

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 4<sup>th</sup> day of February 2009 at 7:00 PM, the meeting was called to order by the Supervisor and there were:

<b>PRESENT AT ROLL CALL:</b> Mary Travers Murphy	Supervisor
Nancy Ackerman	Councilwoman
David Kaczor	Councilman
Mark Dietrick	Councilman
Edward Graber	Councilman
Janis Colarusso	Town Clerk
Michael Wolf	Deputy Town Attorney
Andrew Geist	Building Inspector
Andrew Benz	Chief of Police
Frederick Piasecki, Jr.	Highway Superintendent
Wayne Bieler	Town Engineer
<b>ABSENT:</b> Leonard Berkowitz	Town Attorney

**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 GRABER, TO WIT:**

**RESOLVED**, that the minutes of the Meeting of the Town Board held on July 9, 2008 and December 10, 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.

Councilwoman Ackerman thanked the Town Clerk's Office for finding oversights for Town Board approval of all of the 2008 minutes.

**The resolution was unanimously adopted.**

### **PUBLIC HEARING**

At 7:09 PM (local time) the Supervisor called for the Public Hearing to hear all interested parties for or against the Proposed Changes to a Local Law for the Year 2009. This local law provides for the adoption of the additions and changes to Chapter 12 of the Orchard Park Town Code "Ethics" which provides as follows:

**§12-2 K Repeal §12-2 K:** Insurance Broker's Committee is hereby repealed.

**§12-2 K Add §12-2 K:** No person shall be employed under the supervision of any party described in §12-2 A, Subsections 2-5. Any person employed under the supervision of such party at the time of the adoption of this Local Law shall be exempt from this local law.

**§12-3 A Amend:** Repeal existing §12-3A and replace with: the following individuals shall submit an annual disclosure statement: (a) all elected officials, (b) all department heads, (c) all members of the

Zoning Board, Planning Board, Conservation Board, Board of Ethics, Trails Task Force, Board of Assessment Review, Economic Development Board, Historic Preservation Board, Insurance Review Committee, Library Board, Open Space Preservation & Farmland Protection Task Force, Public Safety Committee, Recreation Commission, Youth Board and Computer & Information Advisory Commission.

**§12-11 Add:** No member of the Ethics Board shall make a contribution to or participate in any Town of Orchard Park political campaigns pertaining to any Town office.

**§12-11 Add:** Consecutive service on the Ethics Board shall not exceed 2 full time terms, a total of 10 years.

**§12-23 Add:** An Annual Report shall be submitted by the Ethics Board prior to March 1 of each year.

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

Supervisor Travers Murphy asked if there was anyone in the audience who would like to speak for or against the application for the Proposed Changes to a Local Law for the Year 2009-Ethics.

**Kathryn Gorkiewicz** – Ms. Gorkiewicz stated if someone takes a civil service exam, passes it and is reachable on the list for the position, she feels that they should be able to be considered for a job even if a relative is in that same department.

**2) 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 the Proposed Changes for a Local Law for the Year 2009: Ethics, is hereby closed at 7:11 PM (local time).

**The resolution was unanimously adopted.**

#### **Town Board Adopts Local Law; Ethics**

**3) 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 adopt Local Law #2 for the Year 2009, which provides for the adoption of the additions and changes to Chapter 12 of the Orchard Park Town Code "Ethics" as recommended by the Board of Ethics Committee with the amendment to change the language in **§12-2 K** of the Proposed Local Law for the Year 2009; Ethics, in two instances, from the word *party* to *person*, for clarification.

**The question of the adoption was duly put to a roll call vote which resulted as follows:**

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

**The resolution was unanimously adopted.**

Councilwoman Ackerman thanked those Ethics Board Members who were in the audience for their diligence concerning this Ethics Law for the Town.

**Old Business #1 Supervisor to Sign Agreement with Jaeckle Fleischmann & Mugel, Atty.**

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

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign an Agreement between the Town of Orchard Park and *Jaeckle Fleischmann & Mugel, Atty.*, to represent the Town in labor negotiations.

**The resolution was unanimously adopted.**

**Old Business #2 Town Board to make an appointment to the Board of Assessment Review**

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

**RESOLVED**, that the Town Board does hereby authorize the appointment of Robert Wozniak, 15 Scattertree Lane, Orchard Park NY 14127, to fill the vacancy on the Board of Assessment Review for a five year term to expire 9/30/2013.

**The resolution was unanimously adopted.**

**New Business #1 Schedule Public Hearing for Proposed Changes to the Town Code; Signs**

6) 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 schedule a Public Hearing for Wednesday, February 18, 2009, at 7:00 PM, for a Local Law for the Year 2009 to §144 of the Town Code of the Town of Orchard Park; *Signs*, 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 Authorize a Traffic Order for Signs North Side of Poplar Avenue**

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

**WHEREAS**, upon the recommendation of the Public Safety Committee, and pursuant to the authority granted by §1660 of the Vehicle and Traffic Law of the State of New York

**NOW, THEREFORE, it is hereby**

**ORDERED**, that five (5) “**NO PARKING from 7 AM to 3 PM Monday through Friday**” signs are to posted on the North side of Poplar Avenue to prevent any hazardous condition due to excessive parking and the added problem of seasonal snow removal, and it is further

**ORDERED**, that the Superintendent of Highways be and is hereby directed to post the proper and necessary signs at said locations.

**The resolution was unanimously adopted.**

**New Business #3 Approve Change Order #2 to the Contract w/Fairway Contracting, Inc.**

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

**WHEREAS**, the Engineering Department is requesting the approval of a Change Order to the contract with Fairway Contracting for the 2007 Utility Improvements Project in the amount of \$1,334.00. If approved, this would increase the total contract amount to \$296,253.00, representing an increase of 0.45%, and

**WHEREAS**, this Change Order is requested to perform additional work not covered under their contract. The additional work involves the installation of a strobe temperature alarm on the hot box at the Yates Park waterline, and

**WHEREAS**, problems were experienced recently when the circuit breaker was blown supplying electricity to the heater in the hot box, causing the water in the pipe to freeze, damaging the meter and a bypass pipe system, and

**WHEREAS**, with the installation of a strobe alarm, if the heater fails to operate, the strobe alarm light will flash when activated at a certain temperature, alerting us of the failure, and

**WHEREAS**, currently the capital project account H-48 "Town Wide Water Improvements" has sufficient funds to cover this cost

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize Change Order #2 to the Contract with Fairway Contracting for the 2007 *Utility Improvements Project Highway Garage Utility Improvements, Compost Waterline Extension & Hydrant and Yates Park Waterline* in the amount not to exceed \$1,334.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #4 Supervisor to Sign Agreement w/AquaTech Environmental, Inc.**

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

**WHEREAS**, to complete the algae/plant treatments for Green Lake and Birdsong Subdivision Retention Lake it is necessary to hire an environmental consulting firm New York Certified in Aquatic Vegetation and Algae Control, and

**WHEREAS**, the Engineering Department has again solicited services and received a proposal from a local environmental consultant firm AquaTech Environmental, Inc., which is qualified and capable to complete lake management work for Green Lake, Birdsong Subdivision Retention Lake and also the stocking of various Town owned lakes/ponds in the necessary time frame, and

**WHEREAS**, the environmental services to be provided for the maintenance of Green Lake are proposed as an annual Lake maintenance service agreement and will include: NYSDEC Permit Procurement, Aquatic Macrophyte Herbicide Treatment, Algae Herbicide Treatment, Water Quality Analysis, Aeration Assessment and Adjustment, and Consultation Services. Aqua Tech Environmental, Inc. lump sum cost to provide the above mentioned treatments for 2009 is \$4,235.00 and

**WHEREAS**, the services proposed for Birdsong Subdivision Retention Lake are on a per treatment basis and include one (1) Aquatic Macrophyte (Rooted) treatment for \$880.00 and two (2) Filamentous Algae treatments for \$675.00/ea. Total anticipated cost is \$2,230.00 for the year. Residents would pay 50% of this cost totaling \$1,115.00, and

**WHEREAS**, Dave Adrian of Aqua Tech Environmental, Inc., who has treated Green Lake and Birdsong in the past, must start as soon as possible, the necessary NYSDEC permitting process for Green Lake and Birdsong Subdivision Retention Lake in order to complete treatments this summer, and

**WHEREAS**, the continuation of the Town of Orchard Park Fish Stocking program recommendations are attached (Attachment 3.0 Fishery Management Agreement) for 2009. Mr. Adrian recommends continuing the baitfish stocking (crayfish, Minnows, shiners), game fish stocking (crappie and yellow perch) and grass carp stocking to aid in weed control.

**WHEREAS**, the 2009 proposed stocking cost is \$2,017.50. There are presently funds (\$10,000) under Orchard Park Engineering Department "Water Quality Consultants" A.1440.000.448 for this work, and

**WHEREAS**, the entire projected cost for Town Lake and Pond maintenance, treatment and stocking for calendar year 2009, is not to exceed \$8,482.50 (minus Birdsong Homeowners Association share costs Treatment = \$1,115.00). The actual final 2009 cost for the Town of Orchard Park will not exceed \$7,367.50.

**NOW THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign the application for NYSDEC permits to use a pesticide for the control of aquatic pest for Birdsong Subdivision Retention Lake and Green Lake Aquatic Vegetation and Algae Control projects, and be it further

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign an agreement with AquaTech Environmental, Inc., 45 Kent Avenue, Blasdell, New York 14219, to provide the following;

- *Annual environmental services for Green Lake Maintenance in an amount of \$4,235.00 annually for Algae and Weed Treatments.*
- *Environmental services for Birdsong Nature Park/Subdivision Retention Lake Maintenance for Algae and Weed Treatments.*
- *Stock fish to specified Town-Owned ponds as per attachment 3.0 & 3.1 Fishery Management Agreement.*
- *The above mentioned services will be for an amount not to exceed \$7,367.50.*

**AND BE IT FURTHER RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign the Agreement with Aqua-Tech Environmental, Inc., for 2009 Pond/Lake Maintenance Service Agreement, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #5 Approve Change Order #1 to the Contract w/Wendel Duchscherer Architects**

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

**WHEREAS**, the Engineering Department is requesting approval of a Change Order to the contract with Wendel Duchscherer Architects & Engineers for the Library Energy Upgrades and Library & Highway Dept. Roof Replacement Project in the amount of lump sum \$3,800 and not to exceed amount of \$2,925.00. If approved, this would increase the total contract amount to \$89,575.00, representing a possible increase of 7.66%, and.

**WHEREAS**, the change is comprised of extra work to perform asbestos survey and design services by Watts Engineers for Wendel Duchscherer. Our contract with Wendel designates these services as reimbursable expenses to be determined during design and construction. Asbestos was found at the Orchard Park Library in the pipe insulation in the boilers and window panes. Asbestos was also found at the Highway Department in the old roof materials, and

**WHEREAS**, of the \$6,725.00 total, \$3,400.00 will come from H-05, Highway Bldg. Repair & Expansion and \$3,325.00 from H-81, Orchard Park Library Energy Upgrades Project. Both accounts will require additional funding to cover these expenses.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize Change Order #1 to the Contract with Wendel Duchscherer Architects & Engineers for the *Highway and Library Roof Replacement Project and Library Energy Upgrades Project* for an increase in an amount not to exceed \$6,725.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #6 (Tabled) Supervisor to Forward Letter to NYS Division of Housing & Comm. Renewal:** Authorize the Supervisor to sign and forward the letter to *New York State Division of Housing & Community Renewal* for the property located at 5245 Murphy Road for affordable housing for low-income senior citizens throughout the area.

**New Business #7 Accept the 2008 Town of Orchard Park Compost Site Activity Summary Report**

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 accept the 2008 Town of Orchard Park Compost Site Activity Summary Report from Fred Piasecki, OP Highway Superintendent.

**The resolution was unanimously adopted.**

Councilwoman Ackerman stated that she and Highway Superintendent Piasecki have combined the 2007 and 2008 reports to compare and contrast and there will be a decrease in numbers in the future, due to the excessive amount of the material from the October 13, 2007 storm.

**BUSINESS FROM THE FLOOR**

**Carol Jo Pope** – She brought a petition from the residents of Timber Lake Drive requesting signs that indicate curves, speed reduction and more Police patrol in their neighborhood. (statement submitted).

**Michael Melerski** – He spoke on behalf of those residents of the Town that don't have a vote and don't pay taxes, which are the children. He suspected many would be in favor of a place to exercise free of the dangers of vehicles. He stated that parents, grand parents and children would enjoy this healthy outdoor activity opportunity with the Rails to Trails. (statement submitted).

**ELECTED OFFICIALS & DEPARTMENT HEADS**

12) 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 submit an application to the New York State Assembly 2008-2009 Capital Projects Program requesting \$125,000 for repairs and improvements to the Town of Orchard Park Municipal Center, and be it further,

**RESOLVED**, that the Town does hereby authorize to contribute \$8,850 in in-kind good and services or 6.6% of the total project cost of \$133,850.

**The resolution was unanimously adopted.**

13) 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 Transfer for the *Recreation Department*:

<b>\$1,894.87</b>	From: A.7020.0137	Recreation Clerical Part Time
	To: A.7020.0149	Recreation Other Personnel

**AND BE IT FURTHER RESOLVED**, that the Town Board does hereby authorize the following Budget Transfer for the *Senior Citizens Center*:

<b>\$272.00</b>	From: A.7610.0420	Telephone
	To: A.7610.0421	Electric

**AND BE IT FURTHER RESOLVED**, that the Town Board does hereby authorize the following Budget Transfer for the *Buildings*:

<b>\$3,470.81</b>	From: A.1620.0422	Gas
	To: A.1620.0421	Electric

**AND BE IT FURTHER RESOLVED**, that the Town Board does hereby authorize the following Budget Transfer for the *Highway Garage*:

	From: A.5132.0422	Gas
	To: A.5132.0421	Electric

**The resolution was unanimously adopted.**

14) 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 authorize to refer the traffic concerns of Mrs. Pope, 13 Timberlake Drive, to the Public Safety Committee.

**The resolution was unanimously adopted.**

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 accept the resignation of Bonnie Foit-Albert from the Historic Preservation Board with deep regret.

Councilman Kaczor stated that Bonnie Foit-Albert resigned due to the possible conflict of interest with Foit-Albert Architects Associates if they might be considered for the Historic Preservation Survey.

**The resolution was unanimously adopted.**

Councilman Dietrick commented on retirement issues in negotiations with the Police Benevolent Association. Councilman Dietrick stated that he regrettably would not seek or accept the endorsements of the Republican, Conservative or Independence Parties for the upcoming 2009 elections for Town Council due to business constraints.

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

**WHEREAS**, the Engineering Department is requesting approval of a Change Order to the contract with Greater Niagara Mechanical, Inc. for the 2007 Building Improvements Project in the amount of \$1,425.00. If approved, this would increase the total contract amount to \$83,775.00, representing an increase of 1.70%, and

**WHEREAS**, this Change Order is requested to perform additional work not covered under their contract. The additional work involves the Highway Garage Addition hot water heating system and the Highway Garage Bays exhaust fans, and

**WHEREAS**, the Highway Garage Addition encountered two design problems in need of correction. The existing hot water heating system needs a new 1" circuit setter installed to properly operate the new system in conjunction with the existing system. This work will result in additional costs in the amount of \$800.00, and

**WHEREAS**, the exhaust system design in the Highway Garage bays did not include starter motors on the plans or specifications. This work will result in additional costs in the amount of \$625.00, and Capital Account H-05 "Hwy. Bldg. Repair and Expansion" has funding to cover the cost

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Change Order #2 to our contract with Greater Niagara Mechanical, Inc. for the 2007 Building Improvements Project; Hwy Building Addition, Compost Equipment Pole Buildings, Yates Park Bath House & Splash Pad and Dog Control Addition in the amount of an increase of \$1,425.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**



Town Engineer Bieler announced that the Town of Orchard Park has received an American Public Works Association Award for 2009 Project of the Year Environmental Category for the Birdsong Trails and Nature Preserve and all the environmental and public access trail work and bridge work involved. Councilwoman Ackerman congratulated and thanked all involved in the Engineering Department, Highway Department and school children that have participated over the years. She also pointed out that this is the second award; the first one was given for the improvements on the Jolls House.

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 #3 following auditing by members of the Town Board and in the funds indicated:

<b>General Fund</b>	\$67,398.56
<b>Part Town Fund</b>	\$2,493.64
<b>Risk Retention</b>	\$0.00
<b>Cemetery Fund</b>	\$0.00
<b>Highway Fund</b>	\$57,249.01
<b>Special Districts</b>	\$11,189.96
<b>Trust &amp; Agency</b>	\$0.00
<b>Capital Fund</b>	\$233,292.95

**The resolution was unanimously adopted.**

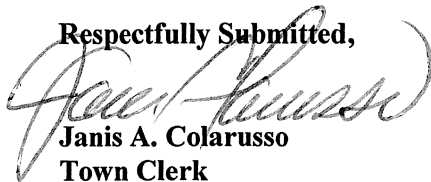
18) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN DIETRICK, TO WIT:

**RESOLVED**, that the Town Board does hereby receive and file the following **Report** listed on the agenda: Waste Management of NY; the Solid Waste & Recycling Reports for the 3<sup>rd</sup> & 4<sup>th</sup> quarter of the Year 2008.

**The resolution was unanimously adopted.**

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilwoman Ackerman, to wit, the meeting was adjourned at 7:42PM (local time).

Respectfully Submitted,



Janis A. Colarusso  
Town Clerk

