

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 19<sup>th</sup> day of March 2008 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
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
<b>ABSENT:</b> 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."*

Councilman Kaczor was absent this evening due to a prior engagement out of town for his work.

**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 February 27 and March 5, 2008 and the Special Meeting Minutes of the Town Board held on March 12, 2008, as presented by the Town Clerk, are hereby approved, and be it further

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

**The resolution was unanimously adopted.**

### **PUBLIC HEARING**

At 7:00 PM (local time) the Supervisor called for the Public Hearing to hear all interested parties for or against an Amendment to the Zoning Ordinance of the Town of Orchard Park to rezone 100 Hart Place from R-2 to B-2, in order to expand the existing office space, as petitioned by Jim Ball Pontiac.

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

At this time, Supervisor Travers Murphy asked if there was anyone in the audience that would like to speak for or against the rezoning.

**Opponents:**

**Stacey Bush** – She stated that she is tired of the continual efforts of Jim Ball to rezone property to expand his auto empire, they have to come back to the Town Board every few years because of this. She said she would just like to go home and not to constantly worry about what the next issue will be. The traffic on Hart Place has increased considerably, and there is speeding. If Jim Ball is granted this rezoning, he is going to knock down the house and expand his dealership, and since he does not maintain what he already has, what makes you think he will take any better care of this. She asked the Board to please listen to the residents.

**Sue Wiencek** - She stated she was present in the audience the last time Jim Ball wanted to rezone this same property. At that time Mr. Ball wanted to turn the house into an office, now he wants to demolish the house to put an addition on. Jim Ball does not respect, or take into consideration, the residents next to his dealerships, he is not a good neighbor. Hart Place is a small, narrow street and there are young families with children on it. They use Hart Place to test drive the cars, and this increases the traffic on it. She is opposed to this rezoning.

**Joseph Mayer** – He stated there is already so much traffic from the dealership, and if he increases his dealership there will only be more. It makes no sense and he is opposed to the rezoning.

**Proponents:**

**David Mozel** – He stated that he and his family rent the house on Jim Ball's lot. Mr. Mozel said that he has been in touch with Mr. Ball who stated that he has no intention to demolish the house, which is good because he and his family would out on the street. He stated that there is a lot of traffic on Hart Place, as it is used as a cut through. He stands out with his daughter waiting for the school bus and he see people traveling down it at 40 mph. He does not see the expansion of the dealership as a big problem.

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

**RESOLVED**, that the Public Hearing in the matter of an Amendment to the Zoning Ordinance of the Town of Orchard Park, to rezone 100 Hart Place from R-2 to B-2 in order to expand the existing Cadillac dealership, as petitioned by Jim Ball Pontiac, is hereby closed at 7:07 PM (local time).

Councilwoman Ackerman asked if any plans have been received from Jim Ball's developer showing what the expansion plans are, and if so, does it indicate if the house is to be demolished? Building Inspector Andy Geist stated that he has seen the proposed expansion plans and the house is definitely to be demolished.

The Supervisor stated there will be no decision made this evening on the proposed zoning.

**The resolution was unanimously adopted.**

**Old Business #1 Village Home Subdivision, Requesting to rezone from R-1 to CMO**

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

**WHEREAS**, following due and timely notice, a Public Hearing has been held relating to the matter of the Amendment to the Zoning Ordinance of the Town of Orchard Park, which Amendment provides as follows: to rezone property located on the South side of Milestrip Road and West of Ponderosa Court (Village Home Subdivision) from R-2 to R-1 and R-1 to CMO (Conservation Management Overlay District), as petitioned by Dominic Piestrak.

**WHEREAS**, the Public Hearing was conducted at the Municipal Center, 4295 South Buffalo Street, Orchard Park, NY 14127, on the 27<sup>th</sup> day of February 2008, at which time all interested persons were given an opportunity to be heard, and

**WHEREAS**, no recommendation from the Erie County Department of Planning, pursuant to Section 239-m of the General Municipal Law, was received and filed by the Town Board, and

**WHEREAS**, recommendations from the Town of Orchard Park Planning Board, December 12, 2007, was received and filed with the Town Board, and

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board is hereby authorized to rezone from R2 to R1 the following:

**ALL THAT TRACT OR PARCEL OF LAND**, situated in the Town of Orchard Park, County of Erie and State of New York, part of Lot No. 4, Township 10 and Range 7 of the Buffalo Creek Reservation bounded and described as follows:

**BEGINNING** at a point in the north line of Lot 4, also being the centerline of Milestrip Road, Distant 297.6 feet westerly from the northeast corner of Lot 4 as measured along said north line;

**THENCE**: southerly along the west line of lands conveyed to Louis A. & Laura A. Petricca by deed recorded in the Erie County Clerk's Office in Liber 11012 of Deeds at page 9931, a distance of 250.02 feet to a point, said point being distant 250.00 feet southerly from the said north line of lot 4 as measured at right angles;

**THENCE**: westerly parallel with the northerly line of lot 4, a distance of 240.00 feet to the east line of lands conveyed to Norman & Cecilia Wishart by deed recorded in the Erie County Clerk's Office in Liber 9090 of Deeds at page 260;

**THENCE**: northerly along said east line of Wishart Lands, a distance of 250.02 feet to said centerline of Milestrip Road;

**THENCE**: easterly along said centerline of Milestrip Road, a distance of 240.00 feet to the Point of Beginning.

**AND BE IT FURTHER RESOLVED AND ORDAINED**, that the Zoning Ordinance and the Zoning Map of the Town of Orchard Park be and are hereby amended by rezoning from R-1 to CMO, the following:

**ALL THAT TRACT OR PARCEL OF LAND**, situated in the Town of Orchard Park, County of Erie and State of New York, part of Lot No. 4, Township 10 and Range 7 of the Buffalo Creek Reservation bounded and described as follows:

**BEGINNING** at a point in the north line of Lot 4, also being the centerline of Milestrip Road, Distant 297.6 feet westerly from the northeast corner of Lot 4 as measured along said north line;

**THENCE:** southerly along the west line of lands conveyed to Louis A. & Laura A. Petricca by deed recorded in the Erie County Clerk's Office in Liber 11012 of Deeds at page 9931 and the west line of lands conveyed to Philip B. Garrison by deed recorded in the Erie County Clerk's Office in Liber 10957 of Deeds at page 6765, a distance of 2,774.77 feet to the south line of Lot 4;

**THENCE:** westerly along said south line, a distance of 840.93 feet to the west line of lands conveyed to Joseph Ippolito by deed recorded in Liber 11119 of Deeds at page 3962, Parcel 'B';

**THENCE:** northerly along said west line of Joseph Ippolito lands, a distance of 2,519.83 feet to the south line of lands conveyed to Jerry N. & Pamela D. Ovitt by deed recorded in the Erie County Clerk's Office in Liber 9800 of Deeds at page 343;

**THENCE:** easterly along said south line of Ovitt Lands and the south line of lands conveyed to David J. Buchheit by deed recorded in the Erie County Clerk's Office in Liber 10970 of deeds at page 1608 and the south line of lands conveyed to Richard J. & Susan M. Herr by deed recorded in the Erie County Clerk's Office in Liber 9179 of Deeds at Page 226, a total distance of 316.00 feet a corner of lands conveyed to said Herr;

**THENCE:** along the bounds of said Herr lands the following three (3) courses and distances:

- Southerly a distance of 148.50 feet to the southwest corner thereof.
- Easterly a distance of 109.56 feet deeded and 110.00 feet measured to the southeast corner thereof.
- Northerly along the easterly line of said Herr Lands, a distance of 44.00 feet to the southwest corner of lands conveyed to Norman & Cecilia Wishart by deed recorded in the Erie County Clerk's Office in Liber 9090 of Deeds at Page 260;

**THENCE:** easterly along the south line of said Wishart Lands, a distance of 175.00 feet to the southeast corner thereof;

**THENCE:** northerly along the east line of said Wishart Lands, a distance of 352.00 feet to the said centerline of Milestrip Road;

**THENCE:** easterly along said centerline of Milestrip Road, a distance of 240.00 feet to the point of beginning.

**AND, BE IT FURTHER**

**RESOLVED**, that this approval is granted with the following stipulations as recommended by the Planning Board 12/12/07:

- This is an Unlisted SEQR Action and a Long EAF, Parts One and Two shall be submitted.
- Acreage fees shall be paid in accordance with Section 144-70C of the Town Code prior to publication of the Public Hearing Notice.

- This recommendation is contingent upon the applicant completing the project as proposed on the preliminary development plans as a CMO received on 6/22/07 and shall revert to its original zoning classification if the project is not completed per Section 144-67 of the Town Code.

**AND, BE IT FURTHER**

**RESOLVED**, that 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 & 265 of Town Law.

**The resolution was unanimously adopted.**

**Old Business #2 Family Video, 3009 Union Road/Formal Site of the old Burger King Restaurant**

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

**WHEREAS**, Family Video Movie Club, Inc, has requested a Building Permit and Site Plan approval for 3009 Union Road, located at the corner of Michael & Union Roads, site of the former Burger King, East side of Union Road and South side of Michael Road, Zoned B-2, to construct a 7,200 +/- sq. ft. building, and

**WHEREAS**, the Planning Board, 3/12/08, recommends approval for the building permit and the site plan.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby authorize a Building Permit and approve the Site Plan received, 2/13/08, for Family Video Movie Club, Inc. 3009 Union Road, as recommended by the Planning Board with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Short EAF, Parts One and Two and a Negative Declaration is granted.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lens. Fixture cuts on the three (3) walls packs shall be submitted with full cut-offs and approved, prior to Town Board approval.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
- Town Engineering Approval was granted on 2/13/08.
- A landscape completion bond in the amount of \$12,404.75 shall be provided for the landscape plan received 9/25/07 which includes 10.4% total interior green space, prior to the receipt of a Building Permit.
- The Zoning Board of Appeals granted two-area variances on 10/16/07; one for an 8-ft. rear setback and the other for front yard parking.
- Per our Town Code, no pornographic/adult material will be displayed or shown, or sold or rented in either a public or private setting.

**The resolution was unanimously adopted.**

**Old Business #3 The Hammocks at Orchard Park, Phase 2, Requesting review of Modified Plan**

5) 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 approve of the revised Site Plan received, 12/6/07, involving Buildings 320 & 340. (Note: Conservation Board approved modified landscaping on for The Hammocks at Orchard Park, Phase 2.) The Planning Board, 3/12/08, recommends approval of the revised plan based on the following conditions and stipulations:

- A Negative Declaration, based on the submitted Long EAF, Parts 1 & 2 was issued by the Town Board for the original approved Site Plan on 10/20/03.
- A landscape completion bond has been previously provided in accordance with the Conservation Board minutes.
- The dumpster currently on the site shall be properly screened with gates. Any other dumpsters on the site shall be screened in accordance with Section 144-25 of the Town Code.
- No outside storage or display is permitted.
- Town Engineering approval was granted on 3/12/08.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lens.
- The project will be completed in one phase.

**The resolution was unanimously adopted.**

**Old Business #4 Quaker Crossing East, Out-parcel, front of Ashley Furniture/Building Permit**

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

**WHEREAS**, Mr. Stephen Kane had requested a Building Permit and Site Plan approval to construct a 6,500 sq.ft. building on the Quaker Crossing East outparcel, zoned B-1, at the front of the Ashley Furniture Store, bordered on the south by Milestrip Road and on the west by Amelia Drive, and

**WHEREAS**, the Planning Board, 3/12/08, recommends approval of the building permit.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize a Building Permit for a 6,500 sq.ft. building and approve the site plan received 2/27/08 for Quaker Crossing East, Stephen Kane, out-parcel located at the front of the Ashley Furniture Store, bordered on the South by Milestrip Road and on the West by Amelia Drive, Zoned B-1, as recommended by the Planning Board with the following conditions and stipulations:

- This is an Unlisted SEQRA Action based on the submitted Long EAF, Parts One and Two and a Negative Declaration is granted.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lens.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
- Town Engineering Approval was granted on 3/12/08.

- A Landscape Completion Bond of \$8,212.00 in accordance with the Conservation Board Minutes shall be provided for the approved Landscape Plan, which includes 18.1% green space, prior to the receipt of a Building Permit.
- Landscaping shall be completed prior to the issuance of a certificate of occupancy.
- The Applicant shall notify the Planning Office when a tenant is found for the remaining building space; Planning Board will determine if review is necessary for approval to insure sufficient parking and green space.

**The resolution was unanimously adopted.**

**Old Business #5 Mr. D's Tire Shop, North side of Southwestern Blvd/Building Permit & Site Plan**

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

**WHEREAS**, Mr. D's Tire Shop, vacant land on the North side of Southwestern Blvd., Zoned I-1. has requested a Building Permit and Site Plan approval to construct a new 6,000 sq. ft facility to relocate the existing "Big D" retail tire store.

**WHEREAS**, the site lighting plan has not received approval yet, or has not been not been reviewed by the Planning Board.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby, with reservation of the lighting pending, authorize a Building Permit for an 6,000 sq. ft. building and approve the Site Plan received 1/31/08, as recommended by the Planning Board, 3/12/08, with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Short EAF, Parts One and Two and a Negative Declaration is granted.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
- Town Engineering Approval was granted on 3/12/08.
- A Landscape Completion Bond of \$9,700.00 in accordance with the Conservation Board Minutes shall be provided for the approved Landscape Plan, which includes 40.6% green space, prior to the receipt of a Building Permit.
- Upon appropriate review and acceptance of the site lighting plan, limited to those fixtures and poles indicated on the site plan, which will have flat lens, wall pack cut-off information shall be supplied to the Planning Office. They must be reviewed and approved prior to the issuance of a Building Permit.

Supervisor Travers Murphy stated she would be voting against this issue as drainage issues that caught her attention in the Planning Board minutes. Namely, that the approved plan could still possibly impact the adjacent properties wetland and result in a dispute between neighbors. She does not feel it is prudent to possibly set up people, in the future, for drainage difficulties.

Councilwoman Ackerman asked the Town Attorney to clarify the ordinance.

Mr. Berkowitz stated that the ordinance requires that a property owner maintains water on his own property, and not have any runoff in addition to the water that is on his property, and the petitioner complied with that. The Town Engineer stated that the applicant has more than complied with the

ordinance. The Town Attorney stated that once you comply with the ordinance, it does not make a difference if there is additional language that seems to make some reference that there may be a problem in the future. If you comply with the ordinance, you are entitled to the relief. The Town Engineer stated that the petitioner had done more than our standard code mandates.

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

**The resolution was duly adopted.**

**Old Business #6 Eye Care & Vision Associates, Southwestern Blvd/Building Permit & Site Plan**

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

**WHEREAS**, Eye Care & Vision Associates, 3712 Southwestern Blvd., located on the North side of Southwestern Blvd., East of South Benzing Road, Zoned I-1 has requesting a Building Permit and Site Plan approval to construct a 7,680 sq. ft single story building to be used for a new eye care medical office and tenant space, and

**WHEREAS**, the Planning Board, 3/12/08, recommends approval of the building permit and the site plan.

**NOW, THEREFORE, be it**

**RESOLVED** that the Town Board does authorize a Building Permit for a 7,680 sq. ft. (amended 5/7/08) building for an Eye Care Facility and lease space for an unknown tenant and approve the Site Plan received, 2/29/08, as recommended by the Planning Board with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Short EAF, Parts One and Two and a Negative Declaration is granted.
- The site lighting is limited to those fixtures on the approved site plan. Light fixtures shall have flat lens. Information regarding the wall packs shall be submitted to the Planning Office and approved prior to the Town Board approval.
- No outside storage or display is permitted.
- Town Engineering Approval was granted on 3/12/08.
- A landscape completion bond in the amount of \$18,700.00 in accordance with the Conservation Board minutes shall be provided for the approved landscape plan, which includes 10% interior green space, prior to the receipt of a Building Permit.

The Supervisor did not comment on why she was voting against this request.

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

**The resolution was duly adopted.**



**Old Business #7 Target's request to expand Warehouse Facilities**

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

**WHEREAS**, Target, 5622 Amanda Lane, Zoned B-1, requests a 21,534 +/- sq.ft. expansion of warehouse facility and floor space, façade improvements and associated relocation of private and public utilities, and

**WHEREAS**, the Planning Board, 3/12/08, recommends approval of the building permit and the site plan

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does authorize a Building Permit for a 21,534 sq. ft. building space and approve the Site Plan received, 2/28/08 & 2/29/08, as recommended by the Planning Board with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Short EAF, Parts One and Two and a Negative Declaration is granted.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lens. Wall packs shall be full cutoffs, fully shielded.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
- Town Engineering Approval was granted on 3/12/08.
- A Landscape Completion Bond of \$36,550.00 in accordance with the Conservation Board Minutes shall be provided for the approved Landscape Plan, which includes 16.3% total green space, prior to the receipt of a Building Permit.
- Target will provide 593-parking spaces.

Councilwoman Ackerman said she has worked extensively with Target on the redevelopment of the façade and upgrade which is going to be a tremendous improvement. This Target store has been so successful that they have had to use outside storage containers to warehouse items, which is not permitted by Town code, therefore they need more interior storage space. The amount of floor space that is going to be used for display is minimal, so they do not have to have a huge number of additional parking spaces.

Supervisor Travers Murphy stated that she is not going to be voting for this issue because of the parking issue. Target is 152 parking spaces short, per our Town Ordinance, and she feels that the Town needs to adhere to, and be respectful of, our ordinances in order to keep them meaningful, and there is also the chance that they may convert part of the warehouse area to retail down the road.

Councilwoman asked the Building Inspector if Target would have to come back to the Town if it wanted to alter the configuration of the store. The Building Inspector stated it would depend on what they would plan to do, if they would have to go through a full review, or just come to the Building Inspector with the change in plans. He also stated that to date the parking in the Target plaza has never reached capacity.

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

**The resolution was duly adopted.**

**New Business #1 Schedule a Public Hearing; Moratorium on Issuance of Building Permits**

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

**WHEREAS**, the Town would like to extend the moratorium on the issuance of Building Permits to be issued for the area along N. Buffalo Road for six months.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby schedule a Public Hearing for April 2, 2008, at 7:00 P.M. for a Local Law of the Year 2008; A moratorium on issuance of building permits for the area between the northern border of the Village of Orchard Park line and Southwestern Boulevard along both sides of N. Buffalo Road.

**The resolution was unanimously adopted.**

**New Business #2 Schedule a Public Hearing; Proposed Franchise Agreement for Cable Television**

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

**RESOLVED**, that the Town Board does hereby Schedule a Public Hearing for April 16, 2008, at 7:00 P.M. for the purpose of considering a proposed initial Franchise Agreement for cable television service in the Town of Orchard Park with Verizon New York, Inc. A copy of such franchise application and of the franchise agreement are on file at the Town Clerk's Office, 4295 S. Buffalo Street, and be it further

**RESOLVED**, that the Town Board does hereby Schedule a Public Hearing for April 16, 2008, at 7:00 P.M. for the purpose of the renewal of the cable television franchise agreement with Time Warner Cable. A copy of the agreement is available for public inspection during normal business hours at the Town Clerk's office 4295 S. Buffalo Street, and be it further

**RESOLVED**, that the Town Clerk is hereby directed to publish due notice thereof.

**The resolution was unanimously adopted.**

**New Business #3 Town Board to authorize Rate Changes for the Compost Site**

12) 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 the following rate changes for the Compost Facility which will take place effective April 1, 2008, as recommended by the Highway Superintendent and Compost Facility Site Manager:

**Price for Compost and Mulch**

- Residents                      \$ 14.00/Cubic Yard (\$12.87 + \$1.13 Sales Tax)
- Non Residents                \$ 22.00/Cubic Yard (\$20.23 + \$1.77 Sales Tax)

**AND BE IT FURTHER**

**RESOLVED**, that on Free Mulch Day which is held once a year at the Compost Facility for the residents, the following will be in effect:

- First cubic yard of mulch                      No Charge
- Second cubic yard of mulch                    50% of full price
- Any Additional cubic yard of mulch        Full price.

The price of fuel had increased the cost of producing the mulch and this will be the first time that the Town has increased the price of mulch. The Compost site produces an exceptional product and still costs less than the commercial product.

Councilman Dietrich stated that the Law Makers in Albany feel that the Town should charge sales tax on this product.

**The resolution was unanimously adopted.**

**New Business #4 Supervisor to sign Agreement for Building Improvement Project –Animal Control**

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

**WHEREAS**, as discussed, since the Animal Control Addition was previously designed and included with the current 2007 Building Improvements Construction Project Bid completed by C& S Engineers Inc. to complete the construction of the Animal Control Addition, the design Architect must be available for submittal review, contractor design questions and construction progress meetings, and

**WHEREAS**, the design architect, Patricia Bailey of Bailey & Harris Architects has requested a retainer in the amount of not to exceed \$750.00 with the attached professional rates for the above mentioned project. I have talked to their office and an agreement with the attached professional rates and the same not to exceed amount is acceptable, and

**WHEREAS**, the Animal Control Building Improvements includes a twelve by thirty foot (12'x30') addition with utility work and interior improvements within the existing building to the bathroom and waiting area, and

**WHEREAS**, there is presently \$316,932.15 plus interest allocated in the Capital Reserve under H05 Highway Bldg. Repair/Expansion & Addition which, as per the March 5, 2008 Town Board meeting, would need an additional funding of \$150,000 to include the Animal Control Alternate with the project. The total construction cost of just the Animal Control Facility Improvements is \$60,780. This additional funding included the Bailey & Harris Architects consultant costs.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign an agreement with Bailey & Harris Architects, 1350 East Main Street East Aurora, NY 14052, to provide architectural services in connection with the Animal Control Facilities Improvements in an amount not to exceed \$750.00, as recommended by the Town Engineer.

Councilman Dietrick stated that he will be voting against this issue as he does not believe that the Town should have a dedicated Dog Control officer, he feels that it should be privatized.

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

**The resolution was duly adopted.**

**New Business #5 Supervisor to sign Agreement/Building Improvement/Asbestos Removal**

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

**WHEREAS**, during the course of the engineering and design of the 2007 Building Improvements Project by C&S Engineers, Watts Architecture and Engineering was hired to perform asbestos testing, and

**WHEREAS**, asbestos was found in various materials at the Highway Department and is planned to be removed during the upcoming project. Project monitoring and testing services will be required during the removal of the asbestos, and

**WHEREAS**, the Engineering Department has received a proposal from Watts Architecture, and Engineer, to perform monitoring and testing services by a New York State Department of Labor Certified Project Monitor in an amount not to exceed \$7,150.00 over a projected 14 day projected removal period.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign the proposal with Watts Architecture and Engineering, P.C., 3826 Main Street, Buffalo, New York 14226 in the amount not to exceed \$7,150.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #6 Approve Transfers of Funds for Yates Park Bath House & Highway Addition**

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

**WHEREAS**, the Town Recreation Director has recommended certain improvements to the town parks including a splash pad and improvement to a bath house, and

**WHEREAS**, the Town Highway Superintendent has recommended certain repairs be provided for the Highway Garage be expanded to meet current department needs, and

**WHEREAS**, the Towns 2008 adopted budget did not contain appropriations for funding to be transferred to the capital fund.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the amending of the 2008 budget as follows, as recommended per the Town's Accountant Wayne Drescher:

Increase: A0960.9901 Appropriations – Transfers Out \$150,000  
Increase: A0599.0000 Appropriations – Appropriated Fund Balance \$150,000

Increase: A0960.9901 Appropriations – Transfers Out \$30,000  
Increase: A0599.0000 Appropriations – Appropriated Fund Balance \$30,000

**AND BE IT FURTHER**

**RESOLVED**, that the Town Board authorizes the transfer of \$150,000 to the Highway Building Repair and Expansion Capital Project ( H05), and be it further

**RESOLVED**, that the Town Board authorizes the transfer of \$30,000 to the Parks Equipment Acquisition Capital Project (H46).

**The resolution was unanimously adopted.**

**New Business #7 Supervisor to sign Contract for Fireworks Display for the Fourth of July**

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

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign the contract between the Town of Orchard Park and Skylighters of Western New York, 3362 Baker Road, Town of Orchard Park, for the 2008 Fourth of July Fireworks in an amount not to exceed \$5, 002.00

**The resolution was unanimously adopted.**

**New Business #8 Supervisor to sign Contract for the Helium Cylinder for the Recreation Dept**

17) 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 Supervisor to sign the contract between the Town of Orchard and Strate Welding Supply Company, Inc., 101 Comet Street, City of Buffalo, for the Helium Cylinder for the Recreation Department, in an amount not to exceed \$45.00

**The resolution was unanimously adopted.**

**New Business #9 Planning Coordinator requesting to hire a Part-time Clerk for Routine Filing**

18) 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 Planning Coordinator to hire Danielle J. Ostrander, from the Town of Orchard Park, to perform routine filing and general clerical duties at \$8.50 per hour, with the stipulation that working papers are in order.

**The resolution was unanimously adopted.**

**New Business #10 Appointments to the Spring/Summer 2008 Staff for the Recreation Department**

19) 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 appointments to the Spring/Summer 2008 Staff for the Orchard Park Recreation Department, as requested by the Recreation Director, with the stipulations that the applicants provide the required certifications.

Name	Address	Position	Title	Rate
Brian Benz	17 Brookview Terrace, OP	PT1-B	Att.	\$7.75
Jennifer Livingston	5660 S. Park Ave., Hamburg	PT2-B	Lg.	\$9.00
Jospeh Carney	24 Melant Drive OP	PT3-A	Att.	\$10.00

**The resolution was unanimously adopted.**

**New Business #11 Appointment to Fill the Vacancy on the Orchard Park Library Board of Trustees**

20) 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 the appointment of Peggy Snajczuk, 9 Quaker Lake Terrace, to fill the vacancy on the Orchard Park Library Board of Trustees, for the term ending 12/31/09.

Councilwoman Ackerman stated it has been the policy to allow the Library Board to interview candidates and make recommendations to the Town Board as to the individual they would like to have serve with them on the Library Board. It has enabled the Library Board to choose people who will work hard for the Library.

**The resolution was unanimously adopted.**

**New Business #12 Theresa Gang, Director of Recreation II, Resigning from Position**

21) 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 accept the resignation of Theresa Gang from the position of Director of Recreation II, effective March 22, 2008.

The Supervisor Mrs. Gang's husband has been transferred, and the Town accepts her resignation with regret as she has been an integral part of the success of the Town's recreation department and programs.

**The resolution was unanimously adopted.**

**New Business #13 Erie County Civil Service Position Creation; Assistant Director of Recreation**

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

**RESOLVED**, that the Town Board, as per Erie County Civil Service, does hereby create the full time Position of Assistant Director of Recreation for the Recreation Department, as recommended by the Recreation Director

**The resolution was unanimously adopted.**

**New Business #14 Proclamation in Support of Western New York Tobacco Free Programs**

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

**WHEREAS**, smoking is the number cause of preventable death in the United States, and

**WHEREAS**, the Surgeon General has concluded that tobacco advertising contributes to youth smoking rates, and

**WHEREAS**, in 2003 tobacco companies spent \$15.1 billion to market cigarettes in the United States, including \$516 million in New York, and

**WHEREAS**, Children are more likely than adults to notice and remember tobacco advertising, and

**WHEREAS**, children who report seeing cigarette advertising in stores are 33% more likely to have experimented with smoking, and

**WHEREAS**, three out of four teenagers are reported to shop at convenience stores at least once a week, and are therefore exposed at high rates and with great frequency to tobacco marketing, and

**WHEREAS**, an estimated 1/3 of adolescent experimentation with smoking can be directly attributed to tobacco advertising and promotional activities, and

**WHEREAS**, retail stores are an integral part of the community.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board of the Town of Orchard Park does hereby supports the efforts of the Western New York Tobacco Free Programs and Erie County Reality Check to protect children in the community of Orchard Park by reducing tobacco advertising.

Councilwoman Ackerman stated the Recreation Commission unanimously passed this resolution at their February 122, 2008 meeting.

**The resolution was unanimously adopted.**

**New Business # 5 Refer to the Planning Board and/or Conservation Board**

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

**RESOLVED**, that the Town Board does hereby refer to the Planning Board and/or Conservation Board the following item listed on the agenda: "Wee Can Preschool and Childcare", Julie Wettlaufer, Director, requesting to operate a daycare center, in the Quaker Centre, at 40 Centre Drive, Zoned I-1.

**The resolution was unanimously adopted.**

**BUSINESS FROM THE FLOOR**

**Jane Schumacher** – Ms. Schumacher stated that she feels that toxic arrogance fills the Town Government, and that the elected officials continually distort, or hide, the facts from the residents (Wal-Mart, Ethics, Comprehensive Plan, Moratorium, Civility, Personnel). Recently it was stated that only a few people oppose Wal-Mart, and that is certainly not true. The Town Board should step up and be honest with the residents.

**Tom Casey** – Mr. Casey stated at the last meeting he outlined four requests to the Town Board regarding the SEQR process for Wal-Mart so as to not repeat the errors of the Wal-Mart site rezoning and the proposed Wal-Mart decisions. The rezoning of that property was the key to what we now have to deal with. He also asks that the Town Board does not rush the SEQR process as it was done in the past. The SEQR process was compromised in the past Wal-Mart site rezoning, and not correctly handled.

**Sal Cerrone** – Mr. Cerrone has questions regarding the tax revenue and tax breaks surrounding the Quaker Crossing Plaza. He would like to see a law that makes owners of large retail buildings demolish them after not being fully occupied for more than one year. Mr. Cerrone stated that he supports the money spent keeping Billboards out of this Town because of the change in character it would cause. He does not want to see Orchard Park become Amherst South. He does not feel that Quaker Crossing is a good plaza as it is not pedestrian friendly.

**Kathy Gorkiewicz** – Ms. Gorkiewicz appreciated that all the resolutions were read tonight, as that is how she learns about things. She appreciated the fact that the Supervisor is adhering to the Town Ordinances, because if they are waived too easily, they will have no meaning. The Town Board should be more consistent.

**Jim Crow** – Mr. Crow stated that he has been in the Target Plaza during the holidays and said that he has had trouble finding parking.

**Deborah Yeomans** – Ms. Yeomans thanked the Supervisor for upholding the Town's Ordinances. Ms. Yeomans wished to address the fact that Councilwoman Ackerman stated she is working with a special committee to form architectural guidelines for North Buffalo Road. When Ms. Yeomans left the Town Board in December, it was decided that they would delay appointment to the "Committee for Architectural Guidelines", and she is not aware of any appointments that have taken place to establish that committee. If there has been a committee appointed, it violated the Open Meetings Law and the Town's Policy of Procedure for appointments to the Town's Board and Committees. She said she will await the response of the Town Board members to these violations.



**Chris Willet** – Mr. Willet is opposed to Wal-Mart for many reasons. One is environmental, another is that you cannot place the burden of putting all the retail burden on one part of the Town for the whole Town to reap the benefits. How will a big box store there benefit anyone, he feels the Town has their priorities messed up. Mr. Willet said that there are a lot of people who are opposed to this Wal-Mart.

**Lou Boehm** - Mr. Boehm stated that the SEQR process is useful, its findings are subjective, and it will be the Town Board that has the last word on the Wal-Mart project.

### **Elected Officials & Department Heads**

#### **Budget Transfers**

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

**WHEREAS**, the Town received \$52,000.00 in state grant money for the purchase of emergency preparedness equipment in response to the October 2006 snowstorm, and

**WHEREAS**, the Town would like to use this grant money to secure emergency preparedness equipment to insure the protection and well being of our residents and the traveling public during storm situations

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board hereby authorize the creation of a new Emergency management Equipment Capital Project (project H83) and these funds be deposited into this account for the future purchase of emergency preparedness equipment, and be it further

**RESOLVED**, that the Town Board does hereby approve the following Budget Transfers:

**\$600.00**      From: DA.5110.0407 – Hwy Clothing Allowance  
                 To:     DA.5130.0407 – Hwy Clothing Allowance

**\$30,000**      From: DA.5110.0472 – Hwy Stone, Gravel  
                 To:     DA.5142.0402 – Hwy, Supplies, Salt

**The resolution was unanimously adopted.**

Councilman Graber wanted to publicly thank all the residents who have volunteered their time and effort to the Brush Mountain Project. Regardless of how it all turns out, the volunteers developed a great blue print of what can be, and they deserve acclaim for all their hard work.

Councilman Dietrick stated that he was aware of a committee that was put in place several years ago to look at the proposed architectural overlay district, and that committee was put into suspense awaiting the approval of a Cultural Overlay District. At a recent work session, it was said this group was going to start work on some of the documentation they had already gathered. Councilwoman Ackerman stated that this group was established according to New York State law, and they are currently reviewing the information. There is language that has been put together, and they wanted to incorporate it into the Comprehensive Plan, but were told the language was too specific for the Comprehensive Plan.

Supervisor Travers Murphy said that they did tell the public that the Town Board would appoint a committee for the Overlay district, and that has not been done yet. The Town Board still needs to do more interviews before they make the appointments. Councilwoman Ackerman stated they will work on that.

Highway Superintendent Fred Piasecki said that Brush pick up will begin soon. He stated that the work at Green Lake has started on the Bath House and Splash Pad.

Town Engineer Wayne Bieler stated that with the several projects started around Town, they are construction fenced off, and he asks that people stay away from these sites.

26) 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 approval of all entries on Warrant #6 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$153,254.51
Part Town Fund	\$6,000.13
Risk Retention	0
Cemetery Fund	0
Highway Fund	\$81,823.74
Special Districts	\$138,554.14
Trust & Agency	\$1,922.22
Capital Fund	\$9,709.85

**The resolution was unanimously adopted.**

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

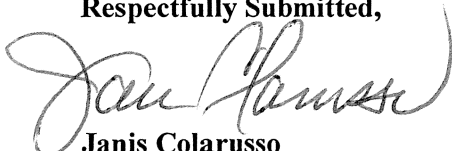
**RESOLVED**, that the Town Board does hereby receive and file the following Communications listed on the agenda: **Earth Day, April 22, 2008**: Join your fellow Western New Yorker's in carpooling, biking, walking or taking public transportation. Visit: [www.goodgoingwny.com](http://www.goodgoingwny.com) , and be it further

**RESOLVED**, that the Town Board does hereby receive and file the following Reports listed on the agenda: Chief of Police's Monthly Report for February 2008

**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 8:10 PM (local time).

Respectfully Submitted,



Janis Colarusso  
Town Clerk