

A Meeting of the Town Board of the Town of Orchard Park, Erie County, New York, was held at the Orchard Park Municipal Center, S4295 South Buffalo Street, Orchard Park, New York on the 16th day of January 2008 at 7:00 PM, (local time). The meeting was called to order by the Supervisor and there were:

PRESENT AT ROLL CALL: Mary Travers Murphy	Supervisor
Nancy Ackerman	Councilwoman
David Kaczor	Councilman
Mark Dietrick	Councilman
Edward Graber	Councilman
Janis Colarusso	Town Clerk
Leonard Berkowitz	Town Attorney
Samuel McCune	Chief of Police
Andrew Geist	Building Inspector
Frederick Piasecki, Jr.	Highway Superintendent
Wayne Bieler	Town Engineer

The Supervisor read into the record the following: *"If anyone appearing before the Town Board has a family, financial or business relationship with any member of the Board, it is incumbent upon that person to make it known under State Law and the Town Code of Ethics."*

1) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the minutes of the Meeting of the Town Board held on January 2, 2008, and the 2008 Organizational Meeting Minutes and the Special Meeting Minutes of the Town Board held on December 19, 2007 and January 9, 2008, as presented by the Town Clerk, are hereby approved, and be it further

RESOLVED, that the reading of these minutes be dispensed with as each member of the Town Board has previously received copies thereof.

The resolution was unanimously adopted.

Public Hearing

At 7:00 PM, the advertised time, the Supervisor called for the Public Hearing to hear all interested persons for or against a Proposed Local Law for the Year 2008, which amendment provides as follows:

Sidewalk Maintenance and Repair

1. Purpose.

The purpose of this Local Law is to promote the maintenance of safe and adequate sidewalks for pedestrian use by regulating the manner of construction, reconstruction, repair, and maintenance of sidewalks and the materials to be used in the grades and widths thereof in the Town of Orchard Park; and to prohibit any construction, reconstruction or repair which does not comply with such regulations and to provide guidelines for assuring the safety of such sidewalks and to delineate the responsibility of the Town of Orchard Park and the property owner.

2. Definitions.

As used in this Local Law, the following terms shall have the meanings indicated:

PROPERTY OWNER OR OWNERS – Anyone who holds title to the premises in fee simple or by life estate or remainder, and also any beneficial owner of the premises such as a contract vendee in possession, who has the duty to pay the taxes on the premises.

SIDEWALK OR SIDEWALKS – Existing sidewalks, those presently under construction, if any, and any future sidewalks constructed after the date of the adoption of this Local Law which abut public highways in fact used by the public.

TOWN - The Town of Orchard Park, New York, 14127.

3. Duties of Owners.

It shall, in all cases, be the duty of the owner of every lot or piece of land in said town to keep the sidewalks adjoining the owner's lot or piece of land in good repair and to remove and clean away all snow and ice and other obstruction from such sidewalks. Failure to do so will result in the costs of any repair done by the Town of Orchard Park to be assessed against the landowner, and further said landowner shall be liable in tort for any injuries to any person or property as a result of the landowner's failure to comply with this Local Law.

4. Standards and Specifications.

Quality of concrete, grade, thickness and width of sidewalks and other standards of construction and installation shall be determined by specifications adopted by the Town and available at the Office of the Town Engineer upon request. Unusual circumstances which may affect installation or cause a deviation from these specifications may be approved on a case-by-case basis after investigation by the Town Engineer.

5. Unsafe sidewalks; Notice to repair; Appeals.

- A. Sidewalks shall be considered to be unsafe if, by determination of the Town Engineer, they are so broken, cracked, lifted, spalled or scaled or otherwise deficient to cause a clear and present danger to pedestrian. Upon such determination, the owner of the property where such sidewalk is located will be notified, in writing, by standard form of the need to repair to replace the sidewalk in question. Such notice shall specify the sidewalk or portions thereof which require repair or replacement and contain a brief summary of the reasons therefore. Such notice shall be served upon such owner by personal service or by certified mail, return receipt requested, addressed to the last known address as shown on the latest completed assessment roll of the Town of Orchard Park. If delivery of the certified mail is returned or unclaimed, then service shall be made by regular mail and shall be deemed complete five days after the date of mailing. The cost of such repair or replacement will be borne by the property owner.
- B. Upon delivery of the written notice, the property owner shall make every attempt to correct the deficiency noted within a reasonable time after delivery of the notice; in no event shall more than one year elapse between the delivery of the written notice and correction of the deficient or unsafe sidewalk.
- C. If, within said one year period, the sidewalks required to be repaired shall not have been repaired, then the Town Board may cause the same to be done at the expense of the property owner. If said expense, as determined by the Town, is not paid within thirty days after billing the property owner, such a charge shall be a lien upon the property benefited until paid and shall be added to the property owner's tax bill as an assessment as set forth in this article.

- D. Any property owner aggrieved by a determination to repair the sidewalk or any portion thereof as contained in the written notification of the same shall have a right to appeal such determination to the Town Board by delivering a written request for review of the determination to the Clerk within sixty days of delivery of said notification, which the Town Clerk shall thereupon transmit to the Town Board. Upon receipt of a timely request for review, the Town Board shall refer the matter to a person whom it shall designate for the purpose of hearing all evidence and arguments both against and in support of such determination. For this purpose, the person designated by the Town Board shall schedule a time and place for such a hearing and shall give or cause to be given adequate notice thereof to the property owner and to the Town Engineer. On such hearing, the formal rules of evidence shall not apply. Upon conclusion of such hearing, the person designated shall prepare and transmit to the Town Board a recommended decision based upon the evidence and the arguments presented, either annulling, modifying or affirming the determination of the Town Engineer, together with a summary of the reasons therefore. Upon receipt of such recommended decision, the Town Board shall take the matter up at the next regularly scheduled Town Board meeting and shall accept, reject or modify said recommended decision. The determination of the Town Board so made shall be deemed final and binding upon the property owner and the Town Engineer.

6. Removal of sidewalk rubble.

The Town of Orchard Park shall dispose of the rubble from the replacement of sidewalks within the right-of-way, provided that the said rubble is placed at the curb or road edge.

7. Noncompliance.

- A. Owners of premises in the Town of Orchard Park, subject to this Local Law, must comply therewith and with any regulations, specifications and any order passed by the Town Board of the Town of Orchard Park pursuant to Town Law §200-a and 130, Subdivision 4. In the event that owner or occupant, as the case may be, fails to comply with this Local Law, the Sections of the Town Law set forth above, any regulations passed by the Town Board or the specifications or any orders of the Town Board pursuant thereto, the Town may cause the construction, reconstruction, repair or removal of the obstructions to be accomplished and audit and pay the expense of doing the same. If the owner or occupant in question does not reimburse the Town, the Town shall assess the expense thereof against the property benefited as a whole, in any five or fewer annual installments, in the same manner as street improvements constructed pursuant to the Town Law §200, and in accordance with the Town Law §200-a
- B. If such expense is assessed in installments, there shall be assessed as part of such installment, except the first, as interest, an amount of six percent (6%) of such installments.
- C. If such expense is assessed as a whole and the Town Board resolution assessing such expense against a particular piece of property shall so provide, the assessment against such property may be paid in five or fewer annual installments on the date fixed by such resolution with interest at the rate of six percent (6%).

Affidavits of Publication and Posting of the Legal Notice of the Public Hearing were presented, read aloud, and filed with the Town Board by the Town Clerk.

At this time Supervisor Travers Murphy opened the Public Hearing to hear all interested persons for or against the Proposed Local Law for the Year 2008:

Proponents:

Anne Bergantz: Chairperson of the Trails Task Force: Ms. Bergantz stated that building safe pedestrian connections between businesses, neighborhoods, recreation areas and town services is the goal of the Trails Task Force. Sidewalks along major Orchard Park roadways are part of the Trails Task Force Master Plan and they benefit both business and residents. They encourage pedestrian activities that promote local businesses, healthy habits and safe corridors for individuals who do not drive. The sidewalks improve the quality of life and year round access is necessary in order to receive all the benefits that safe pedestrian connections provide. Snow removal is part of providing year round access and the Trails Task Force supports a plan that insures that sidewalks are clear throughout the winter. Ms. Bergantz stated that as a resident of Orchard Park she would be willing to put her tax dollars towards the plowing of the sidewalks.

Tony Turton: Mr. Turton is in favor of part of the ordinance, which is keeping the sidewalks clear of snow as his family uses the sidewalks. He does not feel, however, that individuals should be responsible for the sidewalk maintenance.

Opponents: George Slocum; Former Chief of Police Robert Henning; Robert Peleckis; Brendan Cunningham; Jack Bertsch; Jean Miller; Jim Carr; Mary Ann Carr; Paula Szczepanik; Dennis Jewell; Nick Buccieri; Patrick Sullivan; Scott Smith; Eric Matwijow; Paul Voytovich; Larry Bieler and Jan Emminger

The following are reasoning for giving opposition to the new sidewalk law:

- One of the main responsibilities of government is Public Safety.
- Sidewalks are public convenience for the general public, just like roadways.
- Can not see the Town Board legislating legal tort responsibility and huge maintenance costs on the few taxpayers that happen to live in an area that have sidewalks.
- Town is abdicating its responsibility.
- Residents and businesses have had input in the installation, construction, placement and quality of the sidewalks.
- Present sidewalks are already damaged.
- Even though New York State built the sidewalks and assigned the responsibility to the Town, it does not justify the Town rolling over the responsibility onto the few taxpayers who abut the sidewalks. The Town should accept the state mandated responsibility.
- NYS Highway Law Article 7 §140 places the sidewalk maintenance and repair responsibilities with the Town Highway Superintendent.
- Sidewalks were put in by a branch of government on the public right of way and should be the total responsibility of government to maintain them.
- Our tax dollars pay for construction and maintenance of schools, roads, libraries, ball fields, senior centers, recreation areas and other public facilities that not everyone uses, why not sidewalks.
- Legal and financial ramifications to the taxpayers bordering the sidewalks would cause undue burden. A resident could potentially loose their house, or go bankrupt, if sued.
- Insurance premiums would go up.
- Businesses along Buffalo Road suffered severe financial burdens; some even went out of business, when the State constructed road and highways.
- This law could force some businesses out of Orchard Park.
- The Town has grown considerably and sidewalks are needed for Public Safety.
- Snowplows go by at all different times throwing snow, ice, slush and debris onto the sidewalks. It would be impossible for an individual to keep up with it.
- There would be no continuity in the cleaning and maintenance of the sidewalks.

- Some of the people who border the sidewalks are elderly and live on a fixed income. They would not be able to comply with the law physically or financially.
- If individuals are responsible for the sidewalks, there would be inconsistent results all through the Town.
- Having one entity (the Town) do all the clearing and maintenance would assure that it will be accomplished in a cohesive and timely manner.
- It is more cost effective to have one common body handle the sidewalks. It would be far more economical and reliable for the Town to be responsible.
- The law is poorly written and inequitable.
- The Village currently has a sidewalk snowplow. The Town and Village should be able to work together to plow the sidewalks.
- Most residents would be willing to have their tax dollars to go towards the care and maintenance of the sidewalks.

2) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN KAZCOR, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN ACKERMAN, TO WIT:

RESOLVED, that the Public Hearing in the matter of the Amendment to the Town Code of the Town of Orchard Park for Sidewalk Maintenance and Repairs, is hereby closed at 7:40 PM (local time).

The resolution was unanimously adopted.

Supervisor Murphy stated that they would not vote on the Local Law this evening. The Town Board would discuss it at the next work session and decide when it would be back on the agenda.

Public Hearing

At 7:00 PM, the advertised time, the Supervisor called for the Public Hearing to hear all interested persons for or against a Proposed Local Law for the Year 2008, which amendment provides as follows: Town of Orchard Park (new) code fees for the Town Code Book.

Affidavits of Publication and Posting of the Legal Notice of the Public Hearing were presented, read aloud, and filed with the Town Board by the Town Clerk.

At this time Supervisor Travers Murphy opened the Public Hearing to hear all interested persons for or against the Proposed Local Law for the Year 2008:

Proponents and/or Opponents: No one spoke.

3) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Public Hearing in the matter of a Local Law for the Year 2008 and an Amendment to the Town Code of the Town of Orchard Park, is hereby closed at 7:42 PM (local time).

The resolution was unanimously adopted.

Adopt Local Law #1 for the Year 2008 - Fees

4) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

WHEREAS, following due and timely notice a Public Hearing relating to the matter of a Proposed Local Law for the Year 2008: Amendment to the Fee Schedule of the Town Code of the Town of Orchard Park; was conducted at the Orchard Park Municipal Center, at which time all interested parties were given an opportunity to be heard.

NOW, THEREFORE, be it

RESOLVED, that the Town Board is hereby authorized to adopt Local Law #1 for the Year 2008 which was recommended by the Building Inspector and the Town Engineer and provides as follows:

Schedule of Zoning Fees

A. Building Permit Fees.

1) The fee for a building permit shall be as follows:

1-family or 2-family house (all work)	\$40 <u>50</u> , plus \$0.10-0.15 per square foot
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NOTE: "Floor area" shall not include a Cellar, non-habitable basement, non-habitable attic or carport but shall include an accessory garage. Floor area shall be based upon outside dimensions of the building.

Building of nonresidential occupancy (all work)	\$50-200 , plus \$225 <u>275</u> for each \$100,000 of value or any portion of \$100,000
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NOTE: The permit fee for a building occupied in part for residential use and in part of nonresidential use shall be the sum of the two occupancy fees calculated separately.

Structural alterations, additions, private accessory structures or demolitions (all work), tenant build out

Cost of work

First \$1,000	\$20 <u>30</u>
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Each additional \$1,000 or any portion of \$1,000 \$5

Demolition	\$10 <u>25</u>
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Certificate of occupancy for change in use

For building or structure costing up to \$20,000	\$20 <u>30</u>
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For building or structure costing over \$20,000	\$25 <u>35</u> and up to \$40,000
For building or structure costing over \$40,000	\$30 <u>40</u> and up to \$100,000
For building or structure costing over \$100,000	\$10 <u>15</u> for each \$50,000 thereof
Signs (where permitted)	
All signs	\$20
Relocating signs on same premises	\$20
Alteration of signs	\$20
Liquid containers (where permitted) (capacity in gallons)	
550 or less	\$30 <u>40</u>
551 to 1,000	\$50 <u>75</u>
1,001 to 2,000	\$70 <u>100</u>
2,001 to 3,000	\$50 <u>100</u>
Over 3,000	\$20 <u>40</u> , plus \$2- <u>5</u> per 1,000 gallons or fraction thereof in excess of 3,000 gallons
Removing liquid containers	\$35 <u>75</u>
Moving buildings	
On or across a public thoroughfare	\$300 <u>500</u>
Not exceeding 10 feet in width, 20 feet in Length and 10 feet in height on vehicle over a public thoroughfare	\$100 <u>150</u>
From one lot to another without moving onto a public thoroughfare	\$50 <u>100</u> , plus \$3 <u>5</u> per 1,000 cubic feet of new construction
Lot to another location on the same lot	\$20 <u>50</u> , plus \$2 <u>5</u> feet of new construction

- 2) If any person erects, constructs, alters or moves or commences to erect, construct, alter or move any building or structure within the Town of Orchard Park without first having obtained a building permit as required by §144-64 of this chapter, the fee required by this subsection shall be twice the applicable amount. Any fee charged pursuant to this sub-section shall be in addition to any other remedy provided by law.
- 3) If a permit has been issued and the applicant makes a significant plan or lot change, a fee of \$150 will be charged for review of the permit/plan.
- 4) A fee of \$500 will be assessed to the applicant for structures occupied before a certificate of occupancy is issued.
- 5) Right-of-Way Permit Fees (for all new construction) will be paid upon issuance of the building permit: ~~\$35-50~~; right-of-way permit fees: \$35 50.

B. Zoning Board of Appeals application or appeal, applications for variances or appeals shall be accompanied by a fee of ~~\$75~~ 100 payable to the Town of Orchard Park. Furthermore, if a petitioner requests adjournment of a public hearing which has been published and noticed, said petitioner shall bear the costs incurred to republish or re-notice said hearing.

C. Zoning amendment or change petition.

- 1) Any petition and the accompanying instruments to amend or change the zoning regulations relating to parcels of land amounting to five acres or less shall be accompanied by an initial filing fee of \$50. Subsequent to recommendation of the Planning Board and prior to publication in the official Town newspaper, the following fees shall be paid:
 - (a) For areas of ½ acre or less: \$50
 - (b) For areas from ½ acre to two acres: \$150
 - (c) For areas from two to five acres: \$150 for the first two acres
\$50 for each additional acre or fraction thereof
- 2) Any petition and the accompanying instruments to amend or change the zoning regulations relating to parcels of land amounting to five (5) acres or more shall be accompanied by the following fees:
 - (a) For areas from five to ten acres: \$335 for the first five acres
\$30 for each additional acre or fraction thereof
 - (b) For all areas in excess of ten acres: \$485 for the first ten acres
\$20 for each additional acre or fraction thereof
- 3) The fee for a petition and accompanying instruments for a planned unit development shall be \$5,000. The Town of Orchard Park shall refund those fees which are not utilized in reviewing such Petition and accompanying instruments for a planned unit development.

D. Applications for approval of plans for subdivision development shall be accompanied by the following fees:

- 1) For areas of less than five acres: \$185 for the first two acres
\$50 for each additional acre or fraction thereof
- 2) For areas from five to ten acres: \$335 for the first five acres
\$30 for each additional acre or fraction thereof
- 3) For areas in excess of ten acres: \$485 for the first ten acres
\$20 for each additional acre or fraction thereof

E. Where the Planning Board chooses to accept monies from sub-dividers in lieu of recreation land, the following fee schedule shall apply:

- 1) Any owner who presents a subdivision in an area zoned R-3 or R-4 shall be assessed \$1,200 for each lot in said subdivision.
- 2) Any owner who presents a subdivision in any area zoned R-2 shall be assessed \$1,400 for each lot in said subdivision.
- 3) Any owner who presents a subdivision in any area zoned R-1 shall be assessed \$1,800 for each lot in said subdivision.
- 4) Any owner who presents a subdivision in any area zoned A-1 shall be assessed \$2,600 for each lot in said subdivision.
- 5) Any developer who secures a building permit for multi-dwelling units in any zone shall be assessed \$7,200 per acre.

F. Commercial parking lot fee.

- 1) Operators of commercial parking lots shall be obligated to pay an annual fee of ~~\$25~~ 50. Each permit shall be issued for a period commencing June 30 and terminating July 1 of the following year.

G. Fire inspection fee: ~~\$25~~ 40.

H. Operating permit: \$75

Subdivision Engineering Review Fees

Subdivisions of 20 lots or less (2 reviews)	\$50.00/lot
Subdivisions over 20 lots (2 reviews)	\$1,000.00 + \$30.00/lot (over 20 lots)
Multiple Dwelling (two or more families)	\$50.00 + \$50.00/unit over 2 units
Additional reviews after first two initial reviews	\$250.00/review
Engineering Review of residential lot grading and	\$75.00/lot drainage plan

Commercial Engineering Review Fees

Review of Site Plan	\$100.00
Review of site plan if detention or utility	\$400.00/1 st acre + \$50.00/acre extension is included
Additional reviews after first two initial reviews	\$250.00

Flood Zone Development Engineering Review Fees

Permit Application (any new project in flood zone)	\$100.00 + \$0.02/sq.ft.
Flood Zone Letter	\$25.00

Excavation/Fill Permit Engineering Review Fees

Review of Grading Plan (not required for Building Permits or Public Improvement Permits)	\$150.00 + \$75.00/acre
Construction Site Inspection	\$50.00 + 2% of Construction Cost

Sanitary Sewer**Engineering Review, Connection & Inspection Fees**

Residential Development	\$250.00/lot
Multi-unit Residential Development	\$250.00 + \$100.00/unit
Commercial Projects based on water service size	
Less than 1" water service	\$250.00
1" or less than 1.5" water service	\$500.00
1.5" or less than 2" water service	\$1,000.00
2" water service	\$1,500.00
over 2" water service	\$2,000.00

Private Mainline Extensions – Construction Inspections

6" Sanitary Sewer Inspection	\$100.00/100 L.F.
8" Sanitary Sewer Inspection	\$250.00/100 L.F.

Drainage & Phase II**1) Engineering Storm Water Pollution Prevention Plan Reviews & Construction Site Inspections - Single Phase Residential & Commercial Development Projects**

A. If design is in conformance with New York State Design Manuals & Town of Orchard Park Standard SWPP Plan design plan review	\$300.00/less than 5 acres \$450.00/5 acres to 10 acres \$450.00 + \$100.00/each 5 acres or portion of
Construction Inspection	\$500.00/less than 5 acres \$700.00/5 acres to 10 acres \$700.00 + \$200.00/each 5 acres or portion of
B. If design is not in conformance with New York State Design Manuals & Town of Orchard Park Standard SWPP Plan design plan review	\$600.00/less than 5 acres \$750.00/5 acres to 10 acres \$750.00 + \$100.00/each 5 acres or portion of

Construction Inspection	\$500.00/less than 5 acres
	\$700.00/5 acres to 10 acres
	\$700.00 + \$200.00/each 5 acres or portion of

2) Engineering Storm Water Pollution Prevention Plan Reviews & Construction Site Inspections – Multi-Phase Residential & Commercial Development Projects

- A. When the entire project is first being reviewed and approved by the municipality, use the Single Phase Residential & Commercial Development Project schedule above to determine an initial fee based on the entire acreage of the project to be developed in several phases.
- B. Add \$500 for each subsequent phase after the 1st initial phase, to be collected at the beginning of the development of each subsequent phase. This additional \$500.00 is to be used for construction inspection assuming that the SWPP Plan and Design Plans do not change.

Note: These fees are in addition to the existing site plan or subdivision review/application fee.

- C. Engineering Review Of Public Storm Sewer Extensions (Not part of a commercial or subdivision plan) \$50 + \$50.00/100 ft. or portion of

Water

- Engineering Review of a public mainline extension (Not part of a commercial or subdivision plan) \$50 + \$25.00/100 ft. or portion of

Miscellaneous

Rezoning map and description review	\$50.00
Re-inspection (called to make inspection, work	\$35.00 (inspection not completed)
Planning Board Public Hearing Fee	\$75.00
Public Improvement Permit Fee § 104-2. Permit required; fee.	\$10.00 <u>\$50.00</u>

The adoption of the foregoing resolution was duly put to a roll call vote:

Supervisor Travers Murphy	Aye
Councilwoman Ackerman	Aye
Councilman Kaczor	Aye
Councilman Dietrick	Aye
Councilman Graber	Aye

The resolution was unanimously adopted.

Old Business #1 Approve Change-In-Use for 2861 Southwestern Blvd/ Residential to Office

5) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Town Board does hereby approve the request of Steve Schneckenberger, 2861 Southwestern Boulevard, Zoned B-2 for a Change-In-Use from residential to office/retail space, as recommended by the Planning Board, 1/9/08, with the following conditions and/or stipulations:

- This is an Unlisted SEQR Action and therefore no determination of significance is required
- Dumpsters shall be screened, in accordance with Section 144-25 of the Town Code

The resolution was unanimously adopted.

Old Business #2 Re-schedule Public Hearing for the "Village Home Subdivision".

6) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN KACZOR, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN ACKERMAN, TO WIT:

RESOLVED, that the Town Board is hereby authorized to re-schedule the Public Hearing for the ("Village Home Subdivision"), rezoning of vacant land located on the South side of Milestrip Road and West of Ponderosa Court, Zoned R-2 and R-1, for Wednesday, February 20, 2008, at 7:00 PM. (The Planning Board, 12/12/07, recommended that the Town Board schedule a Public Hearing for the rezoning from R-2 and R-1 to "Conservation Management Overlay District" (CMO) for the purpose of constructing 56 single family homes.)

The resolution was unanimously adopted.

New Business #1 Approve Final Change Order of Retention for the Contract w/E J Militello, Inc.

7) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN GRABER, TO WIT:

WHEREAS, the Town Engineer is pleased to inform the Town Board that construction work on the Concrete Gutter Installation for various Town Roads (Fay, Glen, Pilger, Old Orchard, Old Post, etc.) has been completed. All work has been satisfactorily completed in accordance with specifications, and

WHEREAS, a two-year maintenance bond in the amount of \$57,140.51 has been submitted along with the Affidavit of Release of Liens, Affidavit of Payment of Debts and Claims & necessary legal documents, and

WHEREAS, the over/under sheet lists the final adjustments to the quantities for each bid item and shows there was a net decrease of \$12,724.49. This represents a decrease of 18.21% from the Bid Contract amount.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby approve the Final Change Order and authorize the release of retention for the Concrete Gutter Installation for Various Town Road; Fay, Glen, Pilger, Old Orchard, Old Post, etc. to E.J. Militello Concrete, Inc., P.O. Box 770, East Amherst, New York 14051 in the amount of \$2,857.02, and be it further

RESOLVED, that the Town Board does hereby authorize the Town Clerk to release the performance security in the amount of \$7,500.00, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #2 Approve Change Order #1 to the Contract with C&S Engineers, Inc.

8) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN ACKERMAN, TO WIT:

WHEREAS, the Engineering Department is requesting your approval of a change order to the contract with C&S Engineers for the Orchard Park Highway Department Facility and Site Improvements Project in the amount of \$2,150.00. If approved, this would increase the total contract amount to \$100,650.00, representing an increase of 2.1%, and

WHEREAS, during the course of the engineering and design of the Orchard Park Highway Department Addition Project by C&S Engineers, Watts Architecture and Engineering was hired to perform asbestos testing. Asbestos was known to exist in certain portions of the building and more extensive testing was required involving all other materials, and

WHEREAS, the Engineering Department has received a quote from C&S Engineers to have Watts Architecture and Engineering do the testing in the amount not to exceed \$2,150.00.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize a Change Order #1 to the Contract with C&S Engineers, Inc., 90 Broadway, Buffalo New York 14226, for Highway, Composting and Yates Park Facilities Improvements Project, in the amount not to exceed \$2,150.00, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #3 Supervisor to Execute 2008 Van Contract with Erie County

9) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR TRAVERS MURPHY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the 2008 Van Contract between the Town of Orchard Park and the County of Erie. The purpose of this program is to provide service to individuals living independently.

The resolution was unanimously adopted.

New Business #4 Court Clerk Appointment

10) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN GRABER, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN ACKERMAN, TO WIT:

RESOLVED, that the Town Board does hereby appoint Mary Anne Riter as Court Clerk to Town Justice Deborah Chimes at a salary of; JC7, Step E, \$15.45 rate.

The resolution was unanimously adopted.

New Business #5 Appoint Chief of Police as Youth Director and David Rebmann as the Assistant

11) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Town Board does hereby appoint Sam McCune, Chief of Police, to Youth Director (at a salary stipulated in the 2008 Budget) for a period not to exceed one year beginning 3/3/08 and Mr. David Rebmann shall be appointed, with no salary, as Assistant Youth Director to Chief McCune.

Chief of Police Sam McCune is going to retire at the end of February so there will be no overlapping of duties. Between now and the 3/3/08 date, both men are going to serve in the capacities that they will be officially appointed to.

The resolution was unanimously adopted.

New Business #6 Appointments to the Historic Preservation Board.

12) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN KACZOR, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN ACKERMAN, TO WIT:

WHEREAS, Daniel Ransom, Timothy Gardner, Norman Stoj and Philip Schaal (posthumously) were appointed for four year terms on the Orchard Park Historic Preservation Board, and

WHEREAS, Suzanne Kulp, Bonnie Foit-Albert and David Abate were appointed for two years terms on the Orchard Park Historic Preservation Board, and

WHEREAS, each appointment took place on May 14, 2004 and the Resolution appointing the members of the Orchard Park Historic Preservation Board directed that they continue through the end of the calendar year, when their appointment terminated, and

WHEREAS, the Local Law creating the Orchard Park Historic Preservation Board provided for four year terms and two year terms, and

WHEREAS, it is necessary to correct the Resolution to provide for four year terms and two year terms, rather than terms ending at the conclusion of the calendar year

NOW, THEREFORE, be it

RESOLVED, that the appointment of Daniel Ransom, Timothy Gardner, Norman Stoj and Philip Schaal, shall be for a period commencing on the day of their appointment, May 14, 2004, through midnight on the date prior to the fourth year of their appointment, May 13, 2008 and be it further

RESOLVED, that Michael Stock is appointed to replace Philip Schaal for the remainder of his term, and be it further

RESOLVED, that Scott Humphrey is appointed to replace David Abate for the remainder of his term, and be it further

RESOLVED, that the appointment of Suzanne Kulp, Bonnie Foit-Albert and Scott Humphrey shall be for a period commencing on the day of the appointment, May 14, 2004, through midnight on the date prior to the second year of their appointment, May 13, 2006, and be it further

RESOLVED, that Suzanne Kulp, Bonnie Foit-Albert and Scott Humphrey were re-appointed for another term of four years from May 14, 2006, through midnight, May 13, 2010, except in the case of Scott Humphrey who was appointed to replace David Abate for the remainder of his term, ending midnight, May 13, 2010.

The resolution was unanimously adopted.

New Business #7 Advertise for Bids for the 2007-2008 SARA Grant

13) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Town Board does hereby authorize the advertisement of bids for the 2007-2008 Local Government Records Management Improvement Fund in the microfilming category, through the Town Clerk's Office. Bids will be open January 31, 2008, at 8:30 AM.

The resolution was unanimously adopted.

New Business #8 Adopt the New Rules of Decorum for the Town of Orchard Park Board Meetings

14) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN GRABER, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN ACKERMAN, TO WIT:

RESOLVED, that the Town Board does hereby adopt the following rules of decorum for the Town Board Meetings: *Town of Orchard Park Rules of Decorum for Public Meetings:*

A. Decorum. Meetings of the Town Council shall be conducted in an orderly manner to ensure that the public has a full opportunity to be heard and that the deliberative process of the Council is retained at all times. The presiding officer of the Council, who shall be the Supervisor or in his/her absence, other member so designated by the Council, shall be responsible for maintaining the order and decorum of meetings.

B. Rules of Decorum. While any meeting of the Town Council is in session, the following rules of order and decorum shall be observed:

- Council Members. The members of the Town Council shall preserve order and decorum, and a member shall not by conversation or other means delay or interrupt the Council proceedings or disturb any other member while speaking.
- Town Officials (Elected, Appointed). Employees of the Town shall observe the same rules of order and decorum as those which apply to the members of Council.
- Persons Addressing the Council and Council Members being addressed. Public oral communications at the Town Council meetings should not be a substitute for any item that can be handled during the normal working hours of the municipal government. The primary purpose of oral communications is to allow citizens the opportunity to formally communicate with the Town Council as a whole, for matters that cannot be handled during the regular working hours of the Town government. Each person who addresses the Council shall do so in an orderly manner and shall not make personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting shall, at the discretion of the presiding officer, be barred from further audience before the Council during that meeting. Council Members and Town Employees will adhere to the same code of conduct.

- Members of the Audience. No person in the audience at a Council meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impede the orderly conduct of any Council meeting. Any person who conducts himself in the aforementioned manner shall, at the discretion of the presiding officer, be barred from further audience before the Council during that meeting.
- C. Addressing the Council. Persons wishing to discuss an agenda or nonagenda item may seek recognition by the presiding officer during the business from the floor portion of the meeting. No person shall address the Council without first being recognized by the presiding officer. The following procedures shall be observed by persons addressing the Council:
- Each person shall step to the podium provided for the use of the public and shall state his or her name and address; the organization, if any, which he or she represents; and the subject he or she wishes to discuss.
 - Each person shall limit his or her remarks to four minutes, unless further time is granted by the presiding officer.
 - All remarks shall be addressed to the Council as a whole and not to any single member thereof, unless in response to a question from such member.
 - No question may be asked of a member of the Council or of the staff without permission of the presiding officer.
 - Council members and staff will not engage in debate or discussion with the speaker without permission of the presiding officer. The Council member's role is to listen.
- D. Enforcement of Decorum. The rules of decorum set forth above shall be enforced in the following manner:
- Warning. The presiding officer shall request that a person who is breaching the rules of decorum be orderly and silent. If, after receiving a warning from the presiding officer, a person persists in disturbing the meeting, the presiding officer shall order him or her, to leave the Council meeting. If such person does not remove himself or herself, the presiding officer may order any law enforcement officer who is on duty at the meeting as sergeant-at-arms of the Council to remove that person from the Council chambers.
 - Removal. Any law enforcement officer who is serving as sergeant-at-arms of the Council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the Council meeting. Upon instruction of the presiding officer, it shall be the duty of the sergeant-at-arms to remove from the Council meeting any person who is disturbing the proceedings of the Council.
 - Motion to Enforce. If the presiding officer of the Council fails to enforce the rules set forth above, any member of the Council may move to require him or her to do so, and an affirmative vote of a majority of the Council shall require him or her to do so. If the presiding officer of the Council fails to carry out the will of a majority of the Council, the majority may designate another member of the Council to act as presiding officer for the limited purpose of enforcing any rule of this section which it wishes to enforce.
 - Adjournment. If a meeting of the Council is disturbed or disrupted in such a manner as to make infeasible or improbable the restoration of order, the meeting may be adjourned or continued by the presiding officer or a majority of the Council, and any remaining Council business may be considered at the next meeting.

The resolution was unanimously adopted.

New Business #9 Refer to the Planning Board and/or Conservation Board:

15) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN GRABER, TO WIT:

RESOLVED, that the Town Board does hereby refer to the Planning Board and/or Conservation Board the following item listed on the agenda: Jim Ball, 100 Hart Place, Zoned R-4. Requesting to rezone property from R-4 to B-2 to expand his existing Cadillac dealership located at 3433 Southwestern Boulevard.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Lou Boehm – Mr. Boehm does not feel all the new retail businesses built in Orchard Park have been beneficial to the residents, as the taxes have not gone down and we are losing green space. He is against Wal-Mart. He also feels that the business entities in Orchard Park who get the benefits of the Town, but do not pay their fair share should be forced to contribute to the Town.

Sal Cerrone – Mr. Cerrone thanked the Town for supporting Dave Bowersox, an Orchard Park police officer, and his family, while he serves in Iraq. Mr. Cerrone is opposed to Wal-Mart and the literature that they are sending to the residents. He feels Wal-Mart is not a good employer or good resident as they cost taxpayers money because of their employee practices. He wants to know why Quaker Crossing South (property bought by Wal-Mart) was rezoned in the first place.

Kathryn Gorkiewicz – Ms. Gorkiewicz stated that she has studied the Wal-Mart Traffic Impact study, read letters about the parking and has discussed this with a few other people and has concluded that there are very serious short comings. She has summarized her information in a letter to Ed Rutkowski of the New York State Department of Transportation, Remy Orffeo –Planning Coordinator, Wayne Bieler – Town Engineer and Mary Travers Murphy – Town Supervisor, with copies for all the Board members. She asked that everyone carefully and objectively look at the points that are raised in the letter.

Jane Shumaker – Ms. Shumaker stated that when the property south of the Quaker Crossing was rezoned, the Town lost valuable industrial land and asked the Town Board to address three areas. What does the Town Board see as our “Return on Investment” for the pain we will have if Wal-Mart does go into the Quaker Crossing South site? Ms. Shumaker stated that the “perceived relationship” between the Quaker Crossing developer and the Town has been responsible for a lot of the citizens’ reactions and asked for greater clarity and disclosure in further actions taken. Ms. Shumaker wanted to know what is the Town going to do about pursuing the Medical Campus business and where does the Town have land that can be used for that type of business.

Nick Taneff – Mr. Taneff talked about the sidewalks and feels that the Town should not be in the liability business.

Pete Harding – Mr. Harding said that he just got his tax bill and it has gone up again. He thought with all the new construction taking place in the Town that the tax bill would go down. Mr. Harding feels that building in Orchard Park is out of control and he is opposed to the Wal-Mart store. He also stated that the residents of Orchard Park took pride in it being a quiet, small bedroom community, but that is no longer true.

Elected Officials & Department Heads

16) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR TRAVERS MURPHY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Town Board does hereby authorize the following budget transfers:

Highway Department

Amount	From	Description	To	Description
\$288.28	A.5132.0200	Garage Salt Barn	A.5132.0445	Garage Maintenance
\$229.50	A.7110.0425	Parks Port. Bathroom	A.7110.0421	Parks – Electric
\$190.33	DA.1910.0409	Hwy Safety Training	DA.1910.0408	First Aid Equipment
\$12,260.00	DA.5110.0472	Stone Gravel	DA.5110.0416	Gas
\$561.02	DA.5110.0440	Equipment	DA.5110.0420	Cell Phones
\$450.00	DA.5130.0200	Equipment	DA.5130.0407	Machinery
\$4,797.53	DA.5130.0200	Equipment	DA.5130.0419	Machinery –other exp
\$3664.71	A.7110.0144	Parks – labor	A.5010.0137	Part time clerical
\$21,307.52	A.7110.0144	Parks – labor	A.7110.0149	Parks P/T labor
\$11,279.36	A.3310.0144	Traffic – labor	A.7110.0149	Parks P/T labor
\$10,850.80	A.8540.0400	Drainage – labor	A.7110.0149	Parks P/T labor
\$9,486.56	DA.5110.0149	Hwy Labor P/T	DA.5110.0144	Hwy - labor
\$4,001.22	DA.5120.0149	Bridges – labor	DA.5110.0144	Hwy - labor
\$29,439.66	DA.5140.0144	Brush – labor	DA.5110.0144	Hwy – labor
\$25,779.41	DA.5142.0144	Snow – labor	DA.5110.0144	Hwy – labor
\$29,104.26	DA.5142.0144	Snow – labor	DA.5130.0144	Machinery – labor
\$1,220.23	A.3310.0215	Traffic – signs	A.7110.0144	Parks – labor
\$1,185.18	A.3310.0421	Traffic – Electric	A.7110.0144	Parks – labor
\$2,230.04	A.3310.0442	Traffic – Maint.	A.7110.0144	Parks – labor
\$1,535.01	A.3310.0443	Traffic – repairs	A.7110.0144	Parks - labor
\$5000.00	A.7110.0102	Field Maint.	A.7110.0144	Parks – labor
\$3,504.04	A.7110.025	Park Equipment	A.7110.0144	Parks – labor
\$5,000.00	A.7110.0217	Tennis Courts	A.7110.0144	Parks – labor
\$4,487.86	A.8540.0448	Drainage – Maint.	A.7110.0144	Parks – labor
\$5,275.64	A.8540.0400	Drainage – Townwide	A.7110.0144	Parks – labor
\$181,737.00	DA.4010.810	State Retirement Acct.	DA.5110.0144	Hwy - labor

Compost Site

Amount	From	Description	To	Description
\$500.00	800 8161.0401	Facility Supplies	800 8161.0111	Crew Chief
\$400.00	800 8161.0401	Facility Supplies	800 8161.0422	Gas
\$12,600.00	800 8161.0443	Equipment Maint.	800 8161.0416	Gas, Oil, Antifreeze
\$8,400.00	800 8161.0443	Equipment Maint.	800 8161.0149	P/T Personnel
\$2,100.00	800 8161.0440	Equipment Rental	800 8161.0149	P/T Personnel
\$53,300.67	800 8161.0250	Equipment	H71	Equipment. Resv.

The resolution was unanimously adopted.

Supervisor Travers Murphy stated that she attended Governor Spitzer's State of the Upstate Address at Buffalo State College and she encouraged everyone to read it. The vision outlined by the Governor is all about economic growth and the challenges facing Western New York. The part Supervisor Travers Murphy found relevant to Orchard Park was the Governor's commitment to the University of Buffalo and its 2020 program. UB's involvement in the Buffalo/Niagara Medical Campus has attracted biotech and medical research related companies from around the world, and the downtown campus is quickly filling up. These international companies will soon be looking for manufacturing space outside of the Medical Campus and Supervisor Travers Murphy is working to put Orchard Park on the radar screen for the companies that will be looking for space. She has met with the Director of the Buffalo/Niagara Medical Campus and she and Ed Starosielec met with the UB President to promote Orchard Park as a place for the new businesses to locate and for the executives who run them to live.

Councilwoman Ackerman said that she attended the Library Board meeting and they received a resignation from Edward Pace and are now looking for a his replacement. The Library Board held its election of officers and they are as follows: Dorothy Holmes-President, Paul Voytovich-Vice President, Marianne Hoover-Treasurer, and Mark Stevens-Secretary.

Councilman Dietrick stated that the Supervisor is the Budget Director for the Town, but the Town Board is also responsible for the general management and control of the finances of the Town. In order for the Town Board to be better able to handle the Town finances, Councilman Dietrick, after talking with the head of the Supervisor's Advisory Group and obtaining ideas, would like to see the following: monthly updates on the budget as compared with actual expenses to date in a line item format; monthly update of anticipated revenue, especially sales tax; highlight areas where the Supervisor and the Department Heads are projecting to be over budget; highlight areas where the Supervisor and Department Heads are projecting to be under budget; Quarterly Capital Budget updates in meetings which include the Town Highway Superintendent and the Town Engineer.

Town Clerk Janis Colarusso wanted to remind everyone that February 5, 2008 is the Presidential Primary.

Highway Superintendent Fred Piasecki stated that the Town has received its first check from the County towards the payment for snowplowing. He said that the FEMA Town will reimburse the Town for some of the grinding that was done during the 2007 October storm. He stated that the NYS DEC has inspected the Compost site and has found it to be in compliance.

17) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR TRAVERS MURPHY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:

RESOLVED, that the Town Board does hereby authorize the approval of all entries on Warrant #2 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$246,906.86
Part Town Fund	\$938.80
Risk Retention	\$0.00
Cemetery Fund	\$0.00
Highway Fund	\$67,642.03
Special Districts	\$134,963.38
Trust & Agency	\$31,043.30
Capital Fund	\$527,680.30

The resolution was unanimously adopted.

REPORTS

18) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN GRABER, TO WIT:

RESOLVED, that the Town Board does hereby receive and file the Building Inspector's Monthly Report and Building Permits for December 2007, and the Police Chief's Monthly Report for December 2007.

The resolution was unanimously adopted.

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilman Kaczor, to wit: the meeting was adjourned at 8:26 PM (local time).

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Janis Colarusso".

**Janis Colarusso
Town Clerk**