

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 2<sup>nd</sup> day of April 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
David Kaczor	Councilman
Mark Dietrick	Councilman
Edward Graber	Councilman
Kathleen Swarbrick	Deputy 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> Janis Colarusso	Town Clerk

The Town Clerk was absent this evening due to illness.

**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."*

### **Town Justice Court Presentation of Grant Award**

At this time, Judge Edward Pace along with Justice Deborah Chimes introduced M. William Boller, Supervising Judge, Town and Village Courts and Sharon S. Townsend, Administrative Judge who presented a check for \$25,100.99 which was awarded under the grant by the Justice Court Assistance Program. Judge Pace credited Brigid Lavelle, Senior Court Clerk, for her efforts in applying for the grant. The money secured will provide the Town and Village Court with the resources and equipment to fulfill their critical role in our justice system. Judge Philip Marshall and Court Clerks, Toni Violanti and Mary Anne Riter were also recognized at the presentation.

**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 March 19, 2008 and the Special Minutes held on March 26, 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 the Proposed Conservation Easement for Mrs. Joyce Rettig, 5259 Bussendorfer Road, for 22.99 acres of vacant land, Zoned R-2.

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

Supervisor Travers Murphy stated if there was anyone in the audience who would like to speak for or against the application for the Conservation Easement.

**Comments from the floor:** No one spoke.

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

**RESOLVED**, that the Public Hearing in the matter of the Proposed Conservation Easement for Mrs. Joyce Rettig, 5259 Bussendorfer Road for 22.99 acres of land, zoned R-2 is hereby closed at 7:17 PM (local time).

**The resolution was unanimously adopted.**

3) 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 accept the following Perpetual Easement for Mrs. Joyce Rettig, 5259 Bussendorfer Road for 22.99 acres of land, zoned R-2, as recommended by the Conservation Board, and be it further

**RESOLVED**, that the Town Assessor is to determine the valuation of the property, taking into account the limitation on the future use of the land imposed by such Conservation Easement.

**The resolution was unanimously adopted.**

**PUBLIC HEARING**

At 7:18 PM (local time), the Supervisor called for the Public Hearing to hear all interested parties for or against the adoption of a Proposed Local Law for the Year 2008:

***Moratorium on Commercial Construction on North Buffalo Road***

*"This local law provides for 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 shall be continued for a period of six months commencing on the date of the termination of the existing moratorium. The moratorium shall apply to the issuance of building permits which require site plan approval. All other building permits for construction may be issued."*

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 opened the Public Hearing to hear all interested persons for or against the Proposed Amendment to the Town Code of Ordinances.

**Comments from the floor:** none

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

**RESOLVED**, that the Public Hearing in the matter of the Proposed Local Law for the Year 2008; *Moratorium on Commercial Construction on North Buffalo Road*, is hereby closed at 7:20 PM (local time).

**The resolution was unanimously adopted.**

**Adopt Moratorium on N. Buffalo Rd./Southwestern Boulevard & the Orchard Park Village Line**

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

**WHEREAS**, a Public Hearing this evening was scheduled to hear all interested persons for or against a Local Law for the Year 2008; Moratorium on North Buffalo Road between Southwestern Boulevard and the Orchard Park Village line.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby adopt Local Law # 2 for 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 shall be continued for a period of six months commencing on the date of the termination of the existing moratorium. The moratorium shall apply to the issuance of building permits which require site plan approval. All other building permits for construction may be issued, and be it further*

**RESOLVED**, that the Town Board does hereby declare a SEQR Negative Declaration.

**The resolution was unanimously adopted.**

**New Business #1 Award Contract: 2007 Utility Improvement Project/Hwy, Compost & Yates Park**

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

**WHEREAS**, Bids were opened for the 2007 Utility Improvements Project on March 31, 2008. This project consists of a new waterline from Thorn Ave. through Orchard Park Little League and ending in Yates Park, a waterline extension at the Milestrip Compost Center, installation of storm sewer and sanitary sewers and replacement of a lift station at Orchard Park Highway Garage, and

**WHEREAS**, the Engineering Department and the Town's Consulting Engineer, C&S Engineers, have reviewed the prices of the five contractors who submitted bids. The lowest bid of \$290,919.00 was below the Engineer's estimate of \$400,000.00 for the project, and

**WHEREAS**, there is an extended tabulation of bid results showing the bid amounts of each contractor and the low bidder for this project was Fairway Contracting. The company has successfully completed various similar projects in the past and has been found to have the qualifications and experience to perform this work adequately, and

**WHEREAS**, there is presently \$432,416.00, \$617,332.00 and \$825,058.00 allocated under Capital Projects #H-05 Highway Bldg. & Repair Expansion, H-42 Compost Site Acquisition & Development and H-48 District Wide Water Improvements respectfully for this project work per Capital Project meeting

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby award the contract for the 2007 Utility Improvements Highway Garage Building, Compost Site & Yates Park Project to the lowest responsible bidder, Fairway Contracting, 5389 South Freeman Rd., Orchard Park, New York 14127 in the amount of \$290,919.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #2 Approve PIP #2008-03 for Target Addition Sanitary Sewer Mainline Relocation**

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

**WHEREAS**, the Town has received from the Target Corporation, 1000 Nicollet Mall, Minneapolis, Minnesota an application for a Public Improvement Permit to relocate the mainline sanitary sewer at the Target Store at 5622 Amanda Lane, and

**WHEREAS**, this project consists of relocating 448 L.F. of mainline sanitary sewer to facilitate the expansion of the store at 5622 Amanda Lane, and

**WHEREAS**, the plans have been reviewed for this proposed project and have been found to be in compliance with current Town Specifications and Standards. The Town is in receipt of all necessary fees, bonds, and insurances

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve the Public Improvement Permit #2008-03 for the Target Addition at Quaker Crossing – Sanitary Mainline Relocation at 5622 Amanda Lane, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #3 Town Attorney to Proceed w/Dedication of E. Quaker Rd. Sanitary Sewer Ext.**

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

**WHEREAS**, on February 14, 2008, a final inspection was conducted on the East Quaker Road Public Sanitary Sewer Extension. The project consists of the installation of 129 L.F. of sanitary sewer and one manhole to serve one existing home. The completion of this sewer extension will allow John Fitzgerald at 7594 East Quaker Road, Orchard Park, NY to receive sanitary sewer service and to abandon his existing failing septic system, and

**WHEREAS**, all work has been satisfactorily completed in accordance with Town specifications with the exception of the placement of topsoil along alignment of the sanitary sewer mainline and around Sanitary Manhole No. 1 to address differential settlement and for final grading and seeding in the right of way and all areas of disturbance which will be held in escrow until that work has been satisfactorily completed. The Town is in receipt of \$2,500 cash security for final seeding and grading, and

**WHEREAS**, a two-year maintenance bond letter in the amount of \$5,000.00 has been submitted along with all other necessary documents

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Town Attorney to proceed with the dedication of the 129 L.F. of sanitary sewer improvements along East Quaker Road constructed under PIP #2007-05 and authorize the Town Clerk to release the performance cash security in the amount of \$1,000.00 to Philip Vogt, 448 Traverse Boulevard, Buffalo, NY 14223, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #4 Consultant Inspection Services for Target Addition Sanitary Sewer Relocation**

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

**WHEREAS**, the owners of the above referenced project have applied for a public improvement permit with the intent to relocate the mainline sanitary sewer near the Target Store at 5622 Amanda Lane within the week, and

**WHEREAS**, at the present time, the Engineering Department does not have staff available for construction inspection on this project so the assistance of a consultant engineering firm will be required for that purpose, and

**WHEREAS**, the Town is in receipt of a proposal from DiDonato Associates to provide the services of Ms. Amy Schintzius for onsite inspection, when required, at a billing rate of \$45.00 per hour, which includes expenses, overhead and profit. Ms. Schintzius has construction inspection experience over the past two decades, and

**WHEREAS**, the Town has received \$6,850.00 in PIP inspection fees from the owner (the Target Corporation), which should be adequate to cover the costs of the consultant

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign an agreement with DiDonato Associates Engineering and Architecture, P.C., 689 Main Street, Buffalo, New York 14203 to provide inspection services on PIP #2008-03 for the relocation of the mainline sanitary sewer near the Target Store at 5622 Amanda Lane, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #5 Paul Warriner, Computer Analyst, request to attend NYSLGITDA Conference**

10) 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 Paul Warriner, Computer Analyst, to attend the 2008 New York State Local Government Information Technology Director's Association Conference in Saratoga Springs, State of New York, from May 6 through 9, 2008, with expenditures not to exceed \$150.00.

**The resolution was unanimously adopted.**

**New Business #6 Authorize the 11<sup>th</sup> Annual "Tommy's Run" on July 3<sup>rd</sup>, 2008**

11) 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 11<sup>th</sup> Annual Thomas R. Gardner Memorial Scholarship Fun Run/Walk, "Tommy's Run" to be held on July 3<sup>rd</sup>, 2008 at 7:00 PM. The race starts and finishes at the Department of Recreation at Yates Park following the same route as in previous years, as requested by Gretchen Gardner Flannery, Race Committee Chair, and be it further

**RESOLVED**, all proceeds benefit the Thomas R. Gardner Memorial Scholarship Fund at the Orchard Park High School.

**The resolution was unanimously adopted.**

**New Business #7, 8 & 9 Refer the Planning Board and/or Conservation Board**

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 refer to the Planning Board and/or Conservation Board the following item listed on the agenda:

- Keith Bernard, 3718 Transit Road, requests to rezone property from R-1 to R-1 Special Exception Use for the purpose of constructing a tennis court.
- Calamar/Senior Services, Inc. is requesting SR designation and is proposing to develop a 140-unit Independent Living Apartment Complex, (Eagle Crest Senior Apartments) upon Vacant Land located at the end of Weiss Avenue (west end), Zoned B-2.
- Ernie Dobies, representing Saville's Outdoor Power Equipment. Applicant is proposing the construction of a new facility upon Vacant Land located at 3975 Southwestern Blvd., located on the south side of Southwestern Blvd., west of LaGalleria Restaurant, Zoned B-2.

**The resolution was unanimously adopted.**

**BUSINESS FROM THE FLOOR**

The following individuals spoke this evening and expressed their opinions about the Wal-Mart Scooping Session that was held last week by the Planning Board: Kathy Gorkiewicz, Jim Craw, Louis Behm, Patrick Keem and Jane Shumaker.

**Elected Officials & Department Heads**

**13) 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:

**\$8,000.00**      **From:** DA.5110.0472 – Hwy. Stone, Gravel  
                  **To:**     DA.5142.0402 – Snow Supplies, Salt

**The resolution was unanimously adopted.**

Councilwoman Ackerman stated that Mr. George Schichtel, a member of the Conservation Board, donated a white oak to be planted on Arbor Day, April 25, 2008 in honor of Paul Steinwachs and another sycamore tree in honor of Ed Geisdorf. This coincides with Earth Day where clean up at Birdsong Park will take place. In May, the DEC will be donating packets for tree planting by the Elementary Schools and George Schichtel will be donating 150 potted trees to be planted in Birdsong Park.

**14) 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 use of the name "*Steinwachs Green*" to be used in the Oak area by the Library, in honor of Paul Steinwachs, as recommended by the Conservation Board and the Tree Conservancy.

**The resolution was unanimously adopted.**

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

**RESOLVED**, that the Town Board does here by authorize the trees in "*Steinwachs Green*" shall be limited to the planting of different types of Oak and each tree is to be dedicated to an individual that has given a contribution to the Town as deemed appropriate by the Conservation Board and Tree Conservancy.

**The resolution was unanimously adopted.**

Councilwoman Ackerman spoke on issues relating to the Wal-Mart petition and stated that the Positive Declaration and the Scoping Session for Wal-Mart shows that the Town Board is sincere and actively involved in the project.

Councilman Graber agreed with Councilwoman Ackerman and looks forward to a rigorous review of the SEQR review on the Wal-Mart project.

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

**RESOLVED**, that the Town Board does hereby authorize to allocate \$280.00 from the 22<sup>nd</sup> Annual Western New York Regional Preservation Conference (HPC) to cover members registration for the Landmark Society's of Western New York's Annual Preservation Conference and training seminar scheduled for April 21, 2008, as requested by the Historic Preservation Members.

**The resolution was unanimously adopted.**

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

**RESOLVED**, that the Town Board does hereby authorize to allocate \$70.00 from the Historic Preservation Commission budget to cover the cost of subscriptions for the Federal Historic Preservation Magazine, as requested by the Historic Preservation Members.

**The resolution was unanimously adopted.**

Councilman Kaczor apologized (on behalf of the Town Board) for the inadequate and uncomfortable conditions for the Wal-Mart Scoping Session. Mr. Kaczor stated (if need be) the next scoping session will be held in the Town Board Court Room. He also shared his feeling about Wal-Mart and the scoping session.

Councilman Dietrick agreed with residents that Wal-Mart is not being a good corporate citizen, and gave his comments on Wal-Mart. He also stated that the petitioner does have rights and the process must be followed.

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

**WHEREAS**, at the request of the Town Board Members, the Town Attorney was asked this evening to bring forth a resolution the Board Members wish to adopt with regards to the obligations of the Town of Orchard Park Planning Coordinator.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Planning Coordinator shall prepare all SEQR Documents including Environmental Assessment Forms and the preparation of those document shall not be altered by the Supervisor while executing those documents.

Before the vote was taken, Supervisor Travers Murphy stated she would be abstaining from the vote this evening because she still has more questions for the DEC with respect to the SEQR process and Target. Councilman Dietrick felt the Supervisor should have not altered the SEQR document. Councilwoman Ackerman suggested to the Supervisor that there should have been more Town Board Members present when adding any information to the document, any concerns she had should be made on another piece of paper and attached to the document. The Supervisor did state she called the DEC and asked for guidance and how to proceed in adding information to the document.



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

**The resolution was duly adopted.**

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

**RESOLVED**, that the Town Board does hereby authorize to schedule a Public Hearing on Wednesday May 7, 2008, at 7:00 PM, for a Local Law for the Year 2008; Proposed changes to the Town Code

§144-44 Application for Building Permits and Certification of Occupancy in B, I-1 of D-R Zones  
§144-25 General Screening Regulations

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

**The resolution was unanimously adopted.**

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

**WHEREAS**, the Town Attorney and Deputy Town Attorney may have a conflict with an action the Historic Preservation Board is undertaking regarding the significance of the Edgewood Farm barn on Jewett Holmwood Road, and

**WHEREAS**, this action may result in litigation with the Town in regard to any issues in the designation to the barn on 7295 Jewett Holmwood Road in the Town of Orchard Park.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize to retain Hiscock & Barclay, to represent the Town in the matter of the Edgewood Farm barn on 7295 Jewett Holwood Road.

**The resolution was unanimously adopted.**

**21) 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 Detectives Joe Wehrfritz and John Payne to attend the MAGLOCLN Conference in Atlantic City, April 21 – 25, 2008, most of the cost is covered by MAGLOCLN and the balance is in the budget, as requested by Police Chief Benz.

**The resolution was unanimously adopted.**

22) 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 price increase for material at the Compost Facility effective April 1, 2008, as recommended by the Highway Superintendent:

**Price Increase on Compost and Mulch**

Residents: \$3.00 per container up to 30 gallons  
Non-Residents: \$5.00 per container up to 30 gallons

**Price Breakdown**

\$3.00 = \$2.76 + \$.24 sales tax  
\$5.00 = \$4.60 + \$.40 sales tax

**The resolution was unanimously adopted.**

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

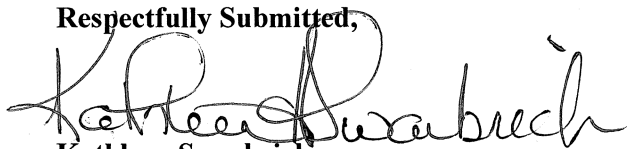
**RESOLVED**, that the Town Board does hereby authorize the approval of all entries on Warrant #7 following auditing by members of the Town Board and in the funds indicated:

<b>General Fund</b>	\$221,185.73
<b>Part Town Fund</b>	\$12,796.45
<b>Risk Retention</b>	\$0.00
<b>Cemetery Fund</b>	\$0.00
<b>Highway Fund</b>	\$97,254.45
<b>Special Districts</b>	\$14,617.15
<b>Trust &amp; Agency</b>	\$5,579.51
<b>Capital Fund</b>	\$41,923.99

**The resolution was unanimously adopted.**

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilman Graber, to wit: the meeting was adjourned at 8:18 PM (local time).

Respectfully Submitted,



Kathleen Swarbrick  
Deputy Town Clerk