

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 18th 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
	David Kaczor	Councilman
	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

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 meetings of the Town Board held on March 4, 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.

Councilman Kaczor stated he was abstaining as he did not attend the 3/4/09 meeting.

The resolution was duly adopted.

New Business #1 Approve Change Order Release with CIR Electrical Construction Corporation

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

WHEREAS, the Electrical Contract work for the 2007 Building Improvements Project has been completed, and on December 4, 2008 a final inspection was conducted and all of the work has been satisfactorily completed in accordance with the contract documents and specifications, and

WHEREAS, a two-year maintenance bond in the amount of \$66,802.54 has been submitted along with all other warranties, equipment manuals and necessary legal documents

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize final payment and release of retention to CIR Electrical Construction Corp., 400 Ingham Ave., Buffalo, New York 14218 for the 2007 Building Improvements Project, including the highway Building Addition, Compost Equipment Pole Buildings, Yates Park Bath House & Splash Pad & Dog Control Addition in the amount of \$3,340.13, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #2 Approve Change Order Release with Greater Niagara Mechanical Inc.

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

WHEREAS, the HVAC Contract work for the 2007 Building Improvements Project has been completed. On December 4, 2008 a final inspection was conducted and all of the work has been satisfactorily completed in accordance with the contract documents and specifications, and

WHEREAS, a two-year maintenance bond in the amount of \$83,775.00 has been submitted along with all other warranties, equipment manuals and necessary legal documents (Affidavit of Release of Liens, Affidavit of Subcontractor Payment)

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the final payment and release of retention to Greater Niagara Mechanical, Inc., 7311 Ward Road, North Tonawanda, New York 14120 for the 2007 Building Improvements Project, including Highway Bldg. Addition, Compost Equipment Pole Buildings, Yates Park Bath House & Splash Pad & Dog Control Addition in the amount of \$4,948.75, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #3 Approve Change Order #3 with Javen Construction Inc.

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

WHEREAS, the Engineering Department is requesting approval of a Change Order to the contract with Javen Construction Co., Inc. for the Library Energy Upgrades Project in the amount of \$3,162.50. If approved, this would increase the total contract amount to \$331,175.50, representing an increase of 1%, and

WHEREAS, this change order is requested to further expand upon the original scope of work as requested by the Library Board. The contract plans excluded the removal of wallpaper and painting of the two hallways and lower half of the meeting room due to budget constraints. Now that the carpet is being changed, the Library Staff, Board, Friends and patrons feel it is worth the money to complete the overhaul and update the highly used and visible spaces (two hallways & lower half of the meeting room). The additional painting and wall work will be paid for by the Orchard Park Public Library and will not affect the Town's financial commitment for this project. The Orchard Park Library Director, Ms. Peters has approved and forwarded payment for this additional work (\$3,162.50) to the Town, and

WHEREAS, also included in this Change Order is an extension of time for the contractor to complete the work and recently added change orders. The contract completion date was previously set for February 27, 2009 and Javen has transferred occupancy of the main library back on February 25, 2009. A forty day extension to Wednesday, April 8, 2009 will not hold up or hinder normal library operations, and will allow the outside painting and caulking to be completed in more optimal weather per manufacturer's recommendations allowing for a more durable and attractive appearance. This extension will leave ample time to closeout the construction grant (June 2009) and is requested by the contractor to ensure the two-year maintenance bond contract requirement and the project performs properly, and

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby approve Change Order #3 to our contract with Javen Construction Co., Inc. for the Library Energy Upgrades Project in the amount of an increase of \$3,162.50 for the additional painting and wallpaper removal work, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #4 Approve Final Change Order to the Contract with AFI Environmental

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

WHEREAS, during the course of the Library Renovation Project, AFI Environmental was hired to complete monitoring duties for the asbestos removal. The original proposal from AFI Environmental was to perform air monitoring services by a New York State Department of Labor Certified Project Monitor (\$625.00) and visual final clearance for the window sash removal (\$225.00/ea.), the total contract was not to exceed \$1,250.00, and

WHEREAS, due to the need for Library security, weather protection and contractor limitations, it was necessary to remove the windows over the course of five days instead of a one day removal of all windows. The Library would have been exposed to the elements for days while the contractor scrambled to install the new windows or place temporary closer units. Approximately 5-6 windows were removed each day and secured at night, and

WHEREAS, The Asbestos Monitor was required by law to inspect and clear the demolished window openings before the new windows could be installed. The visual inspections and approvals were spread over a five day period, with an inspection cost of \$225.00 per each half day. The visual inspection duties totaled \$1,125.00, combined with the air monitoring duties \$625.00, brought the total cost to \$1,750.00. The original contract amount accounted for \$400.00 worth of possible extra costs but another \$500.00 is needed to close out this contract,

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the final change order with AFI Environmental, PO Box 4049, Niagara Falls, New York 14304 in the amount not to exceed \$500.00 for additional visual inspection fees. This would allow their contract total for the professional services of asbestos monitoring to closeout at \$1,750.00, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #5 Approve Change Order #1 with O'Connell Electric Inc.

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

WHEREAS, the Engineering Department is requesting your approval of a Change Order to the contract with O'Connell Electric for the Orchard Park Library Energy Upgrades Project in the amount of \$1,880.61. If approved, this would increase the total contract amount to \$109,380.61, representing an increase of 1.75%, and

WHEREAS, this Change Order is requested to perform additional work not covered under their contract. The additional work involves cable and power drop extension kits for the light fixtures. These are necessary to lower the lights to the proper elevation below the new ceiling. The Change Order price of \$1,120.00 is for materials only, and

WHEREAS, the second aspect of this change order is for the disposal of the hazardous PCB material contained within some of the recently removed light ballasts. The contract documents only address hazardous material with temporary facilities and are unclear on hazardous material disposal. The project design engineer stated that this is normal business practice and the electrician should have expected to dispose of the hazardous ballasts, but also feels this is a weak argument since the contract documents do not directly call out the presence of the PCB ballasts and who is to dispose of them, if present. The electrical contractor has taken time to research disposal companies, to find a considerable cheaper price for the required disposal. The charge to properly dispose of these hazardous materials is \$760.61.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby approve Change Order #1 to our contract with O'Connell Electric for the Orchard Park Library Energy Upgrades Project in the amount of an increase of \$1,880.61, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #6 Approve the Promotion of Craig Wilson to Senior Engineer Assistant

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

WHEREAS, at the August 15, 2007 Town Board Meeting, the Town Board approved the filling of vacated Senior Engineering Assistant positions. Erie County Department of Personnel prepared an open competitive examination for Senior Engineering Assistant position on February 22, 2007. The results from the open competitive civil service exam list dated January 21, 2009 includes Craig Wilson's name within the top three candidates. With the Department work load and the need to use Craig Wilson to perform out of title work, the loss of John Wilson due to retirement, the civil service process that started on August 15, 2007 was complete, and

WHEREAS, Mr. Wilson has worked assisting in the inspection and completion of various projects for various agencies including the Town of Orchard Park since February 1988 and full time as a Construction Inspector since October 4, 2004 with the Town. Craig has accepted the challenge of the added duties and responsibilities of this position with enthusiasm and has performed his assignments with diligence and effectiveness. Throughout his five years of service with the Town, Craig Wilson has proven to be a dedicated and dependable employee.

WHEREAS, per the white collar union contract, Craig Wilson's current Construction Inspector step E wage is \$21.72/hr, the Senior Engineer Assistant step C wage of \$21.98/hr is proposed.

RESOLVED, that the Town Board does hereby approve the change in the civil service classification for Mr. Craig Wilson, 170 Patricia Dr, Tonawanda, N.Y. 14150, to the position of Senior Engineer Assistant in the Orchard Park Engineering Department at the range 0009, Step C of union wage schedule effective March 16, 2009 with a six month probationary period and pending meeting all Civil Service rules and regulations, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #7 Schedule Public Hearing for a Local Law of the Year 2009: Physically Disabled

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

RESOLVED, that the Town Board does hereby authorize to Schedule a Public Hearing for Wednesday, April 15, 2009 at 7:00 PM, for a Proposed Local Law for the Year 2009: *Real Property Tax Law §459 – Physically Disabled*, as recommended by the Town Assessor, 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 #8 Stop the Bill in Albany to convert Elected Offices to Appointed Positions

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

WHEREAS, Part NN, Sections 26 through 28, of S.56/A. 156, Public Protection and General Government Article VII of the Governor's Budget Bill will permit a Town Board to convert the office of Town Clerk, Highway Superintendent and Tax Receiver/Collector, from elected to appointed position, subject to permissive referendum, and

WHEREAS, Municipal Home Rule Law §23(e) already provides that a town may adopt a local law changing the office of Town Clerk, Highway Superintendent and Tax Receiver/Collector from an elected to appointed position, and Municipal Home Rule already requires a mandatory referendum to occur before any change in an elected office could occur, and

WHEREAS, a permissive referendum is a cumbersome, inefficient and time consuming process, and

WHEREAS, there is no cost efficiency in an appointed position versus an elected position because the duties and overhead are the same.

NOW, THEREFORE, be it

RESOLVED, that in the interest of its residents and good, efficient cost effective government the Town Board of the Town of Orchard Park is opposed to part NN, Section 26 through 28, of S.56/A.156, Public Protection and General Government Article VII of the NYS Governor's Bill, and be it further

RESOLVED, that the Town of Orchard Park appeals to its State Officials to oppose to Part NN, Sections 26 through 28, of S.56/A.156, Public Protection and General Government Article VII of the NYS Governor's Bill to convert the Office of the Town Clerk, Highway Superintendent and Tax Receiver/Collector from an elected to an appointed position and requests that a copy of this resolution be forwarded to Governor David Paterson, and the Western New York delegation of New York State Senate & Assembly, the Honorable Sheldon Silver and the Honorable Malcolm Smith.

The resolution was unanimously adopted.

New Business #9 Appointments to the Winter 2008/2009 "Seasonal" Staff at the Recreation Dept.

10) 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 following 2009 Winter "Seasonal" Staff Appointments to the Orchard Park Recreation Department, dependent upon the applicant providing the required certifications, as recommended by the Recreation Director.

Name	Address	Position	Title	Rate
Ashley O'Connor	Town of Tonawanda	PT2-B	Att.	\$9.00
Scott Morris	Town of Cheektowaga	PT2-B	Att.	\$9.00
Julie Burakowski	Town of Orchard Park	PT2-D	Lg.	\$9.50
Marleah Noonan	Town of Orchard Park	PT2-B	Lg.	\$9.00

The resolution was unanimously adopted.

New Business #10 (Tabled) OP Little League requesting to hold the Opening Day Ceremonies: Orchard Park Little League requesting to hold the Annual Opening Day Ceremonies, Saturday, May 2, 2009, and to ask the Town of Orchard Park to assistance them in a new parade route to honor the two (2) State Champion Teams; the Orchard Park Football Team and the Orchard Park Volleyball Team. Parade will start at the Rite Aid Plaza at 10:30 AM and the Formal Opening Day Ceremonies will immediately follow.

New Business #11 The 12th Annual Tommy Run to be held July 3rd, 2009 at 7:00 PM

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

RESOLVED, that the Town Board does hereby approve the request of the organizers of Tommy's Run to hold the 12th Annual Thomas R. Gardner Memorial Scholarship Fun Run/Walk, Friday evening, July 3rd at 7:00 PM. The race will begin and end at the Orchard Park Recreation Department at Yates Park, and follow the same route as in the past. All proceeds benefit a scholarship fund at the Orchard Park High School.

The resolution was unanimously adopted.

New Business #12 Town Justice Requesting an Increase in Pay for Part-time Clerk

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 request from the Town Justice Department for a pay increase for the Year 2009 for Part-time Clerk, Toni Violanti, as requested by Judge Pace and Judge Chimes.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Lou Boehm – Mr. Boehm stated people in Orchard Park bought their homes for the peace and quality of life it offered. Now, especially around Quaker Crossing, the reasons for buying a home in Orchard Park are gone, and it is only going to get worse if a Wal-Mart store goes in. The traffic is already intolerable.

Jane Shumaker – Ms. Shumaker said the Northern portion of Orchard Park is where all the Commercial Growth is taking place and traffic is a growing concern. She does not want uncontrolled growth and feels the Town Board should listen to the people to find out what the residents of Orchard Park want for their Town.

Jim Crow – Mr. Crow stated that the traffic problems in Orchard Park are not going to be solved with patience. We need to face the challenges at hand and resolve the ever growing traffic problems now.

Jeff Lyons – Mr. Lyons submitted a letter to the Traffic Safety Board asking for help regarding the speeding and dangerous and disruptive traffic on Bieler Rd. Currently over 2000 vehicles a day travel this small residential road, with 200 cars an hour at peak times. The people on Bieler Road need help to remedy the serious traffic problems.

ELECTED OFFICIALS & DEPARTMENT HEADS

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 grant Brokers of Record authorization for the following: Ray Stromecki: W.H. Green & Associates to obtain an alternate quote from APEX for the police professional liability coverage, and Paul Powell: Firemans's Fund for the Inland Marine Auto/Physical Damage.

The resolution was unanimously adopted.

Councilwoman Ackerman said she recently was given a copy of NYS DOT North Buffalo Road review (Rt.277/240 reconstruction from Clark to Smokes Creek), and in that document it was stated that every intersection in the State's reconstruction was down graded to a lower form of efficiency, and that was done by intent for "traffic calming". The traffic is calmer, but the people driving in it are not. The NYS DOT determines what will be done along the state roads, not local officials. Councilwoman Ackerman stated that in today's Buffalo News NEXT section, there is an article about the Orchard Park Youth Court. She also stated that Councilman Kaczor's daughter Lauren received the Ann M. Irvin 2009 Youth Recognition Award, which goes to a young person in a community who exemplifies character, commitment and service to their community. Councilman Kaczor stated that Lauren now attends RIT, but still helps out with the Youth Bureau.

Councilman Kaczor said he has had people ask him about Green Lake being empty, and he wanted to let everyone know that the Town is not going to keep Green Lake drained, they are going to let it fill up. The dam at Green Lake does need to be repaired, which will be quite expensive, and the Town is looking for ways to fund this.

Councilman Kaczor announced that the Town of Orchard Park has received the State Environmental Project of the Year Award for the Birdsong Parkland Project, thanks to all the great work by the Town Engineering Department and Highway Department. Town Engineer Wayne Bieler stated that the State looked at the engineering design, the water quality, wetlands development and many other aspects of the design and construction. The State Parks Department was very impressed with how the Town has worked with the schools and Recreation Department to bring children into this park to experience the nature and contribute to the park by planting trees. About 500 children a year go through the park, and the Recreation Program has many programs that utilize the park.

Councilman Dietrick stated that the Town has a problem with Green Lake. To repair the very old dam is going to be very expensive, there is a pollution problem, and the Town's insurance people have an issue with the dam as well. A lake that does not provide the recreational value that it once did has some challenges.

Councilman Dietrick stated that most of the Town's zoning codes have been in effect for many years and the northern area that is being developed commercially and industrially was zoned that way 35 years ago. He also stated that Rt.219 & Rt.179, were designed and developed in the 70's.

Highway Superintendent Fred Piasecki stated that the Highway Department is picking up brush and is also working on some drainage work.

14) 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 #6 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$48,798.53
Part Town Fund	\$552.96
Risk Retention	\$0.00
Cemetery Fund	\$0.00
Highway Fund	\$26,096.81
Special Districts	\$112,530.07
Trust & Agency	\$2,185.02
Capital Fund	\$111,610.71

The resolution was unanimously adopted.

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

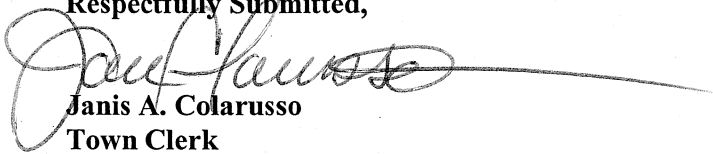
RESOLVED, that the Town Board does hereby receive and file the following Communications listed on the agenda: **County of Erie County Executive Office:** Sent a letter to convey thanks to the Recreation Director, Ed Leak, for his leadership, management and dedication in the staging of the "2009 Winterfest" at Chestnut Ridge Park in February, and the **Village of Springville:** Resolution in support of the conversion of the Buffalo-Pittsburg Railway to a Pedestrian Trail.

AND BE IT FURTHER RESOLVED, that the Town Board does hereby receive and file the following Reports listed on the agenda: Town Clerks Yearly Report for 2008, and the Orchard Park Police Departments Yearly Report for 2008

The resolution was unanimously adopted.

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilman Kaczor to wit, the meeting was adjourned at 7:35PM (local time).

Respectfully Submitted,



Janis A. Colarusso
Town Clerk

