

SENECA COUNTY BOARD OF SUPERVISORS

REGULAR MEETING

August 24, 2010

8:00 p.m.

Call to Order

Chairman Lafler called the meeting to order at 8:03 p.m.

Roll Call of Members by the Clerk

Thirteen members of the Board answered roll call. Mrs. Amidon was not present.

Pledge of Allegiance and Moment of Silence

Public Hearing:

PLEASE TAKE NOTICE that a public hearing will be held by the Board of Supervisors of the County of Seneca on the 24th day of August, 2010 at or about 8:00 p.m. at the Seneca County Office Building, 1 DiPronio Drive, Waterloo, New York, regarding the adoption of Proposed Local Law D of 2010 entitled proposed Local Law D of 2010 entitled "A Local Law Electing a Retirement Incentive Program as Authorized by Chapter 105, Laws of 2010 for the Eligible Employees of Seneca County" be and the same is hereby introduced before the Board of Supervisors of Seneca County, New York to read in substantially the following form: 1) Seneca County hereby elects to provide all of its eligible employees with a retirement incentive program authorized by Chapter 105, Laws of 2010, Parts A and B; 2) the commencement date of the retirement incentive program shall be October 1, 2010; 3) the open period during which eligible employees may retire and receive the additional retirement benefits, shall be 90 days in length; 4) the actuarial present value of the additional retirement benefits payable pursuant to the provisions of this local law shall be paid as one lump sum, or in five annual installments. The amount of the annual payment shall be determined by the Actuary of the New York State and Local Employees' Retirement System, and it shall be paid by Seneca County for each employee who receives the retirement benefits payable under this local law; 5) this act shall take effect immediately upon filing with the Secretary of State in accordance with §27 of the Municipal Home Rule Law. Any resident of the County is entitled to be heard upon said proposed local law at such public hearing. Copies of said proposed Local Law are available for review at the Office of the Clerk of the Board of Supervisors, 1 DiPronio Drive, Waterloo, New York.

Mr. Davidson moved the floor open to hear public comments. No comments were heard. Mr. Same moved the floor closed to hear public comment.

Presentations / Petitioners:

Chairman Lafler recognized Michelle Fridley, Ms. Wheelchair New York 2010. Ms. Fridley appealed to the Board of Supervisors to support The Center for Disability Rights to provide services

through the Nursing Home Transition and Diversion Waiver program (NHTD) and CDPAS, a Self-Directed Personal Assistance Service Program for people who require personal care assistance.

Chairman Lafler recognized Linda Cordovani, resident of Town of Junius. Ms. Cordovani appealed to the Board of Supervisors to set regulations for horse and buggy transportation to encompass safety concerns, horse manure on roads, and wear and tear to road surface due to horseshoes and buggy wheels.

Chairman Lafler recognized Jeff Shipley, Executive Director of the Chamber. Mr. Shipley presented the Quarterly Report for the 2nd Quarter 2010 for Seneca County Tourism.

Seneca County Correctional Facility was awarded Correctional Facility accreditation status by the New York State Sheriff's Association. Chairman Lafler recognized Peter Kehoe, president, New York State Sheriffs Association. Mr. Kehoe praised Sheriff Stenberg and his staff for achieving accreditation status. Correctional Facility accreditation is the hardest to achieve due to the complexity of the program requirements. Three NYS Correctional Facility Accreditation Assessors from the NYS Sheriff's Association spent two days at the Seneca County Sheriff's Office and Correctional Facility reviewing Administrative, Operational and Medical policies and procedures, examining training records, interviewing staff and conducting observations of operations to ensure total compliance with one hundred sixty-six (166) professional standards of operations and excellence. Sheriff Stenberg commended Undersheriff Gary Sullivan who served as the program manager for the Corrections Accreditation Program and the officers and staff who worked arduously to achieve this important recognition.

Approval of Minutes

Board meeting minutes were approved for February 23, 2010 and March 23, 2010.

Reports of Standing Committees

Public Works Committee, Mr. Davidson, Chairperson. The Committee recommended a board resolution authorizing the Chairman of the Board to sign the contract with Cintas to provide work pants and shirts for four full-time building maintenance mechanics and two permanent part-time employees. The contract is for five years. The cost varies depending on the need to replace damaged or worn clothing but is estimated to be approximately \$4,000 per year.

Mental Health Committee, Mr. Reynolds, Chairperson. The Committee recommended refilling positions for a Substance Abuse Counselor and to create a one-year temporary position for a Psychiatric Social Worker.

Planning, Development, Agriculture & Tourism Committee, Mr. Same, Vice-Chairperson. The Committee recommended a board resolution for the following: (1) Submit the Snowmobile Trail Phase II Grant Application for funding to New York State and for the Chairman of the Board to sign the contract with Twin Lakes Snowmobile Association for the 2010-2011 season; (2) Appoint Sally Ann Kenyon as a

member of the Seneca County Planning Board effective September 1, 2010, representing the Town of Varick.; (3) Approve the application for a \$300,000 grant for the BonaDent Expansion that will create 90 full-time jobs and retain 20 jobs on condition that the department of Housing and Urban Development and New York State Office of Community Renewal approve this application.

Government Operations, Mr. Kaiser, Chairperson. The Committee recommended advertising for bids for the printing of the Board of Supervisors Annual Proceedings for the years 2005 through 2009 with an option to extend the contract to include proceedings for the years 1992 through 2004 and 2010 through 2012. Mr. Kaiser also stated the discussion took place relating to New York State Open Meetings Law and questions to petitioners from the public during board meetings. It was the opinion of Robert Freeman, Executive Director of New York State Committee on Open Government, that a county has the right to create its own rules, but the NYS Open Meetings Law is vague on the issue. The members of the Government Operations Committee concurred that the public should have the right to ask questions to petitioners but no formal vote was taken. Mr. Kaiser also said that he and the County Manager Sinclair would meet to discuss reporting to the Board members by the Vacancy Committee recommendations.

Human Services, Mr. Mooney, Chairperson. The Committee recommended board proclamation declaring October 2, 2010 as Literacy Celebration Day with the theme for 2010, "Heroes in Books: READ!" The Committee also approved refilling the temporary position of HEAP Examiner from October 4, 2010 through April 1, 2011.

Indian Affairs, Mr. Shipley, Chairperson. Mr. Shipley said the Committee tabled a motion to withhold Medicaid payments to New York State if on September 1, 2010 the state fails to enforce collection of the county's 4 percent sales tax on cigarettes sold by the Cayuga Indian Nation to non-Indians at its Seneca Falls convenience store. He also said a meeting was planned for involving Mr. Shipley, Mr. Same, Chairman Lafler, Cayuga County Legislature Chairman Peter Tortoricci, Congressman. Michael Arcuri, and representatives from Oneida County and Madison County to discuss Indian issues with Deputy Interior Secretary Larry EchoHawk.

Finance, Assessment & Insurance Committee, Mr. Kubasik, Chairperson. The Committee recommended refilling positions for a Substance Abuse Counselor and to create a one-year temporary position for a Psychiatric Social Worker, and refill the seasonal position for a HEAP Examiner.

Communications:

129. A Notice Letter from the Seneca County IDA regarding Notice of Public Hearing on Tuesday, August 24, 2010 at 10:00 a.m. at the Seneca Falls Town Hall Board Room regarding the Seneca County IDA and Seneca Hospitality, LLC Hampton Inn Project.

130. From Assembly Minority Leader Brian M. Kolb, a letter expressing his support and acknowledging receipt of a letter from Chairman Lafler to Governor Paterson expressing Seneca County's support for Assembly Bill 11535, to require legislative approval for any agreement between Indian Nations or tribes and the State.

131. A copy of Fulton County Resolution No. 307, "Demanding that State Legislators Reduce Unfunded Mandates that Cause Local Property Tax Increases Prior to Imposing a CAP on Local Property Taxes".

132. A copy of the Finger Lakes Regional Airport Advisory Committee June 9, 2010 meeting minutes.

133. A copy of the Seneca County Planning Board July 8, 2010 meeting minutes.

134. A copy of the brief prepared by Harris Beach PLLC to the Supreme Court of the United States for Cayuga County and Seneca County as Amici Curiae in Support of the petitioner, Madison County, N.Y. v. Oneida Indian Nation of NY on Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

135. A copy of the Tourism Promotion Agency (TPA) 2nd Quarter Report, Program Year 2010 from the Seneca County Chamber of Commerce as submitted by Jeff Shipley, Executive Director.

136. A copy of a letter dated August 11, 2010 from Timothy C. Buhl, P.E., Superintendent of Water & Sewer, Town of Varick to Frank Fisher, Seneca County Attorney, of written notice of continuing violation associated with the unpermitted hook up by Seneca County Sewer District No. 2 in the Town of Varick Sewer District No. 2; the lines for hook up fail to meet the standards set forth in the Varick Sewer Use Law; and Seneca County Sewer District No. 2 failed to make payments to the Town of Varick for the use of the unpermitted hook up.

137. An email dated August 20, 2010 from Christopher J. Rosata, MAI, former resident of Waterloo, NY, Seneca County, regarding the Seneca Meadows landfill, stated that "As a board...all should be ashamed for the eye sore that has been created".

Resolutions and Motions

CHAIRMAN OF THE BOARD OF SUPERVISORS AUTHORIZED AND DIRECTED TO SIGN A CONTRACT WITH THE NEW YORK STATE DEPARTMENT OF HEALTH FOR THE EARLY INTERVENTION ADMINISTRATION GRANT

RESOLUTION NO. 182-10, moved by Mr. Hayssen, seconded by Mr. Shipley and adopted.

WHEREAS, the Health Department is receiving a grant from the New York State Department of Health for the administration of the Early Intervention Program; and

WHEREAS, the grant period is October 1, 2010 through September 30, 2011; and

WHEREAS, the grant amount is \$28,493; and

WHEREAS, the Public Health Committee recommends acceptance of this grant funding; and

WHEREAS, the funding is in the Health Department budget 10-115-5-4147; and

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

RESOLVED, that the Chairman of the Board of Supervisors is hereby authorized and directed to sign the Early Intervention Administration Grant with the New York State Department of Health,

AMEND RULES OF THE BOARD TO HOLD SEPTEMBER 28 COMMITTEE MEETINGS AND BOARD MEETING AT THE FORMER COUNTY COURTHOUSE IN OVID, NEW YORK

RESOLUTION NO. 183-10, moved by Mr. Kaiser, seconded by Mr. Prouty and adopted.

RESOLVED, that the Seneca County Board of Supervisors does hereby amend the Rules of Order to hold the committee meetings and board meeting for September 28, 2010 at the former County Courthouse in Ovid, New York at 6:30 p.m. and 8:00 p.m. respectively.

A RESOLUTION ADOPTING LOCAL LAW NO. 4 OF 2010 ELECTING A RETIREMENT INCENTIVE PROGRAM AS AUTHORIZED BY CHAPTER 105, LAWS OF 2010 FOR THE ELIGIBLE EMPLOYEES OF SENECA COUNTY

RESOLUTION NO. 184-10, moved by Mr. Same, seconded by Mr. Davidson and adopted.

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 August 24, 2010 at 8:00 p.m. at the Seneca County Office Building, Waterloo, NY, to hear all interested parties on a proposed Local Law entitled, "A Local Law Electing a Retirement Incentive Program as Authorized by Chapter 105, Laws of 2010 for the Eligible Employees of Seneca County"; and

WHEREAS, a notice of said public hearing was duly advertised in the official newspapers of the County of Seneca; and

WHEREAS, said public hearing was duly held on August 24, 2010 at 8:00 p.m. at the Seneca County Office Building, Waterloo, NY, 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 Local Law No. 4 of the year 2010, as follows: A Local Law Electing a Retirement Incentive Program as Authorized by Chapter 105, Laws of 2010 for the Eligible Employees of Seneca County.

1. Seneca County hereby elects to provide all of its eligible employees with a retirement incentive program authorized under by Chapter 105, Laws of 2010, Parts A and B.
2. The commencement date of the retirement incentive program shall be October 1, 2010.

3. The open period during which eligible employees may retire and receive the additional retirement benefits, shall be 90 days in length.
4. The actuarial present value of the additional retirement benefits payable pursuant to the provisions of this local law shall be paid as one lump sum, or in five annual installments. The amount of the annual payment shall be determined by the Actuary of the New York State and Local Employees' Retirement System, and it shall be paid by Seneca County for each employee who receives the retirement benefits payable under this local law.
5. This act shall take effect immediately upon filing with the Secretary of State in accordance with §27 of the Municipal Home Rule Law.

**BOARD OF SUPERVISORS TO APPROVE DEPARTMENT OF
HUMAN SERVICES BUDGET ADJUSTMENTS**

RESOLUTION NO. 185-10, moved by Mr. Mooney, seconded by Mr. Reynolds and adopted.

WHEREAS, due to program changes, the Department of Human Services budget needs certain increase adjustments made to accommodate programs that extend from one State and Fiscal year to the next and the changes are unknown at the time of the budget; and

WHEREAS, the additional funds are a 1:1 expense to the federal dollars and affect only existing employees and contracts; and

WHEREAS, these adjustments are being requested for the following programs and amounts:

10-125-5-6001-4-380	Eat Smart Coop Agreement	+	26,440
10-320-4-4611	Food Stamp Administration	+	26,440
10-125-5-6001-4-707	Transitional Jobs Program	+	49,727
10-320-3-4609	TANF	+	49,727
10-125-5-6070-4-750	Wheels for Work	+	30,000
10-320-3-4609	TANF	+	30,000

WHEREAS, these adjustments have been reviewed and approved by the Human Services Committee on August 10, 2010; now, therefore be it

RESOLVED, that the Board of Supervisors approve the Department of Human Services Budget Adjustments.

SUPERVISORS ACCEPT BIDS FOR AGGREGATE MATERIALS

RESOLUTION NO. 186-10, moved by Mr. Davidson, seconded by Mr. Mooney and adopted.

WHEREAS, on July 14, 2010 Seneca County advertised solicitations for bids on a contract for aggregate materials; and

WHEREAS, two bids were received, one from Seneca Stone, Fayette, New York, and one from Hanson Aggregates New York, Inc., Oaks Corners, New York, for aggregate materials; and

RIP RAP AVERAGE	13.00
RIP RAP SELECT	15.00

And, be it

FURTHER RESOLVED, that the Seneca County Highway Department and all towns, villages, and school districts in Seneca County, are hereby authorized to purchase aggregate materials at bid prices.

SUPERVISORS ACCEPT BIDS FOR HOT MIX ASPHALT CONCRETE

RESOLUTION NO. 187-10, moved by Mr. Davidson, seconded by Mr. Same and adopted.

WHEREAS, on July 14, 2010 Seneca County advertised solicitations for bids on a contract for hot mix asphalt concrete; and

WHEREAS, two bids were received, one from Seneca Stone, Fayette, New York and one from Hanson Aggregates New York, Inc., Oaks Corners, New York, for hot mix asphalt concrete; and

WHEREAS, the Public Works Committee of the Seneca County Board of Supervisors recommended accepting the bids from Seneca Stone and Hanson Aggregates on August 10, 2010; now, therefore, be it

RESOLVED, that the Seneca County Board of Supervisors does hereby award the bid to Seneca Stone, Fayette, New York and Hanson Aggregates New York, Inc., Oaks Corners, New York for hot mix asphalt concrete, letting availability and delivery costs be the deciding factors.

SENECA STONE CORP.

Type 7 Top	52.00 / ton
Type 6 Top	50.00 / ton
Fine Binder	50.00 / ton
Type 3 Binder	46.00 / ton
Type 1 Base	46.60 / ton

HANSON AGGREGATES

Type 7 Top	54.00 / ton
Type 6 Top	52.50 / ton
Fine Binder	47.75 / ton
Type 3 Binder	47.75 / ton
Type 1 Base	46.00 / ton

FURTHER RESOLVED, that the Seneca County Highway Department and all towns, villages and school districts in Seneca County, are hereby authorized to purchase hot mix asphalt concrete at bid prices.

SUPERVISORS AUTHORIZE REPLACEMENT OF THE EXISTING 75 HP CHILLER COMPRESSOR AT THE SENECA COUNTY OFFICE BUILDING

RESOLUTION NO. 188-10, moved by Mr. Davidson, seconded by Mr. Same and adopted.

WHEREAS, existing 75 hp chiller compressor in the County Office Building, located at 1 DiPronio Drive, Waterloo, New York 13165, has been inspected and found to have damage to two of the cylinders which extended beyond the top end of the unit; and

WHEREAS, the damaged 75 hp chiller compressor is one of four compressors necessary to provide proper climate control for the County Office Building; and

WHEREAS, the County Engineer has advised the board that replacement of this compressor must take place immediately in order to release the undue stress on the remaining compressor and cannot await a formal bid process; and

WHEREAS, Robert L. Kistler Service Corporation, the authorized maintenance and repair Company for the chillers, has provided a proposal to furnish and install a new 75 hp chiller compressor complete for \$22,880; and

WHEREAS, the County Engineer has reviewed the proposal and recommends the County retain Robert L. Kistler Service Corporation for the services; and

WHEREAS, the Public Works Committee approved this resolution on August 10, 2010; now, therefore, be it

RESOLVED, that the Board of Supervisors finds that replacement of the existing 75 hp compressor serving the Seneca County Office Building must be done on an emergency basis and that there is not sufficient time to release the project for bids; and be it further

RESOLVED, that the Seneca County Board of Supervisors does hereby authorize the installation of new 75 hp compressor, as described in the accepted proposal from Robert L. Kistler Service Corporation in the amount of \$27,048 with a deduction of \$4,168 for the return of the compressor core making the Total Net Price of \$22,880; and be it further

RESOLVED, that the Chairman of the Board of Supervisors is hereby authorized to sign any and all necessary contract documents for said project; and be it further

RESOLVED, that the Seneca County Treasurer is hereby authorized and directed to transfer the sum of \$22,880 from account 10-1990-4700, Contingency to account 10-101-5-1622-4220, Repairs and Maintenance.

**BOARD OF SUPERVISORS ACCEPT NEW YORK STATE DEPARTMENT OF LABOR
HIGHWAY DEPARTMENT PERSONNEL TRAINING GRANT**

RESOLUTION NO. 189-10, moved by Mr. Davidson, seconded by Mr. Shipley and adopted.

WHEREAS, the State of New York Department of Labor has awarded the Seneca County Highway Department \$8,277 as part of the New York State Occupational Safety and Health Hazard Abatement Board Grant Program; and

WHEREAS, the stated purpose of the program is to provide safety training courses to County, Town and Village Highway Department personnel; and

WHEREAS, this contract will reimburse 100% of the training costs with no local matching funds requirement; and

WHEREAS, this resolution has been reviewed and approved by the Public Works Committee on July 27th, 2010; now, therefore, be it

RESOLVED, that the Seneca County Board of Supervisors does hereby authorize and direct the Chairman of the Board of Supervisors to sign all necessary grant documents to accept this New York State Department of Labor Grant; and be it

FURTHER RESOLVED, that the Seneca County Treasurer is hereby authorized and directed to amend the 2008 Seneca County Budget as follows:

Seneca County Highway Maintenance:

Amend Highway Administration Training (5010.4450) + \$8,277

Amend Revenue Account 40.3193.3506 OSHHAB Training Grant + \$8,277

**AUTHORIZE SNOWMOBILE TRAIL GRANT APPLICATION AND AGREEMENT WITH
TWIN LAKES SNOWMOBILE ASSOCIATION FOR 2010 – 2011 SEASON**

RESOLUTION NO. 190-10, moved by Mr. Same, seconded by Mr. Reynolds and adopted.

WHEREAS, the Twin Lakes Snowmobile Club starting in 2008 and requested that Seneca County serve as a Sponsor for it to receive the pass-through funding for the Grant-in-Aid Program funding from the New York State Office of Parks, Recreation and Historic Preservation for a section of trail on the New York State Snowmobile System that loops into Seneca County in the Towns of Covert and Lodi; and

WHEREAS, the New York State Office of Parks, Recreation and Historic Preservation has announced that the Phase II applications for the 2010 – 2011 season are due by September 1, 2010; and

WHEREAS, this resolution has been reviewed and approved by the Planning, Development, Agriculture & Tourism Committee on August 24, 2010; and

WHEREAS, the agreement with the Twin Lakes Snowmobile Association for the 2010 – 2011 season needs to be renewed; now, therefore, be it

RESOLVED, that the Seneca County Board of Supervisors authorizes and directs the Department of Planning and Community Development to prepare Phase II and III Applications for the New York State Snowmobile Trails Grant-in-Aid Program; and be it

FURTHER RESOLVED, that the Chairman of the Board is authorized and directed to sign the said Phase II and III Grant Applications; and be it

FURTHER RESOLVED, that the Chairman of the Board and the County Treasurer are authorized and directed to sign necessary reports and vouchers to receive funding for the New York State Snowmobile Grant Program for the 2010 – 2011 season; and be it

FURTHER RESOLVED, that the Chairman of the Board of Supervisors is authorized and directed to sign the Agreement between Seneca County and the Twin Lakes Snowmobile Association for the period of September 1, 2010 to August 31, 2011.

**RESOLUTION AUTHORIZING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
LOAN TO JAMES A. BRUNING**

RESOLUTION NO. 191-10, moved by Mr. Same, seconded by Mr. Davidson and adopted.

WHEREAS, Seneca County has received Community Development Block Grant (CDBG) funds from the United States Department of Housing and Urban Development to make development loans; and

WHEREAS, businesses to whom these monies have been loaned are repaying the loans, thereby establishing a revolving loan fund for business development and job creation and retention; and

WHEREAS, a loan application has been reviewed by the CDBG Loan Review Committee and found to be satisfactory and in full compliance with regulations and guidelines applicable to the Revolving Loan Fund Program; and

WHEREAS, this \$25,000 loan will help start this business and assist in the creation of three full-time jobs at the business located at 103 Fall Street, Seneca Falls, New York; and

WHEREAS, this resolution has been approved by the Planning, Development, Agriculture & Tourism Committee on August 10, 2010; now, therefore, be it

RESOLVED, that the Seneca County Board of Supervisors approves the proposed loan for the sum of twenty-five thousand dollars (\$25,000) under the CDBG Program from funds account no. 272017469 under the terms and conditions provided for such loans through the Department of Housing and Urban Development and the CDBG Loan Committee and authorizes the Chairman of the Board of Supervisors to sign closing documentation.

**A RESOLUTION TO INTRODUCE PROPOSED LOCAL LAW E, ENTITLED “THE SENECA COUNTY HOTEL OR MOTEL OCCUPANCY TAX” AS AUTHORIZED BY §1202-o OF THE
NEW YORK STATE TAX LAW**

RESOLUTION NO. 192-10, moved by Mr. Same, seconded by Mr. Mooney and adopted.

WHEREAS, the local law imposing Seneca county’s Hotel-Motel Tax expires December 08, 2010 pursuant to the provisions of §1202-o of the New York State Tax Law; and

WHEREAS, the Planning and Development Committee recommends extension of such local law for an additional three year period as provided for under §1202-o of the Tax Law; now, therefore, be it

RESOLVED, that Local Law E of 2010 entitled “the Seneca County Hotel or Motel Occupancy Tax” be and the same is hereby introduced before the Board of Supervisors of Seneca County, New York to read in substantially the following form:

SECTION 1. SHORT TITLE

This local law shall be known as the Seneca County Hotel or Motel 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
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, sub lessee, 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 possess 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, 2010, 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, 2010, 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, 2010.

4. EXEMPT ORGANIZATIONS.

(a) Except as otherwise provided in this sub-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 Subsection 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 there from 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 to 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 innkeepers 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, 2010, 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, 2010. 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 sub-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 sub-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 sub-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 sub-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 requires. 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, 2010. 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 sub-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 to 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 Law 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 Law 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 the local laws 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 sub-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 of such determination by a proceeding pursuant to article seventy-eight of the Civil Practice Law 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 sub-section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of sub-section thirteen of this local law where he has had a hearing or an opportunity for a hearing, as provided in said sub-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 sub-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 Law and Rules, pursuant to the provisions of said sub-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 Law 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 sub-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 the nature of a certiorari proceeding under article seventy-eight of the Civil Practice Law 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 sub-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 for 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 upon the 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 therefor, 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 sub-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 or 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 sub-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 (\$1000), 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 sub-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 Law and Rules or any other law 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 this local law, such 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 1202-0 of the New York State Tax Law, 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, 2010, upon filing in the office of the Secretary of State as provided by the Municipal Home Rule Law.

And be it further

RESOLVED, that copies of the aforesaid proposed local law be laid upon the desks of each member of the County Board; and, be it further

RESOLVED, That the County Board hold a public hearing on said proposed Local Law at the County Office Building, 1 DiPronio Drive, Waterloo New York at or about 8:00 P.M., on September 14, 2010; and, be it

FURTHER RESOLVED, That the Clerk to the Board publish or cause to be published a notice of said public hearing in the official newspapers of the County at least ten (10) days prior thereto.

RESOLUTION APPOINTING MEMBER TO THE SENECA COUNTY PLANNING BOARD

RESOLUTION NO. 193-10, moved by Mr. Same, seconded by Mr. Hayssen and adopted.

WHEREAS, the Seneca County Board of Supervisors did pass Local Law #3 of 2010 to Establish Membership and Duties of the Seneca County Planning Board; and

WHEREAS, the Town of Varick has recommended that Sally Ann Kenyon represent the town on the County Planning Board; and

WHEREAS, this resolution has been reviewed and approved by the Planning, Development, Agriculture and Tourism Committee on August 24, 2010; and now, therefore, be it

RESOLVED, that the Seneca County Board of Supervisors does hereby appoint the following person effective September 1, 2010 to a term on the Seneca County Planning Board as the representative of the Town of Varick:

<u>NAME</u>	<u>Town of Residence</u>	<u>Expiration of Term</u>
Sally Ann Kenyon	Varick	06/30/12

Unfinished Business

Mr. Shipley asked Mitch Rowe to give an update on the Route 5 & 20 demolition. Mr. Rowe said he met with the owner who indicated that they were unable to follow through with the demolition of the unsafe building. August 19, 2010, Seneca County advertised for bids for the demolition of the building and the bid opening was scheduled for September 3, 2010 at 4:00 p.m.

New Business:

Mr. Churchill read the following statement.

“Fellow Supervisors,

This past Saturday I was confronted with a very unsettling situation. Seneca Meadows Inc., using its deep pockets and ever expanding power over others in the county, acted to change a planned family event.

Last week I had purchased tickets for a Chicken BBQ being put on Saturday by the Concerned Citizens group. It was a Saturday my wife and I would be spending with our two beautiful Granddaughters, so what better than a nice BBQ without firing up the grill. More time to spend with the kids.

With the girls in tow we proceeded up to Five Star bank to pickup our meals only to find that there was no one there. My daughter spotted two people about a hundred yards down the road in front of the Microtel, sitting near a sign that read BBQ. I drove up and was met by Lee Henry and Glen Silver of the Concerned Citizens group and they proceeded tell me a very disturbing story.

There would be no Chicken BBQ.... A few days earlier Seneca Meadows called the BBQ vendor, Manhill Food Service in Seneca Falls, and threatened to cease any further business relationship with them if they put on the BBQ. Unable to absorb such a

loss in business Manhill had to capitulate and cancel the BBQ. Tom Hilimire, of Manhill, called Lee Henry to sadly convey the news and offered to provide the food, which had already been purchased, in the event that someone else could prepare it.

Lee then informed me that he contacted Five Stare Bank and although not extended the same courtesy of Manhill, was informed that Concerned Citizens could not use their premises for this or any future event. In addition they could not even setup to meet and return money to those already committed to the BBQ; therefore the move to the Microtel which hopefully does not have business dealings with SMI.

I was shocked, angry and generally disgusted by the action of SMI. Many others in my town of Seneca Falls and elsewhere were impacted by their actions which in no way can be explained as those of a 'good neighbor' but rather that of a bully. Although they may have the legal right, which I am not sure they do, to act in such an immoral manner, it should not be tolerated. I am certain that the citizens of Seneca County would not stand in support of such actions.

Suzanne, would you please add a discussion and possible action regarding this topic to the appropriate committee or to the public meeting as you see fit.

This board should move to condemn such behavior and put SMI on notice."

Mr. Same moved the suspension of the rules to introduce the following resolutions:

RESOLUTION APPOINTING MEMBER TO THE SENECA COUNTY PLANNING BOARD

RESOLUTION NO. 194-10, moved by Mr. Same, seconded by Mr. Davidson and adopted.

WHEREAS, the Seneca County Board of Supervisors did pass Local Law #3 of 2010 to Establish Membership and Duties of the Seneca County Planning Board; and

WHEREAS, the Town of Romulus has recommended Fred Swain to represent the town on the County Planning Board; and

WHEREAS, this resolution has been reviewed and approved by the Planning, Development, Agriculture and Tourism Committee on August 24, 2010; and now, therefore, be it

RESOLVED, that the Seneca County Board of Supervisors does hereby appoint the following person effective September 1, 2010 to a term on the Seneca County Planning Board as the representative of the Town of Romulus:

<u>NAME</u>	<u>Town of Residence</u>	<u>Expiration of Term</u>
Fred Swain	Romulus	06/30/12

RESOLUTION AUTHORIZING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO BE GRANTED TO THE SENECA COUNTY ECONOMIC DEVELOPMENT CORPORATION FOR A GRANT TO BRUCE HENRY PROPERTIES, LLC d/b/a BONADENT

RESOLUTION NO. 195-10, moved by Mr. Same, seconded by Mrs. Garlick-Lorenzetti and adopted.

WHEREAS, Seneca County has received Community Development Block Grant (CDBG) funds from the United States Department of Housing and Urban Development (HUD) to make development loans; and

WHEREAS, businesses to whom these monies have been loaned are repaying the loans, thereby establishing a revolving loan fund for business development and job creation and retention; and

WHEREAS, a funding application has been received by the CDBG Loan Review Committee and found to be within HUD regulations and guidelines applicable to the Revolving Loan Fund Program; and

WHEREAS, this \$300,000 grant will help start this business and assist in the creation of 90 full-time and retain 20 jobs at the business located at 2465 BonaDent Drive, Seneca Falls, NY; and

WHEREAS, this resolution has been approved by the Planning, Development, Agriculture & Tourism Committee on August 24, 2010; now, therefore, be it

RESOLVED, on condition that the Department of Housing and Urban Development and New York State Office of Community Renewal approve this application, that the Seneca County Board of Supervisors approved the proposed grant for the sum of three hundred thousand dollars (\$300,000) under the CDBG Program from funds Account No. 272017469 and 27310840 under the terms and conditions provided for such loans through the Department of Housing and Urban Development and the CDBG Loan Committee and authorized the Chairman of the Board of Supervisors to sign closing documentation.

Mr. Kaiser was recognized by Chairman Lafler. Mr. Kaiser questioned why the Board of Supervisors was not informed earlier of Ms. Fridley's request for a Letter of Intent from Seneca County to provide services through the Nursing Home Transition and Diversion Waiver program (NHTD) and CDPAS, a Self-Directed Personal Assistance Service Program for people who require personal care assistance. He cited correspondence about the issue dated June 2010 from Senator Nozzolio to Ms. Sinclair. Ms. Sinclair stated that she and Charles Schillaci, Commissioner of Human Services, are aware of the program and Ms. Fridley's request in June. From discussions it was concluded that services are being offered in Seneca County that addresses the needs of persons with disabilities.

Special Order of the Day

The meeting adjourned at 9:28 p.m.