

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 4th day of March 2009 at 7:00 PM, the meeting was called to order by the Supervisor and there were:

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

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 DIETRICK, TO WIT:

RESOLVED, that the minutes of the meetings of the Town Board held on February 4 & 18, 2009 & Special Meeting February 25, 2009, and the Town & Village of Orchard Park Joint Meeting February 25, 2009, as presented by the Town Clerk are hereby approved, and be it further

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

The resolution was unanimously adopted.

Old Business #1 – Key Bank, 3030 Union Road-Site of the former Anderson's Ice Cream Building

2) 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 authorize a Building Permit to Key Bank, 3030 Union Road (former site of Anderson's Ice Cream) Zoned B-2, for a 4,303 +/- sq. ft. building and to approve the Site Plan received 2/11/09. The Planning Board recommends that the Town Board authorize the building permit with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Long EAF, Parts One and Two and a Negative Declaration is declared.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lenses. Site lighting approval by John Bernard on 2/26/09.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with §144-25 of the Town Code.

- Town Engineering approval, 2/13/09, will be granted upon receipt of SWPPP approval by the DEC.
- A 3-year landscape completion bond in the amount of \$20,999.00 shall be provided for the landscape plan received, 10/27/08, which includes 17.4% total green space, prior to the receipt of a Building Permit.
- The Zoning Board of Appeals granted an area variance on 9/16/08 to allow vehicle parking in the front yard.
- The Cross Parking and Cross Accessing Agreement is to be finalized before a Building Permit is issued.
- The site lighting is to be reviewed and approved by Planning Board Member John Bernard prior to going to the Town Board.

The resolution was unanimously adopted.

Old Business #2 – Walgreen's, corner of Union Rd. & Michael Rd., request for Building Permit

3) 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 a Building Permit for Walgreen's (Southwest corner of Union & Michael Roads) Zoned B-2, for a 14,550 +/- sq. ft. building and to approve the Site Plan received 2/22/09. The Planning Board recommends that the Town Board authorize the building permit with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Long EAF, Parts One and Two and a Negative Declaration is declared.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lenses. Site lighting approval by John Bernard on 2/26/09.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with §144-25 of the Town Code.
- Town Engineering approval, 2/13/09, will be granted upon receipt of SWPPP approval by the DEC.
- A 3-year landscape completion bond in the amount of \$37,750.00 shall be provided for the landscape plan received, 10/27/08, which includes 18.7% total green space, prior to the receipt of a Building Permit.
- A Site Remediation report approved by the DEC, certifying the site is clean, shall be provided to the Building Inspector before a Building Permit is issued.
- The Zoning Board of Appeals granted an area variance on 4/15/08 to allow vehicle parking in the front yard.
- The Cross Parking and Cross Accessing Agreement is to be finalized before a Building Permit is issued.
- The site lighting is to be reviewed and approved by Planning Board Member John Bernard prior to going to the Town Board.

The resolution was unanimously adopted.

New Business #1 – Appointment as Alternate to the Conservation Board

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

RESOLVED, that the Town Board does hereby authorize the appointment of Andrew Sako, 3 Lynchburg Court, as an Alternate to the Town of Orchard Park Conservation Board.

The resolution was unanimously adopted.

New Business #2 – Town Board to Consider the DEIS Submission from Wal-Mart

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

WHEREAS, a revised Wal-Mart DEIS Submission dated February 2, 2009, has been received by the Town, and

WHEREAS, the Planning Coordinator, the Town Engineer and this Town Board have reviewed the DEIS Submission.

NOW, THEREFORE, BE IT

RESOLVED, that this Town Board finds the DEIS submitted on February 2, 2009, to be incomplete for the following reasons:

- 1) Wal-Mart, through its attorney, has refused to release payment to the Town's Consultant, TVGA for the initial review of the DEIS. This creates several problems:
 - a. The Town is unable to do a follow-up analysis of the resubmitted DEIS with TVGA until they are paid.
 - b. TVGA has not reviewed the new traffic study, submitted on February 17, 2009 (15-days after the revised DEIS was submitted), which supplements the DEIS, due to lack of payment, and
 - c. The Town Engineering Department is unable to provide a complete review of the DEIS without TVGA's comments.
- 2) A complete set of updated plans has not been submitted by Wal-Mart.
- 3) Figure 9 in the DEIS uses color coding, but has been submitted in black and white. Colorizing is recommended for clarity and usability.
- 4) The proposed parking does not conform to Town standards and this needs to be reflected not only in Section II B.2 and III B.3, but also throughout the DEIS.
- 5) The submitted DEIS is not presented in a user friendly format. Attachments, appendix and divider tabs, which will allow interested residents to quickly find information, need to be provided.
- 6) A discussion of wetlands (along with associated backup data and reports) needs to be provided and included in the table of contents.
- 7) A discussion of archaeological and historic resources (along with associated backup data and reports) needs to be provided and included in the table of contents.
- 8) A discussion of public accessibility to adjacent property owners on the south side of Milestrip Road between Milestrip and South Benzing Road (along with associated backup data and re-growth) needs to be provided and included in the table of contents.
- 9) There are public right-of-way (ROW) concerns that need to be addressed.
- 10) The public road off Milestrip shown in the DEIS needs to be extended 350 to 360 feet. Presently it is only extended 90 +/- feet without an additional east and west stub extension for possible connection with South Benzing through the Joseph Deck property or other adjacent properties. Run-off and road drainage for future connection must be addressed with the Wal-Mart Site.

- 11) The relocation of all private utilities, landscaping, retaining wall(s), fencing, etc... outside the proposed ROW and turn-around need to be addressed.
- 12) The Stormwater Management Plan and Engineer's report need to be stamped "Draft". These documents are reviewed in detail under the Site Plan phase along with a complete set of updated plans. Run-off and drainage for the site is not properly addressed.
- 13) A letter from NYSEG confirming sufficient capacity needs to be submitted.
- 14) Any finalized encroachment agreements from public utilities, especially NYSEG need to be submitted.
- 15) Other issues may arise which prevent the Town Board from accepting the DEIS as complete when TVGA is able to continue its review. A substantial concern is the issue of traffic which to this point has not been able to be reviewed because of Wal-Mart's action.
- 16) The 30-day requirement of 614.9(2)(ii) (State Environmental Quality Review Act) should start when the above information is received and after funds are released to pay for TVGA's consultant work.

AND BE IT FURTHER

RESOLVED, that a copy of this resolution will be forwarded to the representatives of Wal-Mart.

The resolution was unanimously adopted.

New Business #3 – Pay Increase for the Part-time Dog Control Officer

6) 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 increase in pay for Wende Mulawka, Laborer, PT (Dog Control) from PT 2A @ \$ 8.75/hr to PT 2C @ \$ 9.25/hr on the Non-Union Wage Scale, effective immediately.

The resolution was unanimously adopted.

New Business #4 – Appointments to the Newly Formed Energy Conservation Committee

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

RESOLVED, that the Town Board does hereby appoint the following individuals to the Energy Conservation Board Committee; Kenneth M. Kujawa, 3 West Royal Hill Dr., Dennis Elsenbeck, 7472 Jewett Holmwood Rd., Darleen Stry, 18 Peppermill Rd., Richard Leonard, 33 Burbank Dr., Robert Drahushuk, 40 Winterhall Rd., and be it further

RESOLVED, the following Town employees will also sit on this committee: Supervisor, Mary Travers Murphy, Town Engineer, Wayne Bieler, Highway Superintendent, Fred Piasecki and Tad Beale, Maintenance Crew Chief.

The resolution was unanimously adopted.

New Business #5 – National Kidney Foundation Declares March 12th “World Kidney Day”

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

WHEREAS, healthy kidneys are essential to regulate the waste and other chemicals in your blood; remove fluids, waste, toxins and drugs introduced to the body; release hormones that regulate blood pressure, make red blood cells and promote strong bones, and

WHEREAS, more than 26 millions Americans, about one in nine adults, suffer from chronic kidney disease, and

WHEREAS, 1,600 Western New Yorkers are on dialysis, and

WHEREAS, nearly 500 Western New Yorkers are awaiting a kidney transplant, and

WHEREAS, approximately 40 percent are African American and 16 percent are Hispanic, and

WHEREAS, the two main causes of chronic kidney disease are diabetes and high blood pressure, which are responsible for up to two-thirds of the cases, and

WHEREAS, the National Kidney Foundation of WNY has a free health screening program to identify people in the early stages of kidney disease, and

WHEREAS, the mission of the National Kidney Foundation of WNY is to prevent kidney and urinary tract diseases, improve the health and well-being of individuals and families affected by these diseases, and increase the availability of all organs for transplantation, and

WHEREAS, early detection including regular reporting of the GFR calculation through a simple blood test, currently the best indication of kidney disease staging, can help prevent the progression of kidney disease to kidney failure, which requires continual dialysis or kidney transplant to maintain life, and

WHEREAS, the cost of treatment for kidney disease patients is disproportionately higher than any other chronic disease, and

WHEREAS, most patients who have end-stage renal disease rely primarily on Medicare and Medicaid to cover the costs of their life-sustaining care, which includes dialysis treatment, medications, laboratory testing, and as necessary, transportation services to the dialysis facility, and as a consequence, any changes in Medicare and Medicaid eligibility, significantly put them at risk.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize that March 12th is recognized as “World Kidney Day” in New York State and Orchard Park in the hope that all possible support will continue to be extended to Chronic Kidney Disease patients in New York and throughout the country and the world.

The resolution was unanimously adopted.

New Business #6 – Chief of Police - Bid Opening for Two New Patrol Cars

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

RESOLVED, that the Town Board does hereby authorize the request of Police Chief Benz to hold a Bid Opening for Two (2) New 2009 Marked Police Patrol Vehicles to be held March 24, 2009 at 11:00 AM, in the Supervisor Conference Room, 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 #7 – Public Hearing for a Local Law for a Proposed Amendment to the Town Code

10) 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 schedule a Public Hearing for a Local Law on Wednesday, April 1, 2009, at 7:00 PM, for the Proposed Amendment to the Town Code of Ordinance, Section 2-2 (c); *Planning Board, Zoning Board of Appeals and Conservation Board Alternate Members*, 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.

Councilwoman Ackerman stated that this a language change to allow the Conservation Board Alternate member to be able to vote in the absence or recusal of another member of the Committee.

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

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

RESOLVED, that the Town Board does hereby refer the following request to the Planning Board and/or Conservation: Wayne McNerney, 6245 S. Abbott Road. Requesting an application for a Conservation Easement for 11.01 acres of land, Zoned A-1.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Maryann Grenda – She stated that she was distressed that the Town doesn't feel that there is a need for an independent traffic study, especially concerning her neighborhood in the northwest section. Ms. Grenda asked the Town Board to support an independent study. (Statement submitted)

Dr. Patrick Keem – He stated that residents come to Town Board meetings and speak about sensitive issues that impact them. He feels that the residents should work together to offer solutions instead of criticism week after week.

Jane Shumaker – She spoke on the cumulative impact of traffic on the quality of life in Orchard Park. She asked who would determine if there were a traffic problem in the Town. Ms. Shumaker hoped that the Town Board would conduct a Town wide traffic study and hoped that they would listen to the people.

Kathryn Gorkiewicz – She asked Councilwoman Ackerman to address her view of the traffic issue in her allotted time for Elected Officials.

Sal Cerrone – He stated that the action of rezoning properties from Industrial to Commercial by elected officials, past and present, allowed for Quaker Crossing and probably Wal-Mart, adding more traffic congestion to that area of Town.

Jim Crow – He stated that it depends on where you live if you believe there is a traffic problem in the Town. He asked that the members of the Town Board to respond to whether or not they thought there is a traffic issue and if so, how to resolve it.

Dave Schuster – He commented on the growth and traffic in his own neighborhood, proposing a Town wide traffic study and asked for input from the Town Board members.

Ron Stadelmaier – He stated the Wal-Mart project is of great interest to citizens in this community, because of the sponsor, the potential impacts and the process. He asked that the Wal-Mart the Wal-Mart response's to the TVGA's list of inadequacies and inconsistencies be posted on the town-web. He asked Councilwoman Ackerman to offer her comments, opinions and position as to whether or not she believes there is a traffic issue in the Town and Village of Orchard Park. (Statement submitted)

Mike Randall – He stated that he felt the only traffic problem was when there are Buffalo Bills Sunday Football Games.

ELECTED OFFICIALS & DEPARTMENT HEADS

12) 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 authorize the following Budget Transfer for the *Town Supervisor*:

\$201.54	From: A.7020.419	Other Expense
	To: A.7020.215	Vehicle

The resolution was unanimously adopted.

Supervisor Travers Murphy stated that she thought there was a need for a traffic study and perhaps studies that have been presented from other projects could be incorporated to conduct a Town wide study and keep the expense down. The NYSDOT has sent a communication approving the request for the addition of a green arrow from South Buffalo Road onto Jewett Holmwood Road, but denied the request for a traffic signal at Taylor Road and North Buffalo Road. In response to the question from the audience regarding Public Hearing publications, Supervisor Travers Murphy stated that Town Clerk Colarusso forwards the announcement to the Orchard Park Bee and to our IT person, Paul Warriner, who posts it on the website.

Councilwoman Ackerman stated in response to the audience, she would suggest taking the zoning of each area and plot what the zoning would allow and how it would be impacted at build out to determine potential traffic. She stated that the existing traffic studies could be utilized. Councilwoman Ackerman stated that it is the job of the Town Board to regulate the type of growth and development in the community at such a rate to which people can adjust to it. It is unlawful to deny building if the property is properly zoned. Added population, additional vehicles, impatience of motorists and a decline in agricultural livelihood, have contributed to traffic congestion. She stated that the Town Board is sympathetic to the concerns of the residents and are trying to respond to them. Councilwoman Ackerman stated that the Town Board did not say they were in favor of the Wal-Mart project and are looking carefully at all the circumstances involved and at the impact it will have.

Councilman Graber agreed with Councilwoman Ackerman that people are moving into Orchard Park because of the ambiance and monitoring traffic is going to be constant. He stated that he would support a Town wide traffic study and if Wal-Mart were willing to contribute to the cost, it would be a benefit to the Town. Councilman Graber was concerned that there might be too much faith in the study to fix any problems.

Councilman Dietrick thought it was needless for the Town to spend money on a traffic survey when Wal-Mart has been instructed by the Town to provide one. He stated that the NYSDOT and specific traffic studies provided by the proposed projects should be sufficient.

The Pines @ Murphy Road / New Project

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

WHEREAS, The Pines at Murphy Road was approved for a R-3, SR designation, pursuant to §144-67 of the Ordinances of the Town of Orchard Park, and

WHEREAS, such approval was based upon a submitted site plan, and

WHEREAS, a new site plan has been submitted, which is substantially different from the original site plan, which was approved for an SR designation

NOW, THEREFORE, be it

RESOLVED, that this new site plan for The Pines at Murphy Road shall be considered a new project and the Petitioner is hereby directed to make a new application for SR designation of this new project

AND BE IT FURTHER RESOLVED, that a copy of this Resolution be forwarded to the New York State Division of Housing and Community Renewal, 38-40 State Street, 6th Floor, Albany, New York 12207, Attention: Arnon Adler, Program Manager, and that a copy of this Resolution be forwarded to the Petitioner.

The resolution was unanimously adopted.

Police Chief Benz stated that the Public Safety Committee had petitioned NYSDOT for two green arrows, one at Jewett Holmwood Road, which was approved and the second at Armor Duells Road, which was denied.

Highway Superintendent Piasecki stated that the Highway Department is out collecting for spring cleanup.

Supervisor Travers Murphy announced that the meeting with Mark Thomas from the NYS Parks, Recreation and Historic Preservation regarding Rails to Trails would be rescheduled, since not all Town Board members would be able to attend next week.

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

RESOLVED, that the Town Board does hereby authorize the approval of all entries on Warrant #5 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$74,754.07
Part Town Fund	\$579.27
Risk Retention	\$0.00
Cemetery Fund	\$0.00
Highway Fund	\$39,558.88
Special Districts	\$54,971.32
Trust & Agency	\$3,485.23
Capital Fund	\$235,948.73

The resolution was unanimously adopted.

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

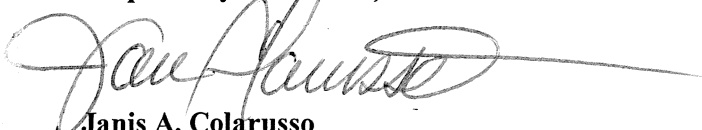
RESOLVED, that the Town Board does hereby receive and file the following Communications listed on the agenda: **State of New York Department of Transportation:** Completed the traffic engineering study concerning the intersection of Route 240 (N. Buffalo Rd.) and New Taylor Road. The letter states the following; *"While the overall volume of traffic entering this intersection is generally consistent with the volumes associated with a three-color signal, approximately 60% of the traffic is right-turning traffic and would receive little or no benefit from the installation of a three-color signal."* & **Legislator John Mills:** Announces 3rd H.E.A.P. outreach in East Aurora, Tuesday, March 17, 2009, at the East Aurora Senior Center, 101 King Street, East Aurora. Interviews will begin at 9:00 AM. Doors open at 8:30 AM.

AND BE IT FURTHER RESOLVED, that the Town Board does hereby receive and file the following Reports listed on the agenda: Building Inspector's Monthly Report and Building Permits for February 2009.

The resolution was unanimously adopted.

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilman Dietrick to wit, the meeting was adjourned at 7:59 PM (local time).

Respectfully Submitted,



Janis A. Colarusso
Town Clerk

