

Seneca County Board of Supervisors  
Regular Meeting  
Three Bears Courthouse, Ovid, NY  
September 25, 2007  
7:00 p.m.

Call to Order

Chairman Barto called the meeting to order at 7:07 p.m.

Pledge of Allegiance and Moment of Silence

Roll Call of Members by the Clerk

All members of the Board of Supervisors answered roll call.

Public Hearing

Proposed Local Law No. D of the County of Seneca for the year 2007, authorizing corrections officers employed by the County of Seneca to reside in Seneca county or any adjoining county within New York State. Mr. Mooney made a motion to open the floor for public comment. Mr. Robinson seconded the motion. The motion carried. No public comments were offered. Mr. Smith made a motion to close the public hearing. Mr. Same seconded the motion. The motion was carried.

Petitioner

Chairman Barto recognized Don McMann, who spoke regarding the issue of residency on the grounds of the Finger Lakes Airport. Mr. McMann's home is at the airport. He asked the Board to allow him the opportunity to develop a proposal that would allow his continued residency at the airport. A copy of Mr. McMann's comments was filed with the Office of the Clerk to the Board of Supervisors.

Reports of Standing Committees

Mental Health Services Committee – Mrs. Amidon, Chair, reported on the success of the Annual Youth Bureau Golf Tournament fundraiser. Over \$7,000 was raised. This money is used for programs that benefit the youth if Seneca County. Mrs. Amidon also announced the Fall Harvest Week event to be held on October 6 at the Seneca County Fairgrounds. The event is sponsored by Seneca County Cornell Cooperative Extension.

Public Works Committee – Mr. Davidson, Chairman, reported that the committee recommended board resolutions to approve carpet replacement for the courthouse and Temporary Assistance, and to award the bid to Elmer Davis for the roof replacement for the courthouse.

Human Services Committee – Mr. Mooney, Chairman, reported that the committee recommended board approval for appointment to the Workforce Investment Board and for the Board Chairman to sign an Agreement with Finger Lakes Health Systems Agency to secure services required for Point of Entry.

Native American Affairs Committee – Dr. Dresser, Chairman, reported that the committee voted to change the name of the committee to Indian Affairs Committee and board approval by resolution was requested. Dr. Dresser stated that the two letters to Governor Spitzer were mailed and that Senator Nozzolio acknowledged receipt of copies of the letters. One letter requested the enforcement of the collection of sales tax made on sales to non-Indian consumers from Indian businesses, and the second letter requested written assurance from the Governor that the state would not negotiate with the Cayuga tribe for a Class III casino over the objection of Seneca County or Cayuga County. Dr. Dresser also distributed copies of resolutions passed by the NYSAC Native American Affairs & Gaming Committee.

Public Health Services Committee – Mr. Lafler, Chairman, reported that the committee recommended board authorization by resolution for Chairman Barto to sign a contract with First Steps Early Intervention Services.

Planning, Development, Agriculture & Tourism Committee – Mr. Kaiser, Chairman, reported that the committee recommended board approval by resolution to amend the Economic Development & Planning budget to account for \$5,000 grant money from room tax revenue for tourism.

Finance, Assessment & Insurance Committee – Mr. Anglim, Chairman, reported that the committee received a copy of the draft budget for 2008, and the committee recommended board approval by resolution for a budget transfer to cover overages in the Sheriff's budget.

#### Chairman's Remarks

Chairman Barto's remarks focused on the study by NYS Commission on Local Government Efficiency and Competitiveness to streamline local governments. A portion of his remarks are included herein.

I am now pleased to report that the study group in question, the, has released its report, containing approximately 150 ideas for counties to consider as ways to reduce the size and cost of local government.

The Seneca County Board of Supervisors will continue to review the recommendations and look for ways to implement those that might be appropriate in our county. Not every recommendation will work in every county, of course. However, some of the initiatives identified by our county have been listed in the state report as worthy of further action, including:

- \* Countywide Highway Services/Equipment: Evaluating options for sharing highway services and equipment among the municipalities and county;
- \* Countywide Code Enforcement: Studying potential for consolidating municipal code enforcement and zoning at the county level.

You have my word, on behalf of the Board, that we will continue this fight to present new ideas to cut costs and improve services for everyone in Seneca County.

A copy of Chairman Barto's complete remarks was filed with the Office of the Clerk to the Board of Supervisors.

#### County Manager's Remarks

Ms. Secor announced that the demolition of the Parson's house would be September 29, 2007. She said the Seneca County Highway Department would be on scene to set-up safety zones and the county engineer would be on scene as well. Ms. Secor recognized the Seneca Meadows for accepting the asbestos debris free of charge.

#### County Attorney's Remarks

Mr. Getman announced that he and the attorney for the Friends of the Three Bears have finalized a draft lease to transfer operation of the historic building to the Friends of the Three Bears. Mr. Getman also congratulated Dan and Phyllis Motill, residents of Ovid, for their hard work on behalf of the Friends of the Three Bears.

#### Communications

The following communications were received and filed:

202. From NYS Office of Homeland Security, a copy of a fully executed agreement between Seneca County and the NYS Office of Homeland Security (OHS) for Weapons of Mass Destruction (WMD) Equipment Grant Contract.

203. From NYSAC, notice regarding a webinar on the Middle Class STAR Rebate Program, September 27 at 11:00 a.m.

204. A copy of minutes from the Seneca County Planning Board meeting on August 9, 2007.

205. A copy of minutes from Western Finger Lakes Solid Waste Management Authority meeting on June 25, 2007.

206. A copy of minutes from the Seneca County Soil & Water Conservation District meetings on May 21, 2007 and June 25, 2007.

207. A copy of minutes from the Seneca County Industrial Development Agency meeting on August 2, 2007

208. A copy of minutes from the Western Finger Lakes Solid Waste Management Authority meeting on August 20, 2007.

The following communication was received and referred to the Public Safety Committee:

209. From NYS Department of State, information and documentation regarding the allocation of funds to Seneca County for reimbursement of certain Wireless 911 services for 2007 – 2008 under the Local Enhanced Wireless 911 Program.

Resolutions and Motions

**TREASURER AUTHORIZED TO AMEND 2007 SENECA COUNTY BUDGET FOR  
PROPERTY ASSESSMENT GRANTS**

RESOLUTION NO. 241-07, moved by Mr. Anglim, seconded by Mr. Same and unanimously adopted by 750 ayes.

WHEREAS, the Board of Supervisors adopted Resolution 169-07 on July 10, 2007 accepting a \$110,000 grant contract with the New York State Office of Real Property Services for the purpose of developing the eParcel Data Hub; and

WHEREAS, the Board of Supervisors also adopted Resolution 170-07 on July 10, 2007 accepting a \$105,000 grant contract with the New York State Office of Real Property Services to provide greater accessibility of property assessment data to the public through a Seneca County website; and

WHEREAS, a budget amendment is necessary to process payment and submit for reimbursement; now, therefore be it

RESOLVED, the Seneca County Treasurer is hereby authorized and directed to amend the 2007 Seneca County Budget as follows:

Real Property Tax Office:

Add 1355.4281 Tax Software Grants: + \$215,000

Add Revenue Account 10-3193-3095: Tax Software Grants + \$215,000

**SUPERVISORS AUTHORIZE APPROPRIATION OF FUNDS AND TREASURER  
AUTHORIZED TO AMEND 2007 ECONOMIC DEVELOPMENT AND PLANNING TOURISM  
BUDGET – RE: LOCAL MATCHING FUNDS PROGRAM**

RESOLUTION NO. 242-07, moved by Mr. Kaiser, seconded by Mr. Shipley and unanimously adopted by 750 ayes.

WHEREAS, the Seneca County Advisory Committee on Tourism (SCACOT) and the Seneca County Chamber of Commerce Tourism Committee support and recommend appropriating \$5,000 from the room tax dollars for a new matching grant program with funds to be matched by local tourism entities and businesses based on guidelines established by the two committees; now, therefore be it

RESOLVED, that the Seneca County Board of Supervisors does hereby approve the appropriation of \$5,000 from unallocated room tax dollars to the Seneca County Tourism Account #8021-4281- local matching grants for a new local matching grant program; and be it

FURTHER RESOLVED, that the Seneca County Treasurer is hereby authorized and directed to amend the 2007 Seneca County Economic Development Publicity & Tourism budget as follows:

Create and add account 8021.4281- local matching grants - \$5,000

Increase revenue account 1113 - County Occupancy Tax - \$5,000

**RESOLUTION AUTHORIZING ADOPTION BY THE BOARD OF SUPERVISORS OF THE  
COUNTY OF SENECA OF LOCAL LAW NO. 7 OF THE YEAR 2007**

RESOLUTION NO. 243-07, moved by Mr. Kaiser, seconded by Mr. Shipley and unanimously adopted by 750 ayes.

WHEREAS, a resolution was duly adopted by the Board of Supervisors of the County of Seneca for a Public Hearing to be held by said County on September 11, 2007 at 7:00 pm at THE SENECA COUNTY OFFICE BUILDING, ONE DIPRONIO DRIVE, WATERLOO, NY 13165 to hear all interested parties on a proposed Local Law entitled "A LOCAL LAW EXTENDING AND AMENDING SENECA COUNTY HOTEL OR MOTEL ROOM OCCUPANCY TAX LAW"; and

WHEREAS, notice of said public hearing was duly advertised in the official newspaper(s) of the County of Seneca; and

WHEREAS, said public hearing was duly held on September 11, 2007 at 7:00 pm at THE SENECA COUNTY OFFICE BUILDING, ONE DIPRONIO DRIVE, WATERLOO, NY 13165 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 Board of Supervisors of the County of Seneca, after due deliberation, finds it in the best interests of the County of Seneca to adopt said Local Law;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of Seneca hereby adopts said Local Law No. 7 of the year 2007 as follows:

**SECTION 1. SHORT TITLE**

This local law shall be known as the Seneca County Hotel or Motel Room Occupancy Tax.

**SECTION 2. INTENT**

The intent of this local law shall be to promote Seneca County in order to increase convention, trade show and tourist business in the County.

**SECTION 3. TEXT**

1. Definitions
2. Imposition of Tax
3. Transitional Provisions
4. Exempt Organizations
5. Territorial Limitations
6. Registration
7. Administration and Collection
8. Records to be Kept
9. Returns

10. Payment of Tax
  11. Determination of Tax
  12. Disposition of Revenues
  13. Refunds
  14. Reserves
  15. Remedies Exclusive
  16. Proceedings to Recover Tax
  17. General Powers of the Treasurer
  18. Administration of Oaths
  19. Reference to Tax
  20. Penalties and Interest
  21. Returns to be Secret
  22. Notices and Limitations of Time
  23. Separability
1. DEFINITIONS.

When used in this local law, the following terms shall mean:

(a) Person. An individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) Operator. Any person operating a hotel or motel in the County of Seneca, including but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or motel.

(c) Hotel. A building or portion of it, which is regularly used and kept open as such for the lodging of guests. The term "hotel" or "motel" includes an apartment hotel, motor court or inn, boarding house or club, or similar hotel or motel type of accommodations by whatever name designated, whether or not meals are served and shall include those facilities commonly known as "bed and breakfast" and "tourist" facilities.

(d) Occupancy. The use or possession, or the right to use or possession of any room in a hotel or motel.

(e) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

(f) Permanent Resident. Any occupant of any room or rooms in a hotel or motel for at least thirty (30) consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

(g) Rent. The consideration received for occupancy valued in money, whether received in money or otherwise.

(h) Room. Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for or let out for any purpose other than a place of assembly.

(i) Return. Any return filed or required to be filed as herein provided.

(j) Treasurer. The Treasurer of Seneca County.

## 2. IMPOSITION OF TAX.

On and after December 8, 2007, there is hereby imposed and there shall be paid a tax of three percent (3%) upon the rent for every occupancy of any room or rooms in a hotel, motel, or bed and breakfast in the County except that the tax shall not be imposed upon (1) permanent resident, or (2) exempt organizations as hereinafter set forth.

## 3 TRANSITIONAL PROVISIONS.

The tax imposed by this local law shall be paid upon any occupancy on and after December 8, 2007, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly, or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after December 8, 2007.

## 4 EXEMPT ORGANIZATIONS.

(a) Except as otherwise provided in this section, any use or occupancy by any of the following shall not be subject to the tax imposed by this local law.

(1) The State of New York or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) improvement districts or political subdivisions of the State;

(2) The United States of America, or any of its agencies and instrumentalities, insofar as it is immune from taxation;

(3) Any corporation, association, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable or educational purposes or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

(b) Where any organization described in paragraph (3) of subdivision (a) of this subdivision carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel or motel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

#### 5. TERRITORIAL LIMITATIONS.

The tax imposed by this local law shall apply only within the territorial limits of the County of Seneca.

#### 6. REGISTRATION.

Within ten (10) days after the effective date of this local law, or in the case of operators commencing business after such effective date, within three (3) days after such commencement or opening, every operator shall file with the Treasurer a certificate of registration in a form prescribed by the Treasurer. The Treasurer shall within five (5) days after such registration issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof for each additional hotel or motel of such operator. Each certificate or duplicate shall state the hotel or motel of which it is applicable. Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Treasurer upon the cessation of business at the hotel or motel named or upon its sale or transfer.

#### 7. ADMINISTRATION AND COLLECTION.

(a) The tax imposed by this local law shall be administered and collected by the Treasurer or other fiscal officers of the County as he may designate by such means and in such manner as are other taxes which are now collected and administered by such officers or as otherwise are provided by this local law.

(b) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the County, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights and eviction, dispossession, repossession and enforcement of any innkeeper's

lien that he may have in the event of non-payment of rent by the occupant; provided, however, that the Treasurer or other fiscal officer or officers, employees or agents duly designated by him shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(c) Where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this local law, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the Treasurer, and it shall be the duty of the occupant to file a return thereof with the Treasurer and to pay the tax imposed thereon to the County Treasurer within fifteen (15) days after such tax was due.

(d) The Treasurer may, whenever he deems it necessary for the proper enforcement of this local law, provide by regulation that the occupant shall file returns and pay directly to the Treasurer the tax herein imposed, at such times as returns are required to be filed and payment made over by the operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after December 8, 2007, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after December 8, 2007. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Treasurer may by regulation provide for credit and/or refund of the amount of such tax upon application therefore as provided in section thirteen of this local law.

(f) For the purpose of the proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of providing that a rent for occupancy is not taxable hereunder shall be upon the operator, except that, where by regulation pursuant to subdivision seven (d) of this section, an occupant is required to file returns and pay directly to the Treasurer the tax herein imposed, the burden of proving that a rent for occupancy is not taxable shall be upon the occupant. Where an occupant claims exemption from the tax under the provisions of subdivision four of this section, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the occupant is its agent, representative, or employee, together with a certificate executed by the occupant that his occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the occupant's duties as a representative of such corporation or association. Where deemed necessary by the operator, he may further require that any occupant claiming exemption from the tax furnish a copy of a certificate issued by the Treasurer certifying that the corporation or association therein named is exempt from the tax under subdivision four of this section.

## 8. RECORDS TO BE KEPT.

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the Treasurer by regulation require. Such records shall be available for inspection and examination at any time upon demand by the Treasurer or his duly authorized agent or employee and shall be preserved for a period of three (3) years, except that the Treasurer may consent to their destruction within that period or may require that they be kept longer.

## 9. RETURNS.

(a) Every operator shall file with the Treasurer a return of occupancy and of rents, and of the taxes payable thereon for the period ending the last day of February, May, August and November of each year, on and after December 8, 2007. Such returns shall be filed within twenty (20) days from the expiration of the period covered thereby. The Treasurer may permit or require returns to be made by other periods and upon such dates as he may specify. If the Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, he may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he may specify.

(b) The forms of returns shall be prescribed by the Treasurer and shall contain such information as he may deem necessary for the proper administration of this local law. The Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(c) If a return required by this local law is not filed, or a return when filed is incorrect or insufficient on its face, the Treasurer shall take the necessary steps to enforce the filing of such a return or of a corrected return.

## 10. PAYMENT OF TAX.

At the time of filing a return of occupancy and of rents each operator shall pay to the Treasurer the taxes imposed by this local law upon the rents required to be included in such return, as well as all other monies collected by the operator acting or purporting to act under the provisions of this local law even though it be judicially determined that the tax collected is invalidly required to be billed shall be due from the operator and payable to the Treasurer on the date limited for the filing of the return for such period, without regard for whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon. Where the Treasurer in his discretion deems it necessary to protect revenues to be obtained under this local law he may require any operator required to collect the tax imposed by this local law to file with him a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and

responsibility, in such amount as the Treasurer may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the Treasurer determines that an operator is to file such bond he shall give notice to such operator to that effect specifying the amount of the bond required. The operator shall file such bond within five (5) days after the giving of such notice, unless within such five (5) days the operator shall request in writing a hearing before the Treasurer at which the necessity, propriety and amount of the bond shall be determined by the Treasurer. Such determination shall be final and shall be complied with within fifteen (15) days after the giving of such notice thereof. In lieu of such bond, securities approved by the Treasurer or cash in such amount as he may prescribe, may be deposited which shall be kept in the custody of the Treasurer who may at any time without notice of the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

#### 11. DETERMINATION OF TAX.

If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty (30) days after giving of notice of such determination, shall apply to the Treasurer for a hearing, or unless the Treasurer of his own motion shall re-determine the same. After such hearing, the Treasurer shall give notice of his determination to the person against whom the tax is assessed. The determination of the Treasurer shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by proceeding under article seventy-eight of the Civil Practice and Rules if application therefore is made to the Supreme Court within thirty (30) days after the giving of the notice of such determination. A proceeding under article seventy-eight of the Civil Practice and Rules shall not be instituted unless (a) the amount of any tax sought to be reviewed, with penalties and interest thereof, if any, shall be first deposited with the Treasurer and there shall be filed with the Treasurer an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of the applicant such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding,

in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the applicant.

#### 12. DISPOSITION OF REVENUES.

All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of Seneca county and shall be credited to and deposited in the general fund of the county, thereafter to be allocated only for tourism, promotion and development in Seneca county. The revenues derived from said tax shall be allocated only to enhance the general economy of the county of Seneca, its towns and villages through promotion of tourist activities, conventions, trade shows, special events and other directly related and supported activities. Pursuant to New York State Tax Law § 1202-o(9), the Seneca County Advisory Committee on Tourism shall be empowered to advise, recommend and administer the activities funded by the revenues generated by this tax.

#### 13. REFUNDS.

(a) In the manner provided in this section, the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Treasurer for such refund shall be made within one (1) year from the payment thereof. Whenever a refund is made by the Treasurer, he shall state his reason therefore in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the Treasurer provided the application is made within one (1) year of the payment by the occupant to the operator, but no actual refund of monies shall be made to such operator until he shall first establish to the satisfaction of the Treasurer, under such regulations as the Treasurer may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The Treasurer may in lieu of any refund required to be made, allow credit therefore on payments due from the applicant.

(b) An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of and the Treasurer may receive evidence with respect thereto. After making this determination, the Treasurer shall give notice thereof to the applicant who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the Civil Practice and Rules, provided such proceeding is instituted within thirty (30) days after the giving of notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the Treasurer in such amount and with such sureties as a justice of the Supreme Court shall approve to the effect that if such proceedings be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(c) A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section thirteen of this local law where he has had a hearing or an opportunity for a hearing, as provided in said section or has failed to avail himself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Treasurer made pursuant to section eleven of this local law unless it be found that such determination by the Treasurer was erroneous, illegal or unconstitutional or otherwise improper after a hearing or of his own motion or in a proceeding under article seventy-eight of the Civil Practice and Rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, credit or penalty found to have been overpaid.

#### 14. RESERVES.

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the Civil Practice and Rules to review a determination adverse to him on his application for refund, the Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

#### 15. REMEDIES EXCLUSIVE.

The remedies provided by sections eleven and thirteen of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under article seventy-eight of the Civil Practice and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within thirty (30) days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Treasurer prior to the institution of such suit and posts a bond for costs as provided in section eleven of this local law.

#### 16. PROCEEDINGS TO RECOVER TAX.

(a) Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as therein provided, the County Attorney shall, upon the request of the Treasurer bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Seneca in any court of the State of New York or of any other state or of the United States. If, however, the Treasurer in his discretion believes that any such operator, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax or

penalties might be satisfied, and that any such tax or penalty will not be paid when due, he may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

(b) As an additional or alternate remedy, the Treasurer may issue a warrant, directed to the Sheriff commanding him to levy upon and sell the real and personal property of the operator or officer of a corporate operator or other person liable for the tax, which may be found within the County for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the Treasurer and to pay to him the money collected by virtue thereof within sixty (60) days after the receipt of such warrant. The Sheriff shall within five (5) days after the receipt of the warrant file with the County Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the interest in real and personal property of the person against whom the warrant is issued. The Sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by in respect to executions issued against property judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the Treasurer, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the Treasurer and in the execution thereof such officer or employee shall have all the powers conferred by upon Sheriff, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the Treasurer may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the County has recovered judgment therefore and execution thereon has been returned unsatisfied.

(c) Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of his hotel or motel or his lease, license or other agreement or right to possess or operate such hotel or motel or of the equipment, furnishings, fixtures, supplies or stock of merchandise, or the said premises or lease, license or other agreement or right to possess or operate such hotel or motel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel or motel, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten (10) days before taking possession of the subject of the sale, transfer or assignment, or paying therefore, notify the Treasurer by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to or informed the purchaser, transferee or assignee that it owes any tax pursuant to this local law, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the Treasurer as required by the preceding paragraph or whenever the Treasurer shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or causes in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or causes in action to the extent of the amount of the County's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the Uniform Commercial Code, shall be personally liable for the payment to the County of any such taxes theretofore or thereafter determined to be due to the County from the seller, transferor, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this local law.

#### 17. GENERAL POWERS OF THE TREASURER.

(a) In addition to the powers granted to the Treasurer in this local law, he is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof;

2. To extend for cause shown, the time of filing any return for a period not exceeding thirty (30) days; and for cause shown, to remit penalties but not interest computed at the rate of six percent (6%) per annum; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the Tax Commissioner of the State of New York or the Treasury Department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;

4. To delegate his functions hereunder to a deputy Treasurer or any employee or employees of the Department of the Treasurer;

5. To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

6. To require any operator within the County to keep detailed records of the nature and type of hotel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, and to furnish such information upon request to the Treasurer;

7. To assess, determine, revise and readjust the taxes imposed under this local law.

#### 18. ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY.

(a) The Treasurer or his employees or agents duly designated and authorized by him shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this local law. The Treasurer shall have power to subpoena and require the attendance of witnesses and the production of books, papers, and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this local law and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or excused from attendance.

(b) A justice of the Supreme Court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the Treasurer under this local law.

(c) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or both such fine and imprisonment.

(d) The officers who serve the summons or subpoena of the Treasurer and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the County Sheriff and his duly appointed deputies or any officers or employees of the Department of the Treasurer, designated to serve such process.

#### 19. REFERENCE TO TAX.

Wherever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of hotel or motel rooms", except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the words "occupancy tax" will suffice.

#### 20. PENALTIES AND INTEREST.

(a) Any person failing to file a return or to pay over any tax to the Treasurer within the time required by this local law shall be subject to a penalty of ten percent (10%) of the amount of tax due; plus interest at the rate of one percent (1%) of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the Treasurer if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest, at the rate of six percent (6%) per year. Such penalties and interest shall be paid and disposed of in the same manner as other revenues

from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(b) Any operator or occupant and any officer of a corporate operator or occupant failing to file a return required by this local law, or filing or causing to be filed, or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this local law, which is willfully false, and any operator and any officer of a corporate operator willfully failing to file a bond required to be filed pursuant to section eleven of this local law, or failing to file a registration certificate and such date in connection therewith as the Treasurer may by regulation or otherwise require or to display or surrender the certificate of authority as required by this local law or assigning or transferring such certificate of authority and any operator and any officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax or any evidence of occupancy and on any bill or statement or receipt or rent issued or employed by the operator, or willfully failing or refusing to collect such tax from the occupant, and any operator and any officer of a corporate operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this local law, and any operator failing to keep the records required by subdivision eight of section two of this local law, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars (\$1,000), or imprisonment for not more than one (1) year, or both such fine and imprisonment. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this local law, and subject to the penalties herein above imposed.

(c) The certificate of the Treasurer to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

## 21. RETURNS TO BE SECRET.

(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Treasurer or any officer or employee of the Department of the Treasurer to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this local law. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Treasurer in an action or proceeding under the provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns

or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed in connection with his tax not to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the County Attorney or other legal representatives of the County of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three (3) years and thereafter until the Treasurer permits them to be destroyed.

(b) Any violation of subdivision (a) of this section shall be punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding one (1) year or both, in the discretion of the court, and if the offender be an officer or employee of the County he shall be dismissed from office and be incapable of holding any public office for a period of five (5) years thereafter.

## 22. NOTICES AND LIMITATIONS OF TIME.

(a) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a post-paid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law, or in any application made by him, or if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from the date of mailing of such notice.

(b) The provisions of the Civil Practice and Rules or any other relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the County to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three (3) years from the date of the filing of a return; provided, however, that where no return has been filed as provided by the tax may be assessed at any time.

(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

## 23. SEPARABILITY.

If any provision of this local law, or application thereof to any person or circumstances, is held invalid, the remainder of this local law, and the application of such provisions to other persons or circumstances shall not be affected thereby.

**SECTION 4. EXPIRATION DATE**

Pursuant to Subdivision 10 of Section 1202-o, Tax, this local law shall expire three (3) years from the date of its inception.

**SECTION 5. EFFECTIVE DATE**

This local law shall take effect December 8, 2007, upon filing in the office of the Secretary of State as provided by the Municipal Home Rule; and be it further

RESOLVED that the Clerk of the Board be and hereby is directed to enter said Local law in the minutes of this meeting and in the Local Law Book of the County of Seneca, and to give due notice of the adoption of said local law to the Secretary of the State of New York.

**CHAIRMAN OF THE BOARD OF SUPERVISORS AUTHORIZED AND DIRECTED TO SIGN  
A CONTRACT WITH HEALTH RESEARCH, INC. (HRI) FOR THE HEALTHY WOMEN'S  
PARTNERSHIP GRANT**

RESOLUTION NO. 244-07, moved by Mr. Lafler, seconded by Mrs. Amidon and unanimously adopted by 750 ayes.

WHEREAS, the Health Department will be receiving \$ 5,139 for patient services for the Breast and Cervical Cancer Screening Program; and

WHEREAS, this money is the federal portion of the grant cycle 6/30/07 thru 6/29/08; and

WHEREAS, it is necessary for the Chairman of the Board of Supervisors to sign the contract with HRI to receive this funding; now, therefore be it

RESOLVED, that the Chairman of the Board of Supervisors is hereby authorized and directed to sign a contract with HRI for the Healthy Women's Partnership Grant.

**CHAIRMAN OF THE BOARD OF SUPERVISORS AUTHORIZED AND DIRECTED TO SIGN  
A CONTRACT WITH RUSHVILLE HEALTH CENTER FOR THE PROVISION OF  
PREVENTATIVE DENTAL HEALTH SERVICES IN SENECA COUNTY SCHOOLS**

RESOLUTION NO. 245-07, moved by Mr. Lafler, seconded by Mr. Mooney and unanimously adopted by 750 ayes.

WHEREAS, Rushville Health Center has been providing dental services in Seneca County schools for many years; and

WHEREAS, these schools include Frank Knight, Romulus, Cady Stanton, South Seneca and Waterloo; and

WHEREAS, all children enrolled in 1st and 4th grades are offered a dental screening, cleaning, and fluoride treatment, tooth brushing and flossing instructions; and

WHEREAS, this cost is billed to the child's health insurance; and

WHEREAS, if the child does not have dental insurance, Rushville Health Center will bill the Seneca County Health Department at \$40 per child; and

WHEREAS, all other children enrolled in the school are offered dental services at their parent's expense; and

WHEREAS, the lack of dental health care is consistently identified in the Seneca County Health Department's Community Health Assessment; and

WHEREAS, the approximate cost for these Dental Health Services is \$ 5,000 which is in the Health Department budget (10-115-5-4010-4280); now, therefore be it

RESOLVED, that the Chairman of the Board of Supervisors is hereby authorized and directed to sign a contract with Rushville Health Center.

**RESOLUTION TO CHANGE THE NAME OF THE  
NATIVE AMERICAN AFFAIRS COMMITTEE**

RESOLUTION NO. 246-07, moved by Dr. Dresser, seconded by Mr. Shipley and unanimously adopted by 750 ayes.

WHEREAS, our federal government has a Bureau of Indian Affairs; and

WHEREAS, the Native American Affairs committee, as well as the citizen advisory committee charged by the Chair of the Board of Supervisors with assisting in the defense of the Cayuga Indian Trust application and related matters, has recommended that the name of the Native American Affairs Committee be changed, for the reasons set forth in said committee; now it is therefore

RESOLVED, that the name of this committee be changed to the "Indian Affairs Committee" of the Seneca County Board of Supervisors.

**APPOINTMENTS TO THE FINGER LAKES WORKFORCE INVESTMENT BOARD**

RESOLUTION NO. 247-07, moved by Mr. Mooney, seconded by Mr. Smith and unanimously adopted by 750 ayes.

WHEREAS, the Finger Lakes Workforce Investment Board Members must be appointed by the respective Board of Supervisors; and

WHEREAS, the Director has solicited the nominations in accordance with the Law with said nominations to be reviewed and approved by the Human Services Committee; and

WHEREAS, the terms of appointment for each member have been made in accordance with the Workforce Investment Board by-laws; and

WHEREAS, the following appointments of the representatives to the Finger Lakes Workforce Investment Board will need to be endorsed by the Board of Supervisors; and

WHEREAS, the Seneca County Human Services Committee has approved the following reappointment to the Seneca County Board of Supervisors for approval; and

Dr. Barbara G. Risser President, Finger Lakes Community College 312 Wey Bridge Terrace Camillus, New York 13031	<u>Term of Office</u> Effective immediately-June 31, 2010
--	--

Ms. Colleen M. Combs RN/President AFGE3306 c/o VMAC, 400 Fort Hill Ave., Bldg. 4A Canandaigua, New York 14424	Effective Immediately-June 30, 2008
--	-------------------------------------

RESOLVED, that certified copies of this resolution be sent to the Director of Workforce Development in Ontario, Wayne and Yates Counties and to the Finger Lakes Workforce Investment Board.

**CHAIRMAN OF THE BOARD TO SIGN AGREEMENT BETWEEN FINGER LAKES HEALTH SYSTEMS AGENCY AND SENECA COUNTY DIVISION OF HUMAN SERVICES**

RESOLUTION NO. 248-07, moved by Mr. Mooney, seconded by Mrs. Teichner and unanimously adopted by 750 ayes.

WHEREAS, the Division of Human Services would like to enter into agreement with the Finger Lakes Health Systems Agency to secure professional services required for Point of Entry; and

WHEREAS, the rate for services is \$100.00 per hour, not to exceed the sum of \$8,000.00; and

WHEREAS, these services include the following:

- Write Application
- Develop “Readiness” for Assumption of POE Services
- Staffing of Advisory Council
- Write follow-up grant application; and

WHEREAS, Committee recommendation to have the County Treasurer increase and establish the following accounts:

+ 8,000.00	State Aid Revenue 3610
+ 8,000.00	Finger Lakes Health Systems POE-10-125-5-6070-4749; and

WHEREAS, this upcoming agreement has been reviewed by the Oversight Committee for Human Services and Finance Committee and recommended for full Board approval; now, therefore be it

RESOLVED, that the Chairman of the Board sign the agreement between Finger Lakes Health Systems Agency and Seneca County Division of Human Services.

**SUPERVISORS AWARD BID FOR COURTHOUSE ROOF REPLACEMENT**

RESOLUTION NO. 249-07, moved by Mr. Davidson, seconded by Mrs. Amidon and unanimously adopted by 750 ayes.

WHEREAS, three bids have been received for the re-roofing project of the Seneca County Courthouse; and

WHEREAS, Elmer Davis, 1217 Clifford Avenue, Rochester, NY 14621 is the lowest responsible bidder; and

WHEREAS, the Jason McCormick has reviewed the bids and recommends award to Elmer Davis; now, therefore be

RESOLVED, that the Seneca County Board of Supervisors does hereby award the bid for re-roofing of the Seneca County Courthouse to Elmer Davis as follows: Base bid - \$196,477, Alternate I - \$27,000 and Unit price of \$4.50 for plywood replacement as necessary. Funds for said project are budgeted in the Buildings project account 1620.428 with 88% reimbursed by the Office of Court Administration; and be it

FURTHER RESOLVED, that the Chairman of the Board is hereby authorized to sign any and all necessary contract documents for said project.

New Business

Mr. Davidson made a motion to suspend the rules of order to introduce a resolution not previously filed. Mrs. Amidon seconded the motion. The motion carried.

**SUPERVISORS APPOINT MCCORMICK COUNTY ENGINEER**

RESOLUTION NO. 250-07, moved by Mr. Davidson, seconded by Mr. Kaiser and unanimously adopted by 750 ayes.

RESOLVED, that the Seneca County Board of Supervisors does hereby appoint Jason T. McCormick, 294 Skuse Road, Geneva, NY, 14456 as Seneca County Engineer, effective October 1, 2007, at an annual salary of \$72,453.

Special Order of the Day

Mr. Davidson moved the meeting adjourned.