

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 18<sup>th</sup> day of January 2006 at 7:00 P.M., (local time). The meeting was called to order by the Supervisor and there were:

<b>PRESENT AT ROLL CALL:</b>	Mary Travers Murphy	Supervisor
	Nancy W. Ackerman	Councilwoman
	Stanley A. Jemiolo, Jr.	Councilman
	David R. Kaczor	Councilman
	Mark C. Dietrick	Councilman
	Janis Colarusso	Town Clerk
	Leonard Berkowitz	Town Attorney
	Andrew Geist	Building Inspector
	Samuel McCune	Chief of Police
	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."*

***Swearing in of the Orchard Park Youth Court Members***

Councilwoman Ackerman stated the Orchard Park Youth Court is the official alternative to Erie County Family Court. This enables the individuals are brought before this court to be judged by their peers. The Youth Court is overseen by three dedicated individuals; Tom McGinty-Youth Board Director, Judge Phil Marshall-Village Justice and Sam McCune-Chief of Police, who all put in many hours preparing the Youth Court Members to do their jobs. The program was then turned over to Tom McGinty.

Mr. McGinty stated "The greatest and most valuable resource of any community is its youth, for they are our future, our future citizens, future leaders and future taxpayers. And with the group we have tonight, I can honestly say our community is in very good hands for the future." Mr. McGinty stated this group has gone through an intensive six week training course, and he thanked the individuals who helped with the training: Village Justice Philip Marshall, Town Justice Edward Pace, Town Justice Deborah Chimes, Supreme Court Justice John Curran, Town Attorney Leonard Berkowitz, Brian Knauth, Robert Lee, Daniel King and Kim Paul.

*Mr. Tom McGinty, Mr. David Rebman and Councilwoman Ackerman presented the following students their "Certificates of Achievement". All students were sworn in as new members of the Orchard Park Youth Court by Village Justice Philip Marshall:*

Laura Garbes, Nicolette Hernek, Samantha Jemiolo, Kim Kucharski, Kimberly Mossburg, Angel Nardolillo, Christina Palczewski, Jennifer Rojeck, Bethany Saul, Courtney Stacy, Hayley Van Lew, Megan Harrington, Caroline Kane, Jenny Johnson, Kate Joyce, Lauren Kryszak, Ashley Kuma, Grace Pappalardo, Melissa Wanat, Emily Yox, Victoria Felser, Lauren Kaczor, Lauren Kaczor, Marleah Noonan, Laura Jarocho, Carl Armstrong, Michael Bella, Bill Burke, Andrew Bammel, Neil Curran, Matt Gura, Kevin Stevens, Ted Sullivan, Robert Terreri, Michael Dietrick, Kyle Druding, Veronica Kelly, Andrew Brydges, Andrew Fitscher, Eric Johnson, Patrick Knauth, Jordan Ott, Kevin Sexton, Jeff Marron, Akhil Iyer.

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

**RESOLVED**, that the minutes of the following Town Board Meetings as presented by the Town Clerk, are hereby approved: December 14, 2005 Executive Session/Special Meeting, December 21, 2005 Town Board Meeting, January 4, 2006 Executive Session/Special Meeting, 2006 Organization Meeting, January 4, 2006 Town Board Meeting, and January 11, 2006 Executive Session/Special Meeting, and be it further

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

**The resolution was unanimously adopted.**

### **PUBLIC HEARING**

At 7:00 PM (local time) the Supervisor called for the Public Hearing to hear all interested parties for or against an Amendment to the Zoning Ordinance and Zoning Map of the Town of Orchard Park to rezone vacant land at the end of Weiss Avenue, from R-3 to B-2, in order to construct an indoor volleyball center, as petitioned by Buffalo Niagara Court Center, Inc., which property is described as follow:

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the Town of Orchard Park, County of Erie and State of New York, being part of Lot No. 457, Township 10, Range 7 of the Holland Land Co. Survey bounded and described as follows:

**COMMENCING** at a point at the Southwestern corner of lands conveyed to the Town of Orchard Park, Liber 2844, Page 306 and the Northeast corner of the Ten Acre Exception and Reservation Liber 1112, page 129, Thence along the South line of lot 456 a bearing of N 89°-45'-23"W a distance of 385.00' to the intersection of the Southerly line of Lot 456 with the West line of Michael G. Connelly, Liber 9285 page 504, Thence along the said West line of Connelly a bearing of S 00°-14'-37"W a distance of 187.65' to the Point and Place of Beginning, Thence continuing along the said West line of Connelly a bearing of S 00°-14'-37"W a distance of 52.35 to a point, Thence a bearing of S 89°-45'-23"E a distance of 37.36' to a point, Thence a bearing of S 35°-16'-23"E a distance of 251.45' to a point, Thence a bearing of N 89°-40'-23"W a distance of 554.08' to a point, Thence a bearing of N 00°-19'-37"E a distance of 444.40' to a point, thence a bearing of S 89°-40'-23"E a distance of 235.93' to a point, Thence a bearing of S 35° 16'-23" E a distance of 230.79' to a point and place of beginning containing 4.0 acres +/-.

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 the Supervisor opened the meeting to anyone who wished to speak on this proposed rezoning:

Supervisor Travers Murphy stated she has received letters from the following people regarding the proposed rezoning. She also stated if anyone would like to view the letters, they will be filed in the Town Clerk' office.

- James A. Bubar, President of Boncraft Printing: Proponent
- Michael R. Story, Vice President of Boncraft Printing: Proponent
- Thomas F. Nye, 11 Bittersweet Lane: Proponent
- James J. Trampert, OPCS Director of Health, Physical Education & Athletic Programs: Proponent
- Lawrence R. Norville, Asst. Vice President of Property Management for Bally's: Proponent
- Timothy D. Kwiatkowski, Resident of school district: Proponent

- Jim Grotke (for Norman Grotke), Boldt Court: Proponent if plan remains as stated on 12/14/2005.
- Gorden Soehnlein, 20 Boldt Court: Opponent
- Anthony F. Lorenzetti, 24 Boldt Court: Opponent
- Betty Lou Voorman POA for Doris M. Jennings, Faahs Drive: Opponent
- Maria Lehman, 5162 Ellicott Road: Proponent

Petitions against the project were also handed in. One petition had 138 signatures, and the other petition has 12 signatures.

Gary Hill, the Petitioner for the project, wishes to rezone four acres of a fourteen acre site from R-3 to B-2, to construct an indoor sports center along with the required parking and green space. The primary use of the facility will be for indoor volleyball and basketball. Rental time will be available for anyone that would like to use the facility. Terry Meyer from LBM Construction, who Mr. Hill has retained as his design/build partner, came forward to outline the current plan and the changes that went into it. Mr. Hill stated that he has plans to put an addition on in the future.

#### **Opponents From the Floor:**

Jim Crow, 2 Creekside Drive  
Don Eagan, 39 Eaglebrook Drive  
Mary Jo Tomasik, 30 Sylvan Circle  
Scott Basista, 14 Boldt Court  
Ron Stadelmaier, 73 Eaglebrook Drive  
Dave Stott, 15 Locust Drive  
Gene O'Hara, 7 Creekside Drive  
Charles Martin, 32 Faas Drive  
Michelle Phillips, 131 Woodview Drive  
Fred Willik, 69 Eaglebrook Drive  
Debbie Naborowski, 61 Eaglebrook Drive

#### **The following issues were mentioned as reasons of opposition:**

- This is a nice, safe, quite neighborhood and they would like it to remain so. In a survey of the neighborhood, 90% of the people do not want this project.
- Has anyone on the Town Board walked the area to see what an oasis this area is and the positive recreation that does take place there.
- Keep the green space.
- Why is there a request to rezone residential land when there is so much commercial property (over 325 acres) available.
- Sprawl and ugly buildings have already crept into this area with the construction of the large tin building for the Gymnasium. If this project does goes through, it will only get worse.
- One resident had an Arial picture which showed the area to be developed and illustrated that a structure the size Rich Stadium would fit inside the proposed project.
- The people who are in favor of the project do not live anywhere near it.
- There is discrimination in the community. Eagle Heights did not want nature trails on Town property and did not get them. Birdsong subdivision did not want soccer fields in the park and did not get them. In the southern part of Town there are parks, ponds and no commercial projects. Why not put the nature trails in this site.

- The Town has no Master Plan for residents to review to know what is planned for this area, no Planning Board Charter to be reviewed or bylaws for direction. How are residents to know what to expect or does the Board like it that way.
- It is always Business vs. Residents.
- Smokes Creek runs through this site and the resident's property along the creek is in jeopardy and so is the creek itself. With the gradual development along Smokes Creek starting as far back as the Birdsong Subdivision, Stonehenge, Braunview and down to the Tops Plaza and the Hammocks apartments, the creek has been pushed beyond its capability to handle the runoff. It is a well know fact that pavement and concrete cannot absorb water like open land. This water has to go somewhere and runs off into Smoke Creek. Where flooding of this project area was once a 10 year event, it is now becoming a regular event. When this area floods, it goes over the manhole cover of the sewage trunk line and sewage mixes with flood water openly in the area. Eventually if this situation is not addressed, the creek will start eroding the Sewer Trunk line that leads to the Sewage Treatment Plant.

**Proponents From the Floor:**

Frank Downing, 24 Symphony Circle: Owner of the property in question

James Coyle, 6428 Lake Avenue

Paul Durrengier, 5060 Chestnut Ridge Road

Doug May, 21 Deer Run

Ed Leak, Orchard Park Recreation Director

Brad Smith, 22 Braunview Way

Vicky Care, Co-owner of Spa at Falling Waters @ 3385 Orchard Park Road

Howie Homes, 4684 Freeman Road

Joe Deck, 4 Lancaster Lane

**The following issues were mentioned as reasons of support:**

- Gary Hill is a well known, well respected developer who will do all he can to work with the residents in the area to make this a good project. He will be a good neighbor.
- New recreation areas are needed for children & adults.
- This project is a complementary service for the area.
- New businesses increase the tax base.
- This business would enhance the other businesses in the area.
- The area to be rezoned is currently zoned R-3 which would allow apartment building to be put in there which would be worse that what is currently planned.
- Orchard Park Recreation Department programs have grown rapidly and they are working with restricted facilities. They are always looking for new venues and ways to expand their programs. Mr. Hill would work with the Recreation Department.

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

**RESOLVED**, that the Public Hearing in the matter of an Amendment to the Zoning Ordinance, and Zoning Map of the Town of Orchard Park, to rezone vacant land at the end of Weiss Avenue, Zoned R-3, from R-3 to B-2, in order to construct an indoor volleyball center, as petitioned by Buffalo Niagara Court Center, Inc., is hereby closed at 9:07 P.M. (local time).

**The resolution was unanimously adopted.**

**Old Business #1 DeMarco Masonry, Rezone Vacant Land on California Road from R-4 to I-1.**

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

**WHEREAS**, following due and timely notice a Public Hearing was held on December 21, 2005 at the Municipal Center, S4294 South Buffalo Street, Orchard Park, New York, in the matter of an amendment to the Zoning Ordinance, and Zoning Map, of the Town of Orchard Park, which amendment provides as follows: To rezone 6 +/- acres of vacant property located at 3964 California Road, from R-4 to I-1, as petitioned by DeMarco Masonry, at which time all interested parties were given an opportunity to be heard, and

**WHEREAS**, the Zoning Maps of the Town showed this property to be Zoned I-1 since August 25, 1981, when the zoning in that area was updated. Recommendations at that time were to zone this property I-1 and it was assumed it had been done. The Building Inspector discovered that the published legal description at that time omitted the metes and bounds of this parcel, thereby excluding it from the rezoning. The public hearing took place to correct that error, and

**WHEREAS**, a Negative SEQR Declaration has been made by the Town Board.

**NOW, THEREFORE, be it**

**RESOLVED AND ORDAINED** that the Zoning Ordinance and the Zoning Map of the Town of Orchard Park be and hereby amended by rezoning from R-4 to I-1 all tract or parcel of land bounded and described as follows:

**ALL THAT TRACT OR PARCEL OF LAND SITUATE** in the Town of Orchard Park, County of Erie and State of New York, being part of Lot 32, Township 9, Range 7, of the Holland Land Company bounded and described as follows:

**BEGINNING** at the point of intersection of the Southwesterly line of California Road with the Northerly line of lands conveyed to Dennis Canfield, by Deed recorded in the Erie County Clerk's Office in Liber 372 of Deed at Page 324; running thence Southeasterly along the Southwesterly line of California Road, two-hundred eighty-seven and thirty-two hundredths (287.32) feet to a point; thence Westerly on a line having an interior angle of sixty (60) degrees, twenty-eight (28) minutes with the last mentioned line, a distance of one-thousand one-hundred thirty-seven and seventy hundredths (1137.70) feet to the East line of land conveyed by Alfred Ellis, unmarried, to Niagara, Lockport and Ontario Power Company by Deed recorded in the Erie County Clerk's Office in Liber 1655 of Deed at Page 632; thence Northerly along the East line of lands of said Niagara, Lockport and Ontario Power Company, two-hundred fifty-one and fifty-six hundredths (251.56) feet to the north line of lands conveyed to Dennis Canfield aforesaid; thence Easterly and along the said North line of said Canfield lands, Nine-hundred sixty-eight and twenty-five hundredths (968.25) feet to the Southwesterly line of California Road at the point or place of beginning.

This ordinance shall take effect ten (10) days after publication and posting in accordance with law, and be it further

**RESOLVED**, that the Town Clerk publish and post a copy of said amendment in accordance with §264 and 265 of Town Law.

**The resolution was unanimously adopted.**

**Old Business #2 Wesleyan Church of OP Requesting a Building Permit to Construct a Sanctuary**

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

**RESOLVED**, that the Town Board does hereby approve the request of the Wesleyan Church of Orchard Park, 7295 Ellicott Road, Zoned R-1, for a building permit to construct an 8,500 square foot Sanctuary addition to the existing Church building. The Planning Board, 1/11/06, recommends approval of this request and of the site plan with the following stipulations:

- This is an Unlisted SEQR Action based on the submitted Long EAF, Parts 1 & 2, and a Negative Declaration is made.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan.
- Light fixtures shall have flat lens.
- The east & west perimeter pole lights shall have house shields.
- The lighting fixtures on the building are subject to review.
- There shall be no outside storage or display permitted.
- Dumpsters as shown, shall be screened along with any additional dumpsters in accordance with §144-25 of the Town Code.
- Engineering approval took place on 1/11/2006.
- A landscape completion bond in the amount of \$24,195.00, or cash/certified check in the amount of \$12,097.50 must be submitted to the Town Clerk, prior to a building permit being issued, for the approved landscape plan which includes 10% green space.

**The resolution was unanimously adopted.**

**Old Business #3 Jeremy Lindstrom, 3776 N. Buffalo Road Requesting a Change In Use**

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

**RESOLVED**, that the Town Board is hereby authorized to approve the request of Jeremy Lindstrom, 3776 North Buffalo Road for a Change in Use, from residential to office, to operate a Chiropractic Office. The Planning Board, 1/11/06, recommends approval of this request with the following stipulations:

- This is a Type II SEQR Action, therefore, no determination of significance is required.
- The parking spaces are to be provided as outlined on the plan dated 12/19/2005, with paving to be completed by 6/15/2006.

**The resolution was unanimously adopted.**

**New Business #1 Schedule Public Hearing for a Proposed Local Law for the Year 2006**

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

**RESOLVED**, that the Town Board does hereby schedule a Public Hearing for Wednesday, February 1, 2006 at 7:00 PM in the matter of a Proposed Local Law for the Year 2006: **Amendment to the Sign Ordinance**

**And be it further**

**RESOLVED**, that the Town Board does hereby sets forth the following resolution for consideration:

**WHEREAS**, the Town Board of the Town of Orchard Park (hereinafter the "Town Board") has the authority and responsibility, pursuant to Article 16 of the Town Law of the State of New York and for each of the purposes specified therein, through the enactment of, and any and all additions, deletions, amendments or supplements to, the Code of the Town of Orchard Park (hereinafter the "Town Code"), including but not limited to Chapter 144 of the Town Code ("Zoning") (hereinafter the "Zoning Ordinance"), to regulate and restrict the location, size and use of buildings and other structures and the use of land in the Town of Orchard Park (hereinafter the "Town"), outside the corporation limits of the Village of Orchard Park, and to establish comprehensive controls for the development of land in the Town, in order to promote and protect the health, safety, comfort, convenience and the general welfare of the people, and

**WHEREAS**, pursuant to §144-4 of the Zoning Ordinance, such regulations shall be made in accordance with the general plan and designed to lessen congestion in the streets; to secure safety from fires, flood, panic and other dangers; to promote the health and general welfare; to provide adequate light and air; to prevent overcrowding of lands; to facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements, and shall be made with a reasonable consideration, among other things, to the characteristics of the district and its peculiarities for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town;

**WHEREAS**, the Zoning Ordinance currently includes, at §§144-33 through 144-42, and incorporating the statutory definitions of §144-5B, regulations which govern sign structures within the Town (the "sign structure regulations");

**WHEREAS**, on February 21, 2001, the Town Board adopted a resolution which amended the Zoning Ordinance by repealing §144-36A(3), which contained restrictions on the placement and erection of "political signs," thereby removing those restrictions;

**WHEREAS**, in August 2001, billboard developer Lamar Advertising of Penn, LLC (hereinafter "Lamar") commenced an action in the United States District Court for the Western District of New York alleging that the sign structure regulations violated Lamar's right to free speech under the First Amendment to the United States Constitution;

**WHEREAS**, on February 20, 2002, the Town Board adopted a resolution which amended the sign structure regulations, in part by revising §144-33 in order to accurately state the intent of the Town Board to regulate sign structures in order to advance its interests in aesthetics and traffic safety, while permitting adequate business identification, advertising and communications, as well as non-commercial communications, and in part by repealing §144-35B, which had stated:

"Permitted Sign Copy. A sign may contain only the name and/or nature of the business conducted and/or the primary goods sold or the services rendered on the premises. Signs not advertising a business conducted, service rendered or primary goods sold on the premises of the sign are prohibited";

**WHEREAS**, the Second Circuit Court of Appeals, by its decision of February 2, 2004 in the action entitled *Lamar Advertising of Penn, LLC v. Town of Orchard Park, New York* [356 F.3d 365 (2d Cir. 2004)] (hereinafter "Second Circuit decision"), effectively approved the Town's February 20, 2002 amendments to the Zoning Ordinance, and specifically, the amendment of §144-33 and the repeal of §144-35B, by its holding that these amendments rendered moot Lamar's claims that the Zoning Ordinance was unconstitutional because (a) it did not include an express statement of legislative intent, and (b) §144-35B effectively favored "commercial speech" over "non-commercial speech";

**WHEREAS**, following its review of the Second Circuit decision of the Second Circuit Court of Appeals and the then-current jurisprudence related to municipal sign regulation, the Town Board determined that it was in the best interests of the Town and its residents to further amend the Zoning Ordinance to further clarify, and insure the achievement of, the intent of the Town Board, on behalf of the Town, to regulate sign structures in a constitutional manner, and to further clarify the technical and procedural rules related to sign structures in the Town;

**WHEREAS**, on April 7, 2004, the Town Board accordingly adopted Local Law 4-2004 ("Local Law 4-2004"), which reaffirmed the Town Board's legislative intent as set forth in §144-33, and made additional amendments to the Zoning Ordinance to further clarify, and further insure the achievement of, the intent of the Town Board to regulate sign structures in a constitutional manner, and to further clarify the technical and procedural rules related to sign structures in the Town;

**WHEREAS**, Local Law 4-2004 represented the Town Board's intent to continue to modernize and expand the sign structure regulations of the Zoning Ordinance in order to conform to, and be consistent with, the developing jurisprudence related to municipal sign regulation;

**WHEREAS**, the Town Board is aware of the decision of the United States District Court for the Eastern District of New York in the case of *Nichols Media Group, LLC v. Town of Babylon*, 365 F.Supp.2d 295 (E.D.N.Y. 2005), decided April 14, 2005;

**WHEREAS**, the Town Board is aware that in *Nichols Media v. Babylon*, the plaintiff was a billboard developer which brought actions against the Towns of Babylon and Islip, New York, alleging essentially the same legal claims against those municipalities as Lamar has alleged in its action against the Town;

**WHEREAS**, the Town Board is aware that following a trial in the *Nichols Media v. Babylon* action, the Court ruled in favor of the Towns of Babylon and Islip, and against the billboard developer, on essentially all of the billboard developer's legal claims, and the billboard developer did not appeal the Court's decision;

**WHEREAS**, the Court in *Nichols Media v. Babylon* held that, with respect to signs erected by the Towns of Babylon and Islip, New York:

"Those signs, however, must be subject to the same requirements as signs sought to be erected by non-governmental entities. Additionally, communication of these important public service messages may require that certain signs exceed size and location parameters set forth in the Towns' regulatory schemes. Thus, from time to time, the Towns may seek exemption from any further specific requirement by pursuing the same channels of review available to all citizens. Further, the Towns may be able to draft narrowly tailored exemptions to their Ordinances that could pass constitutional muster. Such narrow exceptions might constitutionally exempt limited types of governmental signs from certain requirements. The court will not speculate here as to which particular exemption would be valid. Instead, the court holds only that a broad exemption of all Government signs from the Ordinances cannot stand";

**WHEREAS**, the Court in *Nichols Media v. Babylon*: upheld the constitutionality of the Babylon sign ordinance in all respects except for the "governmental sign exception"; severed the "governmental sign exception" from the remainder of the Babylon sign ordinance, but held that the Babylon sign ordinance would remain intact and continue to prohibit the erection of the billboards sought by the billboard developer; and allowed the Town of Babylon's decision to deny the billboard developer's permit applications for billboards to stand;

**WHEREAS**, notwithstanding the Court's decision in *Nichols Media v. Babylon*, Lamar has stated its intention to continue to prosecute those same legal claims against the Town, and has continued to allege that the Town has engaged in a "pattern and practice" of infringement of First Amendment rights;

**WHEREAS**, in response to the Court's decision in *Nichols Media v. Babylon* and the developing jurisprudence related to municipal sign regulation, and as part of its efforts to continue to modernize and expand the sign structure regulations in order to conform to, and be consistent with, the developing jurisprudence related to municipal sign regulation, the Town Board desires to enact additional amendments to the Zoning Ordinance to further clarify, and insure the achievement of, the intent of the Town Board to regulate sign structures in a constitutional manner, and to further clarify the technical and procedural rules related to sign structures in the Town;

**WHEREAS**, the Town Board has determined that the sign structure regulations of the Zoning Ordinance should be even more detailed than they are now so as to further describe those regulations and the legislative purpose of those regulations and hereby reaffirms that the sign structure regulations are concerned with the secondary effects of speech and are not designed to censor speech or regulate the viewpoint of any speaker;



**WHEREAS**, the Town Board reaffirms its intent that the provisions of § 1-5 of the Town Code (“Severability”) are applicable to the Zoning Ordinance;

**WHEREAS**, the Town Board reaffirms that § 1-5 of the Town Code was adopted with the intent of upholding and sustaining as much as the Town’s regulations, including its sign structure regulations, as possible in the event that any portion thereof (including any clause, sentence, paragraph, section or article) be held invalid or unconstitutional by any court of competent jurisdiction;

**WHEREAS**, the Town Board desires that there be an ample record of its intention that the presence of a severability clause in connection with the sign structure regulations be applied to the maximum extent possible, even if less speech would result from a determination that any exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever;

**WHEREAS**, the Town Board desires that there be an ample record of its intention that each prohibition of sign-type continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the sign structure regulations, other provisions of the Zoning Ordinance, or other laws, for any reason(s) whatsoever;

**WHEREAS**, the Town Board desires that there be an ample record of its intention that those aspects of the sign structure regulations which regulate the location, number, height and size of sign structures continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the sign structure regulations, other provisions of the Zoning Ordinance, or other laws, for any reason(s) whatsoever;

**WHEREAS**, the Town Board desires that there be an ample record of its intention that the prohibition on billboards continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the sign structure regulations, other provisions of the Zoning Ordinance, or other laws, for any reason(s) whatsoever;

**WHEREAS**, the Town Board is aware that Lamar, in its action against the Town, has advanced arguments that the sign structure regulations are subject to “prior restraint” scrutiny under the First Amendment, and that this similar legal strategy has been advanced in numerous other lawsuits brought against municipalities by billboard developers;

**WHEREAS**, the Town Board finds, determines and reaffirms that the sign structure regulations are concerned with the secondary effects of speech, including but not limited to aesthetics and traffic safety, and are not intended to regulate viewpoints or censor speech, and for those and other reasons, that the sign structure regulations are not subject to, or would not fail, a “prior restraint” analysis;

**WHEREAS**, the Town Board acknowledges that Lamar has, in its action against the Town, asserted a challenge based upon the pretext that the sign structure regulations on their face unconstitutionally restrain speech, and although the Town Board believes that such challenge is frivolous, the Town desires to amend and modify the sign structure regulations to insure that a “prior restraint” claim cannot be advanced in good faith against the sign structure regulations;

**WHEREAS**, the Town Board desires to reaffirm the following findings made in support of Local Law 4-2004:

1. Section 144-33, added February 20, 2002 (and as supplemented by the amendments described herein), accurately states the intent of the Town Board of the Town of Orchard Park to regulate sign structures in order to advance its interests in aesthetics and traffic safety, while permitting adequate business identification, advertising and communication as well as non-commercial communication;
2. Regulating the location, number, height and size of sign structures in the Town of Orchard Park is the best way to advance the interests of the Town of Orchard Park, as set forth in § 144-33;
3. Sign structures should be regulated by location and zoning district in order to minimize their negative impact on aesthetic values and traffic safety;

4. The greater the number of signs in the Town of Orchard Park, the greater the interference with the scenic and natural beauty of the Town of Orchard Park, and the greater the probability of distraction and obstruction, and therefore, the more severe the negative impact upon aesthetic values and traffic safety;
5. The greater the surface area or height of any sign, the more it will negatively impact upon aesthetic values and traffic safety, because the greater the surface area or height of any sign, the greater the interference with the scenic and natural beauty of the Town of Orchard Park, and the greater the probability it will cause distraction and obstruction;
6. Notwithstanding the foregoing, businesses operating in the Town of Orchard Park have a strong interest in identifying their places of business and advertising the products or services available there, and the public similarly has a strong interest in this type of information. However, the interest of any business operating in the Town of Orchard Park in using or leasing its available space for the purpose of advertising a business, commodity, service, entertainment or attraction sold, offered or located elsewhere is not as great as its interest in identifying its own place of business and advertising the products or services available there, and not as great as the Town of Orchard Park's interests in aesthetics and traffic safety;
7. The Zoning Ordinance's prohibition of billboards, defined in §144-5 of the Zoning Ordinance, advances the Town of Orchard Park's interests in aesthetics and traffic safety because it is intended to result in fewer sign structures in general, and fewer large sign structures in particular, in the Town of Orchard Park, while allowing businesses operating in the Town of Orchard Park to adequately identify, advertise and communicate concerning their businesses, and while allowing all persons to publish non-commercial messages on any sign structure authorized under the Zoning Ordinance; and
8. The Town of Orchard Park incurs sufficient administrative cost in connection with its handling and review of applications for permits to erect sign structures to support the modest permit fee requirements of the Zoning Ordinance which relate to sign structures. Specifically, the Building Inspector's Office, which handles applications for permits to erect sign structures, reports that on average, an inspector spends a minimum of two hours in connection with an application for a simple, conforming sign, and spends additional time as needed, depending upon the complexity of the proposed sign structure.

**WHEREAS**, Article XIV, §4 of the New York State Constitution provides that it shall be the policy of the State to conserve and protect its natural resources and scenic beauty;

**WHEREAS**, the Town Board finds, determines, and reaffirms that the prohibition of the construction of billboards and certain other sign types, as well as the establishment and continuation of height, size, location and other standards for sign structures, is consistent with the aforesaid policy of the State;

**WHEREAS**, the Town Board recognizes that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on the part of the observer, unlike other forms of advertising that are ordinarily seen as a matter of choice on the part of the observer [*see Packer v. Utah*, 285 U.S. 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799 (1935)];

**WHEREAS**, the Town Board acknowledges that the United States Supreme Court and many federal courts have accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area. [*see Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *National Advertising Co. v. City & Town of Denver*, 912 F.2d 405, 409 (10<sup>th</sup> Cir. 1990) and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999)];

**WHEREAS**, the Town Board finds and determines that its above-referenced findings made in support of Local Law 4-2004, that the greater the number of signs, and the greater the surface area or height of any sign, the greater the probability that such signs will cause distraction and obstruction and thereby impact upon traffic safety, is consistent with determinations made by the courts that anything beside the road which tends to distract the driver of a motor vehicle directly affects traffic safety, and that signs which divert the attention of the driver and occupants of motor vehicles from the highway to objects away from it, may reasonably be found to increase the danger of accidents. [*see In re Opinion of the Justices*, 103 N.H. 268 (1961); *Newman Signs, Inc. vs. Hjelle*, 268 N.W. 2d 741 (N.D. 1978)];

**WHEREAS**, the Town Board is aware that in *Nichols Media v. Babylon*, the Court rejected for lack of credibility and reliability (due to clear bias in favor of the billboard industry) a study prepared by Dr. Suzanne Lee (hereinafter the "Lee study"), offered at trial as evidence by the billboard developer on the issue of traffic safety, which in relevant part claimed that billboards do not inhibit driver performance, and noted that there had been no peer review of the Lee study and "that there is no other scientific study with the same or similar conclusions regarding driver distraction";

**WHEREAS**, the Town Board finds that if permitted, billboards would detract from the natural and manmade beauty of the Town;

**WHEREAS**, the Town Board agrees with the determination of the American Society of Landscape Architects that billboards tend to deface nearby scenery, whether natural or built, rural or urban;

**WHEREAS**, the Town Board is aware that Scenic America, Inc. ("Scenic America"), a national organization focused on safeguarding America's natural beauty and community character, recommends improvements in the scenic character of a community's landscape and appearance by prohibiting the construction of billboards, and by setting height, size and other standards for all signs [see Scenic America's "Seven Principles for Scenic Conservation", Principle #5];

**WHEREAS**, the Town Board is aware that Scenic America reports that a 1980 Federal Highway Administration study found a positive correlation between billboards and accident rates, and that both federal and state courts have long cited traffic safety as a legitimate basis for billboard regulations;

**WHEREAS**, the Town Board is aware that at least four states — Alaska, Hawaii, Maine and Vermont — have prohibited the construction of billboards in their states and are now billboard-free in an effort to promote aesthetics and scenic beauty;

**WHEREAS**, the Town Board is aware that under current jurisprudence [see, e.g., *Linmark Associates v. Town of Willingboro*, 431 U.S. 85 (1977)], on-site real estate signs, such as "for sale" signs, should be allowed given the important role and unique function that real estate signs, such as "for sale" signs, perform on the premises where they are located;

**WHEREAS**, the Town Board is aware that under current jurisprudence [see, e.g., *Ladue v. Gilleo*, 512 U.S. 43 (1994)], signs that allow property owners, especially residential homeowners, to freely express a particular point of view on their own property should be reasonably accommodated and may be uniquely valuable;

**WHEREAS**, the Town Board is aware that under current jurisprudence, election signs are generally accorded a higher level of protection under the First Amendment than other classification or type of speech;

**WHEREAS**, the Town Board is aware that durational limits requiring the removal of election signs following such election are generally permissible [see, e.g., *Election Signs and Time Limits*, *Evolving Voices in Land Use Law*, 3 Wash. U.J.L. & Pol'y 379 (2000)];

**WHEREAS**, the Town Board desires to clarify that the sign structure regulations do not prevent persons from displaying signs freely expressing a particular point of view on their property (hereinafter "free expression signs"), and that they do not prevent persons from maintaining signs on their property displaying their support for or opposition to political candidates and ballot issues before the election to which they pertain (hereinafter "election signs");

**WHEREAS**, the Town Board desires to clarify that provisions allowing real estate signs, free expression signs, election signs and certain other sign types are not intended to diminish or lessen the Town's interests in aesthetics and traffic safety, but are contained in the sign structure regulations in recognition of the useful functions and practical needs served by such signage in the Town's commerce and/or in the political freedom that must be accorded its citizens to freely express their points of view and political desires;

**WHEREAS**, the Town Board recognizes that under current jurisprudence, its sign regulations may be under-inclusive in their reach to serve the Town's interests in aesthetics and traffic safety while at the same time balancing the interests protected by the First Amendment [*see, e.g., Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984)];

**WHEREAS**, the Town Board recognizes that under current jurisprudence, a sign bearing a non-commercial message is considered to be an on-site or on-premises sign [*see Southlake Property Associates, Ltd. v. City of Morrow, Georgia*, 112 F.3d 1114, 1118-1119 (11<sup>th</sup> Cir. 1997), *cert. denied* 525 U.S. 820 (1998)], and the Town Board hereby adopts that conclusion;

**WHEREAS**, the Town Board, in its deliberations in connection with the amendments to the sign structure regulations addressed herein, considered the question of whether the County of Erie, as lessor of Ralph Wilson Stadium, is or has ever been subject to the Zoning Ordinance;

**WHEREAS**, as part of its deliberations, the Town Board considered:

1. Chapter 252, Laws of New York 1968 ("Erie County — Stadium — Construction and Financing");
2. Chapter 669, Laws of New York 1974 ("Erie, County of — Stadium — Construction and Financing");
3. Chapter 387, Laws of New York 1998 ("Erie County — Stadium Renovation — Vending"), the Governor's Memorandum of Approval (hereinafter "Governor's Memorandum") and the Memorandum in Support, New York State Senate (hereinafter "Senate Memorandum");
4. The Agreement of Lease, made October 15, 1971 between the County of Erie and Buffalo Bills Division of Highwood Service, Inc. (hereinafter "Buffalo Bills") ("1971 Lease"); and
5. The Master Lease between the County of Erie and Erie County Stadium Corporation (a wholly-owned subsidiary of the New York State Urban Development Corporation) and the Stadium Lease between the ECSC and the Buffalo Bills, both effective on or about July 31, 1998 ("1998 Leases");

**WHEREAS**, the Town Board notes the following:

1. In Chapter 252, Section 1 of the Laws of 1968, the New York State Legislature authorized and empowered the County of Erie as follows in connection with the construction and operation of a stadium (now Ralph Wilson Stadium):

"Notwithstanding the provisions of any other law, general, special or local, the county of Erie, acting by the county executive, with the approval of the Erie county legislature, is hereby authorized and empowered from time to time to enter into contracts, leases, or rental agreements with, or grant licenses, permits, concessions, or other authorizations, to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the county and such person or persons, whereby, for any purpose or purposes hereinafter referred to, such person or persons are granted the right, to use, occupy, or carry on activities in, the whole or any part of a stadium, including the site thereof, parking areas and other facilities appurtenant thereto or utilized therefor, hereby authorized to be constructed by the county of Erie on such site as may be finally determined by the Erie county legislature and acquired by the county of Erie";

2. Section 2 of the aforesaid law in relevant part provided:

"The person or persons entering into any contract, lease, rental agreement, license, permit, concession, or other authorization referred to in Section 1 hereof with the county of Erie hereunder, may be granted the right to use, occupy or carry on activities in the whole or any part of such stadium, site, parking areas, and other facilities (1) for any purpose or purposes as shall furnish to, or foster, or promote among, or provide for the benefit of, the people of the county of Erie . . .";

3. In addition, Section 2 of the aforesaid law stated:

"It is hereby declared that all of the purposes referred to in this section are in the public interest and for the benefit of the people of the county . . . and are hereby declared to be public purposes for which county monies may be appropriated and expended";

4. By Chapter 699 of the Laws of 1974, the New York State Legislature amended Chapter 252 of the Laws of 1968, by adding a section 4, which in relevant part stated:

"a. The financing, construction, operation, leasing and use of a stadium and all purposes as authorized by this act are governmental and public purposes of the county of Erie."

"b. The purpose of this section is to confirm the intention of the legislature in section two of this act that all the purposes mentioned are and shall be deemed to be the public and governmental purposes of the county of Erie."

5. In Chapter 387 of the Laws of 1998, which in relevant part addressed renovations to the stadium now known as Ralph Wilson Stadium, the New York State Legislature stated in Section 1:

"It is hereby declared to be the policy of this state to promote the economic welfare and prosperity of inhabitants of counties, and to actively promote, attract, encourage and develop commerce through cooperative governmental action for the purpose of continuing the economic revival of such counties. The promotion, attraction and development of commerce in the county of Erie is a matter of state concern. It is found that participation by the county of Erie and state of New York in the refurbishment, renovation, improvement, operation, maintenance, repair and financing of a sports and entertainment complex is hereby declared to be for a public and governmental purpose and in the public interest for the benefit of the people of such county and state and the improvement of their health, education, welfare, recreation, well-being and prosperity and for the advancement and improvement of recreation, trade and commerce."

6. In the aforesaid law, the New York State Legislature also re-confirmed its broad delegation of authority and power to the County of Erie in connection with the construction and operation of the stadium now known as Ralph Wilson Stadium. Section 3(a) of the aforesaid law stated:

"Notwithstanding the provisions of any general, special or local law or charter: (a) the county is hereby authorized and empowered to take any action and enter into any agreement, including, but not limited to, the ancillary development agreements, with any party or parties, including private persons or entities, that any of the participating development entities find necessary or appropriate for the project."

7. In addition, Section 3(b) of the aforesaid law indicated that the New York State Urban Development Corporation ("UDC"), a public benefit corporation, and its subsidiary, the Erie County Stadium Corporation ("ECSC"), would be involved in the continuing operation of the stadium project:

"The county shall have the power to appropriate county funds and to permit the use of county property of all kinds to support the activities of and assist in funding the obligations of the [UDC] and/or the [ECSC], with respect to obligations relating to the continued operation of the project, in such amounts and upon such terms and conditions as may be agreed between the county and the [UDC] and/or the [ECSC]"; and

8. The Governor's Memorandum highlighted Chapter 387's broad grant of authority from the State to Erie County, and both the Governor's Memorandum and the Senate Memorandum highlighted the participation of state public benefit corporations UDC and ECSC in the stadium renovation project;

**WHEREAS**, the Town Board is aware that where, as here, the New York State Legislature has enacted a law vesting broad authority and power in a county to accomplish a specified purpose, through the use of authorizing language such as "Notwithstanding the provisions of any other law, general, special, or local . . .", the host municipality's zoning ordinance does not apply to the county's actions taken to accomplish that specified purpose. [*see Oswald v. Westchester County Park Commission*, 234 N.Y.S.2d 465, *aff'd*, 18 A.D.2d 1139 (2d Dept. 1963);

**WHEREAS**, the Town Board hereby finds and determines, upon consideration of the above-described legislation and related documentation, that the County of Erie, as lessor of Ralph Wilson Stadium, is not and has never been subject to the Zoning Ordinance, in light of the following factors:

1. The nature and scope of the stadium project as described in the above-referenced legislation and related documentation;
2. The New York State Legislature's broad grant of authority and power to the County of Erie related to the stadium project;
3. The County of Erie's use of the land and facilities to accomplish the New York State Legislature's policy of insuring the continued viability of the sports and entertainment complex now known as Ralph Wilson Stadium;
4. Imposition of the Zoning Ordinance upon the County of Erie, as lessor of Ralph Wilson Stadium, would be contrary to the New York State Legislature's broad grant of authority and power, and substantially impair the County of Erie's ability to accomplish the New York State Legislature's stated policies and purposes; and
5. The significant participation of the State in the stadium project, by virtue of the involvement of the UDC and the ESCS, both of which are State public benefit corporations. [*see In re County of Monroe*, 72 N.Y.2d 338 (1988)];

**WHEREAS**, the Town Board desires that there be an ample record that its intent has been, and will continue to be, to regulate sign structures in a manner, and through legislation, consistent with current jurisprudence related to municipal sign regulation, and that it has no intention of enacting in the future any amendments to the Zoning Ordinance which are intended to be or could be deemed inconsistent with current jurisprudence;

**WHEREAS**, the Town Board finds that the amendments to the sign structure regulations still allow adequate alternative means of communication;

**WHEREAS**, pursuant to Part 617 of the Implementing Regulations pertaining to Article 8 of the State Environmental Quality Review Act of the Environmental Conservation Law, it has been determined by the Town Board that adoption of said proposed amendments to the Zoning Ordinance relating to signs would not have a significant affect upon the environment;

**NOW, THEREFORE**, be it

**RESOLVED**, that the Town Board hereby proposes to adopt the following amendments to the Zoning Ordinance, as set forth below:

1. **Amendments to Article II, Definitions, §144-5B:**  
**Add:**

COMMERCIAL MESSAGE – Any sign wording, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, service, sale or sales event or other commercial activity.

**Delete the definition of "CONSTRUCTION SIGN" and replace it with the following:**

CONSTRUCTION SIGN – A temporary on-premises sign identifying the ongoing construction activity during the time that a building permit is active and prior to completion of the work for which the permit was issued, containing sign copy that is limited to the ongoing construction activity and identifying the contractor and/or any subcontractor engaged to perform construction activity on the site, and/or the

architect, engineer or any other participants in the construction activity on the site, and announcing the purpose of the building or structure for which the building permit has been issued.

**Add:**

**ELECTION SIGN** – A temporary sign erected or displayed for the purpose of expressing support for or opposition to a candidate or stating a position regarding an issue upon which voters of the Town shall vote.

**FREE EXPRESSION SIGN** – A sign communicating information or views on matters of public policy concerns or containing any other non-commercial message, that is otherwise lawful.

**NON-COMMERCIAL MESSAGE** – A message which is not a commercial message.

**Delete:**

**POLITICAL SIGN**

**Delete the following clause from the definition of “SIGN”:**

but not including signs placed or erected by the town or the state for the purpose of showing street names or traffic directions or regulations or for other public, non-commercial purposes.

**Add:**

**SPECIAL EVENT** – An event, gathering, assembly or meeting that is open to the public at large.

**Delete the definition of “TEMPORARY SIGN” and replace it with the following:**

**TEMPORARY SIGN** - A sign intended for a use not permanent in nature.

**Add:**

**TRAFFIC CONTROL DEVICE SIGN** – Any sign located within the right-of-way that functions as a traffic control device and that is described and identified in either the Manual Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard and/or in the New York State Department of Transportation Manual for Uniform Traffic Control Devices. **TRAFFIC CONTROL DEVICE SIGNS** include those signs that are classified and defined by their function as regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide sign (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information).

**2. Amendments to §144-33, Regulation of Signs; Legislative Intent.**

**Delete §144-33A and replace it with the following:**

A. The purpose of the regulations set forth in §§144-33 through 144-43 of this chapter (and, as applicable, the definitions set forth in §144-5B of this chapter) is to regulate existing and proposed signs in order to:

**Add the following as §144-33A(10):**

(10) Allow for traffic control devices consistent with national and state standards and whose purpose is to promote highway safety and efficiency by providing for the orderly movement of road users on streets and highways, and that notify road users of regulations and provide warning and guidance needed for the safe, uniform and efficient operation of all elements of the traffic stream.

**Add the following as §144-33C:**

C. Notwithstanding any other provision contained herein to the contrary, no sign or sign structure shall be subject to any limitation based upon the content (viewpoint) of the message contained on such sign or displayed on such sign structure.

**3. Amendments to §144-34, Procedures and Permits for Signs:**

**Delete §144-34C and replace it with the following:**

C. The Zoning Officer shall issue a sign permit if the Zoning Officer concludes from a review of the application that such proposed sign complies with all the requirements of this chapter and all other applicable laws and regulations of the Town of Orchard Park. The Zoning Officer shall advise the applicant of the grant or denial of the permit application within 30 days of the submission of the application. If the application for a sign permit is denied by the Zoning Officer, the Zoning Officer shall give written notice of the denial to the applicant, together with a brief written statement of the reasons for the denial. Non-conforming signs shall be designated as such on the sign permit. Any person aggrieved by the determination of the Zoning Officer in connection with any application for a sign permit may take an appeal from that determination in the manner provided in Article IX of this chapter.

**Delete §144-34D and replace it with the following:**

D. Traffic control device signs are exempt from the requirements of this chapter.

**4. Amendments to §144-35, General Sign Requirements:**

**Amend §144-35D as follows:**

Add the word "or" between the words "acres" and "located."

**Delete §144-35I and replace it with the following:**

I. Specialty signs. Pursuant to the procedures and criteria set forth in §144-34 of this chapter, special time and temperature signs with or without electrical lettering, special clock signs and other special signs of similar nature may be erected upon approval of the Zoning Officer upon written application providing the information required by §144-34B of this chapter and demonstrating compliance with the Building Code. A specialty sign may not exceed the maximum height and size requirements for signs in the zoning district in which it will be located;

**Delete §144-35J and replace it with the following:**

J. Service organization identification signs. Pursuant to the procedures and criteria set forth in §144-34 of this chapter, a permit for a service organization identification sign may be issued upon written application to the Zoning Officer providing the information required by §144-34B of this chapter. A service organization identification shall not exceed the maximum height and size requirements for signs in the zoning district in which it will be located;

**5. Amendment to §144-37, Signs in Residential or Agricultural Districts.**

**Delete §144-37D and replace it with the following:**

D. Signs otherwise authorized under §§144-34D, 144-35D, 144-35J, 144-40C, 144-40D, 144-40E and 144-40F.



**6. Amendments to §144-38, Signs in Business, Industrial or D-R Development and Research Districts:**

**Delete §144-38I and replace it with the following:**

I. Off-premises identification signs. Where it is not practical to obtain necessary visibility from an identification sign on the premises, the Zoning Officer shall grant the applicant a permit to erect an off-premises identification sign, provided that the applicant has demonstrated the following:

**Add the following as §144-38I(4)(d):**

(d) The proposed off-premises identification sign shall not have surface area of greater than twenty square feet and shall not have an overall height greater than nine feet.

**Delete §144-38J and replace it with the following:**

J. Signs otherwise authorized under §§144-34D, 144-35D, 144-35E, 144-35F, 144-35I, 144-35J, 144-40B, 144-40C, 144-40D, 144-40E and 144-40F.

**7. Amendments to §144-38.1, Signs in Industrial Parks.**

**Delete §144-38.1C and replace it with the following:**

C. Signs otherwise authorized under §§144-34D, 144-35D, 144-35J, 144-40C, 144-40D, 144-40E and 144-40F.

**8. Amendments to §144-40, Temporary and Special Purpose Signs:**

**Delete §144-40B and replace it with the following:**

B. Banners. Pursuant to the procedures and criteria set forth in §144-34 of this chapter, no banner shall be displayed over any sidewalk, town street or highway except upon the issuance of a permit by the Zoning Officer, following written application and the furnishing of a public liability bond as described in this paragraph. The applicant shall provide the Zoning Officer with the information required by §144-34B of this chapter and demonstrate the ability to furnish a public liability bond or policy in the sum of at least fifty thousand dollars (\$50,000).

**Delete §144-40C and replace it with the following:**

C. Temporary signs. (1) The Zoning Officer shall approve an application for temporary signs if the applicant demonstrates through written application the number, size and location(s) of the signs sought to be erected, and that it meets the following content-neutral criteria:

- (a) The signs are temporary signs for a limited time and frequency;
- (b) The signs are for a special event as defined in this chapter;
- (c) The temporary signs will not exceed the maximum height and size requirements for signs in the zoning district in which the proposed signs will be located;
- (d) The temporary signs will not conceal or obstruct adjacent land uses or signs;
- (e) The temporary signs will not conflict with the principal permitted use of the site or adjoining sites;
- (f) The temporary signs will not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
- (g) The temporary signs will be installed and maintained in a safe manner; and
- (h) The display of temporary signs for a special event shall not begin any earlier than thirty (30) calendar days before the event and shall be removed within two (2) business days after the event.

- (2) Consistent with §144-33 of this chapter, approval or disapproval shall not be based on the content of the message contained (*i.e.*, the viewpoint expressed) on such signs; provided, however, that no temporary sign may direct attention to a business, commodity, service, entertainment or attraction sold, offered, or existing elsewhere and upon the same premises where such sign is displayed, or only incidentally sold, offered, or existing upon such premises. The Zoning Officer shall advise the applicant of the grant or denial of the application for temporary sign within thirty (30) days of the submission of the application, and the procedures set forth in §144-34 shall apply to appeals under this section.

**Add as §144-40E:**

E. Free expression signs. For each parcel, one free expression sign with a surface area of four square feet or less may be displayed. If displayed as a freestanding sign, such sign shall not exceed four feet in height. A free expression sign is in addition to any other sign allowed under this chapter and is allowed in any zoning district. Only one such sign may be permitted on each parcel. The sign must be located within six feet of a building located on the lot or parcel, or if there is more than one building on the lot or parcel, the sign must be located at least fifteen feet from any street. No permit is required for a free expression sign.

**Add as §144-40F:**

F. Election signs. For each parcel, one election sign for each candidate and each issue may be displayed. The election signs allowed under this section are in addition to any other sign allowed under this chapter. An election sign must have a surface area of four square feet or less. If displayed as a freestanding sign, such sign shall not exceed four feet in height. An election sign shall be removed within seven calendar days following the election to which it pertains. No permit is required for an election sign allowed under this paragraph.

**9. Addition of §144-43, Severability:**

**Add as §144-43:**

**§144-43. Severability.**

- A. Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this chapter is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter.
- B. Severability where less speech results. Without diminishing or limiting in any way the declaration of severability set forth above in §144-43A, or elsewhere in this chapter or in this Code, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.
- C. Severability of provisions pertaining to prohibited signs. Without diminishing or limiting in any way the declaration of severability set forth above in §144-43A, or elsewhere in this chapter or in this Code, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article or any other laws declared unconstitutional by valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter that pertains to prohibited signs, including specifically those signs and sign types prohibited and not allowed under §144-36 of this chapter. Furthermore, if any part, section, subsection, paragraph,

subparagraph, sentence, phrase, clause, term or word of §144-36 is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of §144-36.

- D. Severability of prohibition on billboards. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter and/or any other provisions of the Zoning Ordinance or this Code are declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the prohibition on billboards as contained herein.

**10. Amendment to Town of Orchard Park Schedule of Zoning Fees.**

Delete the clause "plus \$1 per face square foot of sign" from, and amend subsection (1) of section A. Building permit fees, to state as follows:

Signs (where permitted)

All signs \$20

Relocating signs on same premises \$20

Alteration of signs \$20

**And be it further**

**RESOLVED**, at such time all interested persons will be given an opportunity to be heard at such Public Hearing, and be it further

**RESOLVED**, that a copy of this proposed Local Law, a copy of the Legislative Findings and a copy of the Legislative Record for Proposed Amendments to Chapter 144 Zoning, may be examined at the Town Clerk's office during regular business hours, and be it further

**RESOLVED**, that the Town Clerk shall publish due notice in the official newspaper of the Town.

**The resolution was unanimously adopted.**

**New Business #2 Approve Final Change Order Release to the Contract with Sicilia Construction**

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

**WHEREAS**, the construction work on the South Lane Reconstruction Project – Installation of Concrete Gutters has been completed, and on October 20, 2005 a final inspection was conducted and all work has been satisfactorily completed in accordance with the contract documents and specifications, and

**WHEREAS**, the two-year maintenance bond in the amount of \$68,729.70 has been submitted along with the Affidavit of Release of Liens, Affidavits of Subcontractor Payment and necessary legal documents, and

**WHEREAS**, the Over/Under sheet lists the final adjustments to the quantities for each bid item and shows there will be a net decrease of \$8,408.30. This represents a decrease of 10.90% 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 to Sicilia Construction Company, Inc., 5634 William Street, Lancaster New York 14086, for the South Lane Reconstruction Project – Installation of Concrete Gutters in the amount of \$3,436.49, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #3 Authorize Wage Adjustment Senior Citizen Center Part-time Employee**

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

**WHEREAS**, the Town Board wishes to fairly compensate its employees commensurate with their level of responsibility and service to the Town, and

**WHEREAS**, certain part-time employees are not included within either the Town's bargaining agreements or existing wage scales and therefore do not receive annual wage adjustments, and

**WHEREAS**, upon considering service provided the department head has requested a wage adjustment from \$8.75 to \$9.00 per hour for Rosalind Healy part-time assistant at the Senior Citizen Center, and

**WHEREAS**, the funding for this wage increase was included within the Town's 2006 adopted budget  
**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorizes an increase in the pay rate for Rosalind Healy, Senior Center Part-Time Assistant from \$8.75 to \$9.00 per hour.

**The resolution was unanimously adopted.**

**New Business #4 Town Board to Authorize an Investment Policy for Public Monies**

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

**WHEREAS**, pursuant to State Law, including Sections 10 and 11 in the General Municipal Law, the Town is generally permitted to deposit moneys in banks and trust companies located and authorized to do business in the State, and

**WHEREAS**, all such deposits, including special time deposit accounts and certificates of deposit, in excess of the amount insured under the Federal Deposit Insurance Act, are required to be secured in accordance with the provisions of and subject to the limitations of Section 10 of the General Municipal Law, and

**WHEREAS**, the Town may also temporarily invest moneys in:

- Obligations of the United States of America
- Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America
- Obligations of the State of New York

- With the approval of the New York State Comptroller, in tax anticipation notes or revenue anticipation notes issued by the Town
- Certificates of participation issued by political subdivisions of the State pursuant to Section 109-b(10) of the General Municipal Law
- Obligations of a New York public benefit corporation which are made lawful investments for municipalities pursuant to the enabling statute of such public benefit corporation, or
- In the case of moneys held in certain reserve funds established by the Town pursuant to law, in obligations of the Town. All of the foregoing instruments and investments are required to be payable or redeemable at the option of the owner within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of instruments and investments purchases with the proceeds of bonds or notes, shall be payable or redeemable in any event, at the option of the owner, within two years of the date of purchase. Unless registered or inscribed in the name of the Town, such instruments and investments must be purchased through, delivered to and held in custody of a bank or trust company in the State pursuant to a written custodial agreement as provided in Section 10 of the General Municipal Law.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby adopt an *Investment Policy* and such policy conforms with applicable laws of the State governing the deposits and investment of public moneys. All deposits and investments of the Town are made in accordance with such policy.

**The resolution was unanimously adopted.**

**New Business #5 Authorize Supervisor to Sign Contract with Tel Cove**

**10) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, TO WIT:**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign a one (1) year Contract with Tel Cove, Inc., who provides voice and networking services for the Town of Orchard Park.

**The resolution was unanimously adopted.**

**New Business #6 Appointments to the Orchard Park Police Department**

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

**RESOLVED**, that the Town Board does hereby appoint the following individuals to the Orchard Park Police Department, with the conditions the candidates pass all required tests:

1. Brian J. Lukowski, 27 Clark Street, Orchard Park NY 14127
2. Donald G. Hoelscher, 4159 North Buffalo Road, Orchard Park NY 14127
3. Robert W. Cirbus, 110 Shadow Lane, Orchard Park NY 14127
4. Joseph C. Rizzo, 25 Ferndale Drive, Orchard Park NY 14127

**And be it further**

**RESOLVED**, candidates Hoelscher, Cirbus & Rizzo will have a one (1) year probationary period and will be required to graduate from the Central Police Services Training Academy, starting January 30, 2006, and be it further

**RESOLVED**, the above candidates are appointed at the starting salary as reflected in the Collective Bargaining Agreement between the Town of Orchard Park and the Orchard Park PBA, Inc., and be it further

**RESOLVED**, the above list also reflects their seniority ranking, as new officers, in the Orchard Park Police Department. All appoints effective January 30, 2006, as recommended by the Chief of Police

**The resolution was unanimously adopted.**

**New Business #7 Building Inspector's Dept. to attend Niagara Frontier Bldg. Annual Conference**

**12) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOAMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, TO WIT:**

**RESOLVED**, that the Town Board does hereby authorize the Building Inspector, Andrew Geist, and his staff; David Holland, Merrill Porter and David Jensen, to attend the Niagara Frontier Building Officials Annual Conference, January 30, 31 and February 1, 2006, at the Buffalo Niagara Marriott Hotel, at Town expense.

**The resolution was unanimously adopted.**

**New Business #8 Recreation Director to attend 2006 State Recreation and Parks Conference**

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

**RESOLVED**, that the Town Board does hereby authorize the Recreation Director, Ed Leak, to attend the 2006 State Recreation and Park Conference, April 2-5, 2006 at the Hudson Valley Resort in Kerhonkson, New York, at Town expense.

**The resolution was unanimously adopted.**

**New Business #9 Accept the Resignation of Wendy Backman from the Recreation Commission**

**14) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN KACZOR, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, TO WIT:**

**RESOLVED**, that the Town Board does hereby accept, with regret, the resignation of Wendy Backman from the Recreation Commission.

**The resolution was unanimously adopted.**

**New Business #10 Recreation Department Appointment to the 2005-2006 Winter/Spring Staff**

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

**RESOLVED**, that the Town Board does hereby authorize the following appointment to the staff of the Town of Orchard Park Recreation Department, dependent upon the applicant providing the required certifications, as recommended by the Recreation Director:

NAME	ADDRESS	POSITION
Bradley Deck	4 Lancaster Lane	Lifeguard, PT

**The resolution was unanimously adopted.**

**ELECTED OFFICIALS AND DEPARTMENT HEADS****Budget Transfers**

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

**RESOLVED**, that the Town Board does hereby approve the following budget transfers, as pre-filed with the Town Board Members and the Town Clerk:

Amount/Dept.	From	To
<b><u>Highway</u></b>		
\$746.00	A.5132.200 Salt Barn	A.5132.445 Building Maintenance
\$3,562.81	A.7110.424 Parks-Bathrooms	A.7110.423 Parks- Watering
\$5,000.00	A.7110.217 Tennis Courts	A.7110.475 Park - Gasoline
\$1978.00	A.7110.449 Lake Maintenance	A.7110.475 Park - Gasoline
\$210.63	A.7110.447 Park Fencing	A.7110.475 Park - Gasoline
\$5,613.00	A.8560.471 Tree Stump Removal	A.8560.419 Trees & Supplies
\$5,043.00	DA.5110.472 Stone & Gravel	DA.5142.402 Snow Supplies
<b><u>Compost Site</u></b>		
\$2,800.00	800.8161.443 Equip.Maintenance	800.8161.401 Facility Supplies
\$3,500.00	800.8161.422 Utilities	800.8161.416 Gas, Oil & Anti-freeze
\$700.00	800.8161.421 Electric	800.8161.420 Telephone
<b><u>Recreation</u></b>		
\$25.00	A.7020.201 Playground Equipment	A.7020.433 Special Events
\$325.00	A.7020.201 Playground Equipment	A.7020.480 Supplies
\$1720.00	A.7020.201 Playground Equipment	A.7020.450 Publishing
<b><u>Engineering Dept.</u></b>		
\$900.00	A.1400.200 Equipment	A.1440.445 Vehicle Maintenance
<b><u>Police</u></b>		
\$3,800.00	A.3120.451 Insurance Deductible	A.3120.225 Other Equipment

**Budget Amendment**

\$50,000.00	Increase Appropriation account A.3120.498 – Police-BZPP Grant	Increase estimated revenues A.0000.3386 St. Aid-BZPP Grant Revenue
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**The resolution was unanimously adopted.**

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

**WHEREAS**, the Town Board wishes to ensure that the assessment rolls continue to be maintained appropriately, and

**WHEREAS**, the Town Assessor believes that additional assistance is required in appropriately maintaining and updating of such assessment rolls, and that such assistance requires special knowledge and experience, and

**WHEREAS**, the Town Assessor believes that he can obtain the required assistance on a part time basis and can limit the hours required, and

**WHEREAS**, the funding for this part time position was not included within the Town's 2006 adopted budget.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorizes the hiring of a clerk, part-time to assist for up to 200 hours at an hourly rate of \$18.00, as directed by the Town Assessor, and be it further

**RESOLVED**, that the Town Board does authorizes a budget transfer in the 2006 Adopted Town Budget to fund this part time position as follows:

***Increased Appropriations:***

A.1355.0138	Assessment – Part Time Clerical	\$3,600.00
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***Decrease Appropriations:***

A.1910.0480	Contingent	\$3,600.00
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**The resolution was unanimously adopted.**

Councilwoman Ackerman announced that in a recent Planning Board meeting, a motion was made to honor Lorraine Biryla for her more than thirty years of service on the Planning Board, many of them as Chairman. This Town Board would like to extend their profound thanks to Lorraine Biryla for her years of hard work, dedication, service and the sharing of her knowledge as a member of the Planning Board. The Town of Orchard Park is deeply in her debt and looks forward to her continued service as a member of the Planning Board.

Town Engineer Wayne Bieler announced that "Clean Sweep New York", a term used to describe any effort to remove any form of pesticide (other than home & garden pesticides that can be disposed of during household hazardous waste days) mostly from commercial/farming sources will be holding its pick up day on April 24, 2006. Individuals must register for this event by April 14<sup>th</sup>.



**Department Heads from the Floor**

Recreation Director Ed Leak announced that the Highway Department has put up signs in the Town Parks stating that dogs are allowed in the park areas as long as they are on a lease. The only area where they will not be allowed will be in the actual play ground areas.

**State and County Representatives**

County Legislator John Mills stated that he has arranged for another HEAP outreach for the Town and it will be held sometime in February. In his meeting with the County Highway Commissioner, it was established that the following items will be addressed this year; clean out under the bridge on Lake Avenue near Boldt Court, drainage issues on Scherff Rd., traffic problems on Freeman Rd. and to help Mr. Frantsits with his drainage problems on Big Tree Road.

**18) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR TRAVERS MURPHY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, 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	\$318,132.34
Part Town Fund	\$815.84
Risk Retention	\$0.00
Cemetery Fund	\$0.00
Highway Fund	\$19,165.76
Special Districts	\$151,435.09
Trust & Agency	\$1,738.88
Capital Fund	\$67,989.20

**The resolution was unanimously adopted.**

**Receive & File Reports**

**19) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, TO WIT:**

**RESOLVED**, that the Town Board does hereby receive and file the following Reports: Building Inspector's Monthly Report & Building Permits for December 2005; Town Clerk's Yearly Report for 2005; Chief of Police's Yearly Report for 2005; Town of Orchard Park Historians Report for June 2004 through to December 2005.

**The resolution was unanimously adopted.**

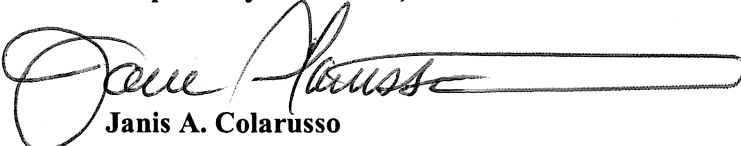
**BUSINESS FROM THE FLOOR**

**Ann McNerney – 27 Graystone Lane:** Ms. McNerney lives in Barrington Heights where there has been talk of a waste dump being in the area. She would like to know what the Town has done and what information they have regarding this issue. Supervisor Travers Murphy asked Ms. McNerney to come into her office and she will give her all the information the Town has to date.

Kristen Matteson – 3 Mo [REDACTED] Claire Lane: Ms. Madison asked if anyone has read the Enviro  
Studies done on Barrington [REDACTED] Heights. She was told that there is a person coming out from the Uni  
Buffalo to read and interpre [REDACTED] he results of the studies. The Town Board is going to get other ou  
to resolve the issues in Barr [REDACTED] on Heights. The DEC is also keeping abreast of this issue and v  
agency to do further testing –

There being no further busi [REDACTED] from the floor, on motion by Supervisor Travers Murphy, sec  
Councilman Kaczor, to wit: [REDACTED] the meeting was adjourned at 9:38 PM (local time).

Respectfully Submitted,

  
Janis A. Colarusso  
Town Clerk