Payrolls	<u>\$ 84,065.01</u>

TOTAL	\$384,567.05
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Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

NEW & UNFINISHED BUSINESS:

- Alderwoman Shepard asked what could be done about a recurring situation where cars illegally cross the double-line on Main Street in order to park on the other side. Mayor Hogan said he would meet with Police Chief Crowe and ask him to make his officers aware of the problem.
- Fred Tarantino, of 177 River St., Hornell, N.Y., read the following statement to the Common Council:

To: The Administration of the City of Hornell, including the Mayor, all aldermen, city attorney, code enforcement officer, and all other interested parties.

Subject: Illegality and unenforceability of local laws pertaining to rental properties.

In the last two years, I have received several letters from the code enforcement officer referring to local laws §120-1.B(3) and 120-1B(4), for which compliance is required before the locally required inspections and certificates of occupancy can be issued by the City as a precondition for renting residential property. Furthermore, these letters threaten that if in violation of these laws, an existing certificate of occupancy can be revoked.

Having worked for the government for over 38 years, I brought these laws to the attention of a number of agencies, including the American Civil Liberties Union, the Monroe Housing Council, the New York State Division of Housing, the New York State Office of the Superintendent of Insurance, and the office of the New York State Attorney General. The consensus was that these local laws will never withstand a legal challenge because of the following:

- 1) Insurance is not required and a property owner may choose not to insure his property. The only people that have a right to be named in an insurance policy that can require insurance are those having an ownership interest, such as a mortgage company.
- 2) No one can be required to relinquish or delegate any rights to his or her property by designating a local agent if he or she is a non-resident of the City of Hornell. Furthermore, this would be discriminatory to non-city residents, which would again be illegal.

On the subject of inspections, attached please find a copy of a municipal bulletin, entitled "Report from Counsel's Corner." About halfway down on the third column, please note the case of *Sokolov v. Village of Freeport*, with case reference on page two. This was brought before the highest court in New York State, the state Court of Appeals. The Court found that required inspections and rental (occupancy) permits (certificates) violate the Fourth Amendment as they coerce property owners into a search without a search warrant, foregoing rights guaranteed under the Constitution. Therefore, the rental permit ordinance could not condition the permit upon a search which was not voluntary.

On page two, about two-thirds down column one, please note the case of *Pashcow*, with case reference in the third column, stating that penalty provisions may not be applied in such a manner as to render the owner's ability to collect rents conditional upon consent of a warrantless entry or to fine the owner for renting the apartment prior to the inspection. Again, on

page two near the top of the second column, please note in *People v. Rosenthal* that the tenant's consent was found not sufficient to allow the legal inspection of property for housing code violations, as the Court found that the tenant could not legally consent to a search of property personal to the landlord. Continuing a bit farther, there is reference to the Court of Appeals' use of the term "owner's consent" in *Sokolov*.

The Court of Appeals' ruling in *Sokolov*, of course, renders the two latest local laws on insurance and appointing a local agent for out-of-town owners worthless since inspections and occupancy certificates cannot be required by the municipality as conditions for renting property.

The purpose of this submittal to the City of Hornell is to make you aware of the above rulings in case they have been missed by the City Attorney, eliminating the reasoning that the City was unaware of these rulings and acted in good conscience. Hopefully, these violations of civil rights can be corrected and these local laws will be repealed. If they persist, then this notice will serve to open the door for legal expenses, punitive damages, loss of rental income, loss of market value of rental properties, over-assessments, etc., in a class-action lawsuit by an out-of-town law firm, which we hope can be avoided.

Finally, it is recommended that since the code enforcement office can still be beneficial in voluntary inspections and cases of blatant, dangerous disrepair, that the existing staff and hours be cut down to a part-time job for one person to reflect the diminished need for that office and save the taxpayers of Hornell money in unnecessary city expenses.

Sincerely,

Frederick Tarantino

City Attorney Pelych advised the Mayor and the Common Council not to discuss the issues raised by Tarantino, because of the threat of legal action.

- Alderman W. Hogan asked for an update on the former city property acquired by ServeU (formerly Steuben Educators Federal Credit Union). Mayor Hogan and City Attorney Joseph Pelych said the project is in Phase II, and that information that is more specific can be obtained.

By Shepard/Flaitz:

RESOLVED, that the Common Council adjourn at 7:30 p.m.

Carried – Ayes all (7)

Absent – Aldermen Sciotti, Foreman, Smith (3)

Shawn D. Hogan
Mayor

Robert J. Roberts
City Clerk