

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 5<sup>th</sup> day of September 2007 at 7:00 P.M., (local time). 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
	Deborah Yeomans	Councilwoman
	Janis Colarusso	Town Clerk
	Leonard Berkowitz	Town Attorney
	Samuel McCune	Chief of Police
	Andrew Geist	Building Inspector
	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 DIETRICK, TO WIT:

**RESOLVED**, that the minutes of the Meeting of the Town Board held on August 15, 2007, 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 Local Law for the Year 2007; Fire Prevention and Building Code, which provides as follows:

### **SECTION 1. PURPOSE AND INTENT**

This local law provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this TOWN OF ORCHARD PARK. This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this local law.

**SECTION 2. DEFINITIONS**

“Building Permit” shall mean a permit issued pursuant to section 4 of this local law. The term “Building Permit” shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this local law.

“Certificate of Occupancy” / “Certificate of Compliance” shall mean a certificate issued pursuant to subdivision (b) of section 7 of this local law.

“Code Enforcement Officer” shall mean the Code Enforcement Officer appointed pursuant to subdivision (b) of section 3 of this local law.

“Code Enforcement Personnel” shall include the Code Enforcement Officer and all Inspectors.

“Compliance Order” shall mean an order issued by the Code Enforcement Officer pursuant to subdivision (a) of section 15 of this local law.

“Energy Code” shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

“Inspector” shall mean an inspector appointed pursuant to subdivision (d) of section 3 of this local law.

“Operating Permit” shall mean a permit issued pursuant to section 10 of this local law. 2 The term “Operating Permit” shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this local law.

“Permit Holder” shall mean the Person to whom a Building Permit has been issued.

“Person” shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

“Stop Work Order” shall mean an order issued pursuant to section 6 of this local law. “Temporary Certificate” shall mean a certificate issued pursuant to subdivision (d) of section 7 of this local law.

“Town” shall mean the TOWN OF ORCHARD PARK.

“Uniform Code” shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

**SECTION 3. CODE ENFORCEMENT OFFICER AND INSPECTORS**

(A) The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this local law. The Code Enforcement Officer shall have the following powers and duties:

- 1) to receive, review, and approve or disapprove applications for Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;
- 2) upon approval of such applications, to issue Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits, and to include in

Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;

- 3) to conduct construction inspections, inspections to be made prior to the issuance of Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this local law;
- 4) to issue Stop Work Orders;
- 5) to review and investigate complaints;
- 6) to issue orders pursuant to subdivision (a) of section 15 (Violations) of
- 7) this local law;
- 8) to maintain records;
- 9) to collect fees as set by the TOWN BOARD of this TOWN OF ORCHARD PARK;
- 10) to pursue administrative enforcement actions and proceedings;
- 11) in consultation with this Town's attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this local law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this local law; and (
- 12) 11) to exercise all other powers and fulfill all other duties conferred upon
- 13) the Code Enforcement Officer by this local law.

(B) The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(C) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this local law.

(D) One or more Inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this local law. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(E) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the TOWN BOARD of this TOWN OF ORCHARD PARK.

#### **SECTION 4. BUILDING PERMITS.**

(A) Building Permits Required. Except as otherwise provided in subdivision (B) of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No Person shall

commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

(B) Exemptions. No Building Permit shall be required for work in any of the following categories:

- 1) installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- 2) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
- 3) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- 4) construction of temporary motion picture, television and theater stage sets and scenery;
- 5) installation of window awnings supported by an exterior wall of a one or two-family dwelling or multiple single-family dwellings (townhouses);
- 6) installation of partitions or movable cases less than 5'-9" in height;
- 7) painting, wallpapering, tiling, carpeting, or other similar finish work;
- 8) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- 9) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- 10) repairs, provided that such repairs do not involve (i) the removal or cutting away of a load bearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(C) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (B) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

(D) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- 1) a description of the proposed work;
- 2) the tax map number and the street address of the premises where the work is to be performed;
- 3) the occupancy classification of any affected building or structure;
- 4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- 5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include

a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

(E) Construction documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (D) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

(F) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.

(G) Building Permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

(H) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.

(I) Time limits. Building Permits shall become invalid unless the authorized work is commenced within [ 6 ] months following the date of issuance. Building Permits shall expire [12 ] months after the date of issuance.

(J) Revocation or suspension of Building Permits. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

(K) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time of submission of an application for a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

**SECTION 5. CONSTRUCTION INSPECTIONS.**

(A) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (B) of this section is ready for inspection.

(B) Elements of work to be inspected. The following elements of the construction process shall be inspected made, where applicable:

- 1) work site prior to the issuance of a Building Permit;
- 2) footing and foundation;
- 3) preparation for concrete slab;
- 4) framing;
- 5) building systems, including underground and rough-in;
- 6) fire resistant construction;
- 7) fire resistant penetrations;
- 8) solid fuel burning heating appliances, chimneys, flues or gas vents;
- 9) Energy Code compliance; and
- 10) a final inspection after all work authorized by the Building Permit has been completed.

(C) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

(D) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

**SECTION 6. STOP WORK ORDERS.**

(A) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:

- 1) any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
- 2) any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
- 3) any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

(B) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

(C) Service of Stop Work Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by [registered mail / certified mail]. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by [registered mail / certified mail]; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

(D) Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

(E) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 15 (Violations) of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

## **SECTION 7. CERTIFICATES OF OCCUPANCY / CERTIFICATES OF COMPLIANCE**

(A) Certificates of Occupancy/Certificates of Compliance required. A Certificate of Occupancy / Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy / Certificate of Compliance.

(B) Issuance of Certificates of Occupancy/Certificates of Compliance. The Code Enforcement Officer shall issue a Certificate of Occupancy / Certificate of Compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy / Certificate of Compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy / Certificate of Compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy / Certificate of Compliance:

- (1) a written statement of structural observations and/or a final report of special inspections, and
- (2) flood hazard certifications.

(C) Contents of Certificates of Occupancy/Certificates of Compliance. A Certificate of Occupancy / Certificate of Compliance shall contain the following information:

- 1) the Building Permit number, if any;
- 2) the date of issuance of the Building Permit, if any;
- 3) the name, address and tax map number of the property;
- 4) if the Certificate of Occupancy / Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy / Certificate of Compliance is issued;
- 5) the use and occupancy classification of the structure;
- 6) the type of construction of the structure;
- 7) the assembly occupant load of the structure, if any;
- 8) if an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- 9) any special conditions imposed in connection with the issuance of the Building Permit; and
- 10) the signature of the Code Enforcement Officer issuing the Certificate of Occupancy / Certificate of Compliance and the date of issuance.

(D) Temporary Certificate. The Code Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate unless the Code Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed [6] months, which shall be determined by the Code Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

(E) Revocation or suspension of certificates. If the Code Enforcement Officer determines that a Certificate of Occupancy / Certificate of Compliance] or a Temporary Certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

(F) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time of submission of an application for a Certificate of Occupancy / Certificate of Compliance or for Temporary Certificate.

## **SECTION 8. NOTIFICATION REGARDING FIRE OR EXPLOSION.**

The chief of any fire department providing fire fighting services for a property within this TOWN OF ORCHARD PARK shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.



**SECTION 9. UNSAFE BUILDING AND STRUCTURES**

Unsafe structures and equipment in this TOWN OF ORCHARD PARK shall be identified and addressed in accordance with the procedures established by Local Law Number 7 of 2007, as now in effect or as hereafter amended from time to time.

**SECTION 10. OPERATING PERMITS.**

(A) Operation Permits required. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:

- 1) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR section 1225.1;
- 2) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;
- 3) use of pyrotechnic devices in assembly occupancies;
- 4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
- 5) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the TOWN BOARD of this TOWN OF ORCHARD PARK.

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (A) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

(B) Applications for Operating Permits. An application for an Operating Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.

(C) Inspections. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.

(D) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (A) of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single Operating Permit to apply to all such activities.

(E) Duration of Operating Permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any Operating Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each Operating Permit shall be specified in the Operating Permit. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.

**SECTION 11. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS**

(A) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:

- a. Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.
- b. Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.
- c. Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision, shall be performed at least once every thirty-six (36) months.

(B) Inspections permitted. In addition to the inspections required by subdivision (A) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon:

- 1) the request of the owner of the property to be inspected or an authorized agent of such owner;
- 2) receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- 3) receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(C) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b.

(D) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

**SECTION 12. COMPLAINTS**

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this local law, or any other local law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

(A) performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;

(B) if a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 15 (Violations) of this local law;

(C) if appropriate, issuing a Stop Work Order;

(D) if a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

### **SECTION 13. RECORD KEEPING.**

(A) The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

- 1) all applications received, reviewed and approved or denied;
- 2) all plans, specifications and construction documents approved;
- 3) all Building Permits, Certificates of Occupancy/Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;
- 4) all inspections and tests performed;
- 5) all statements and reports issued;
- 6) all complaints received;
- 7) all investigations conducted;
- 8) all other features and activities specified in or contemplated by sections 4 through 12, inclusive, of this local law, including; and
- 9) all fees charged and collected.

(B) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

### **SECTION 14. PROGRAM REVIEW AND REPORTING**

(A) The Code Enforcement Officer shall annually submit to TOWN BOARD of this TOWN OF ORCHARD PARK a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in section 13 (Record Keeping) of this local law and a report and summary of all appeals or litigation pending or concluded.

(B) The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this TOWN OF ORCHARD PARK, on a form prescribed by the Secretary of State, a report of the activities of this TOWN OF ORCHARD PARK relative to administration and enforcement of the Uniform Code.

(C) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this TOWN OF ORCHARD PARK is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this TOWN OF ORCHARD PARK in connection with administration and enforcement of the Uniform Code.

**SECTION 15: VIOLATIONS**

(A) Compliance Orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this local law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this local law; (4) specify the provision or provisions of the Uniform Code, the Energy Code, or this local law which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by [registered mail / certified mail]. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by [registered mail / certified mail]; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

(B) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

(C) Civil Penalties. In addition to those penalties proscribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code or this local law, or any term or condition of any Building Permit, [Certificate of Occupancy / Certificate of Compliance], Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this TOWN OF ORCHARD PARK.

(D) Injunctive Relief. An action or proceeding may be instituted in the name of this TOWN OF ORCHARD PARK, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this local law, or any term or condition of any Building Permit, [Certificate of Occupancy / Certificate of Compliance], Temporary Certificate, Stop Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of this TOWN OF ORCHARD PARK, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding ascribed in this subdivision shall be commenced without the appropriate authorization from the Town Board of this TOWN OF ORCHARD PARK.

(E) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

#### **SECTION 16: FEES**

A fee schedule shall be established by resolution of the TOWN BOARD of this TOWN OF ORCHARD PARK. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of Occupancy/Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this local law.

#### **SECTION 17. INTERMUNICIPAL AGREEMENTS**

The TOWN BOARD of this TOWN OF ORCHARD PARK may, by resolution, authorize the SUPERVISOR of this TOWN OF ORCHARD PARK to enter into an agreement, in the name of this TOWN OF ORCHARD PARK, with other governments to carry out the terms of this local law, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

#### **SECTION 18. PARTIAL INVALIDITY**

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

#### **SECTION 19. EFFECTIVE DATE**

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

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.

At this time the Supervisor asked if there was anyone in the audience that would like to speak for or against the proposed local law.

**Comments from the floor:**

**John Sawicz** – Mr. Sawicz questioned if businesses need to notify the Fire Department about hazardous materials and Building Inspector Geist stated that it is covered. Councilman Dietrick added it is mandated by New York State to report this as well.

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

**RESOLVED**, that the Public Hearing in the matter of the Proposed Local Law for the Year 2007; Fire Prevention and Building Code, is hereby closed at 7:08 PM (local time).

**The resolution was unanimously adopted.**

3) 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 adopt Local Law #7 for the Year 2007; Fire Prevention and Building Code, as recommended by the Town Attorney and Building Inspector.

**The question of the adoption of the foregoing resolution was duly put to a roll call vote:**

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

**The resolution was unanimously adopted.**

**Public Hearing**

At 7:09 PM (local time) the Supervisor called for the Public Hearing to hear all interested parties for or against the Town of Orchard Park "Updated" Comprehensive Plan.

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 that Drew Reilly, from Wendel Duchscherer Architects, who was in the audience, compiled the Land Use Study and is handling the SEQR portion of the Comprehensive Plan.

At this time the Supervisor asked if there was anyone in the audience that would like to speak for or against the "Updated" Comprehensive Plan for the Town of Orchard Park.

**Comments from the floor- In Favor:**

**Bill McNamara** – Mr. McNamara stated he is the Planning Board Chair and asked for adoption of the Plan. He stated that Councilwoman Ackerman and the other citizens who helped create this document

should be congratulated, having saved the Town thousands of dollars. The section entitled, "Goals and Objectives", will be a valuable resource for all advisory board members and for consideration of future projects. Amendments and changes may be made as the needs of the Town change.

**James Lawicki** – Mr. Lawicki stated that the Plan represents progress and direction.

**Henry Heppner** – Mr. Heppner stated he is a Member of the Recreation Commission and urged the Town Board to vote in favor.

**Hal Fabinsky** – Mr. Fabinsky stated he is a Member of the Planning Board and he advocated for an expeditious passage of the Plan. He stated that the Town boards need the framework for guidance and the current Plan is outdated. The Plan would give flexibility and options to deal with new situations as they arise. Failure to move forward keeps the outdated Plan in effect and the problems it causes in place.

**Al Mogavero** – Mr. Mogavero has been active in the past with the Planning Board. He asked the Town Board to act in favor of the Plan as soon as possible.

**Ron Stadelmaier** – Mr. Stadelmaier submitted additional written comments for the Town Board's consideration. He stated that he appreciated all the work that has gone into the 2<sup>nd</sup> draft of the Plan and is very grateful that it includes the input from the 1<sup>st</sup> draft. He stated that there was very positive information in the Plan and supports it. Mr. Stadelmaier stated that he felt the two best points in the Plan are the Policy Statement and the implementation of a follow up committee.

**Gene Majchrczak** – Mr. Majchrczak stated he is a Planning Board Member and that this Plan is a step in the right direction and reiterated the savings to the Town.

Many of the above individuals thanked Councilwoman Ackerman and the committees involved, for the amount of work and their dedicated efforts to the Comprehensive Plan.

**Comments from the floor- In Opposition:**

**Tom Casey** – Mr. Casey stated that the Plan was well researched, but without a concrete, enforceable, clear set of specific actions to be taken.

**John Sawicz** – Mr. Sawicz would like the Plan to have more specific guidelines rather than generalizations.

**Carol Trala** – Ms. Trala stated that there are goals, but no direction on how to accomplish them.

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

**RESOLVED**, that the Public Hearing in the matter of the Town of Orchard Park "Updated" Comprehensive Plan, is hereby closed at 7:37 PM (local time).

**The resolution was unanimously adopted.**

**Old Business #1 Accept Payment from Fox Run of OP in Lieu of Trail Loop Development**

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

**RESOLVED**, that the Orchard Park Town Board does hereby accept payment of one hundred and thirty thousand dollars (\$130,000.00) from Fox Run of Orchard Park, corner of Big Tree Road (Rt. 20A) and California Road, in lieu of the Trail Loop Development in the New York State Wetlands, as recommended by the Planning Board at their July 11, 2007 meeting.

**The resolution was unanimously adopted.**

**New Business #1 Approve PIP #2007-02 for Birdsong Subdivision Part 3A, Phase 4B**

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

**WHEREAS**, the Town Engineer has received from Dominic Piestrak, P.O. Box 470, E. Amherst, New York, 14051 representing DPS Southwestern Corp., an application for a Public Improvement Permit to construct Part 3A, Phase 4B of the Birdsong Subdivision, and

**WHEREAS**, Part 3A, Phase 4B will include 670 L.F. of new roadway and public utilities to serve 10 residential sublots, the stormwater treatment facilities and retention pond were constructed in Part 3A, Phase 1, and

**WHEREAS**, the plans and specifications have been reviewed for the proposed project and 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 Public Improvement Permit #2007-02 for the Birdsong Subdivision, Part 3A, Phase 4B, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #2 Supervisor to Sign Agreement w/Empire Soils, Inc. for Professional Services**

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

**WHEREAS**, the Town Engineer has stated, to complete the Brush Mountain Park and Brush Mountain Park West design work existing soil conditions in the vicinity of the Aquatic/Community/Senior Center, roads, parking lots, retention ponds, and bridge, culvert and drainage structures need to be known. The Town of Orchard Park will directly contract the soil test boring/geotechnical services for these projects and add the findings to the Town's soil boring records book, and

**WHEREAS**, in order to keep the project on schedule, test boring work must be completed early in the design stage. He has solicited services from a local consultant, Empire GEO Services Inc., which is qualified and capable to complete this work in the necessary time frame, and



**WHEREAS**, all soil borings and geotechnical reporting will be completed at one time for the entire site, while the consultant is on site. The test boring work will include two 50 ft. deep soil boring locations and sixteen (16) test 25 ft. deep boring locations, five 10 ft. deep bedrock cores, and six groundwater monitoring wells throughout the two properties for the various infrastructure noted above. Empire GEO Services Inc. estimated cost to complete the above mentioned work is \$16,750.00. The Town of Orchard Park Highway Department has agreed to provide any clearing that will be required for access to the proposed bore locations, and

**WHEREAS**, there is presently \$54,180.88 allocated under Capital Project H-51 "California Rd. Park Master Plan" for this project.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign an agreement with Empire GEO Services, Inc., 5167 South Park Avenue, Hamburg, New York 14075, to provide soil test borings and geotechnical report services for the Brush Mountain Park and Brush Mountain Park West Projects in an amount not to exceed \$16,750.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #3 Authorize the Advertisement of Bids/OP Police Dept., Interior Alterations Project**

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

**WHEREAS**, the consultant architect for the Orchard Park Police Department Interior Alterations Project, Robert J. Gill, R.A., is finalizing the plans and specifications. This project consists of the remodeling of the dispatch area and alterations which will add two new offices and an interview room. The preliminary architect's estimate is within the amounts collected for this project, and

**WHEREAS**, in order to stay on the project schedule, the Advertisement for Bids should be published on September 17, 2007. Plans will be available for purchase on September 24, 2007 and bid opening on October 15, 2007, due to long lead time of some material. Actual construction work is scheduled to start after December 26, 2007 (Bills Season) as requested by the Police Chief.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby accept the plans and specifications for the proposed Orchard Park Police Department Interior Alterations Project as prepared by Robert J. Gill, R.A. and be it further

**RESOLVED**, that the Town Board authorize the advertisements in the Southtowns Citizen, and The Buffalo News for sealed bids to be opened at 2:00 P.M. on October 15, 2007 in the Supervisor's Conference Room at the Orchard Park Municipal Center, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #4 Authorize the Advertisement for the OP Library & Highway Roof Replacement**

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

**WHEREAS**, the Consultant Architect for the above referenced project, Wendel Duchscherer, is finalizing the plans and specifications for the Orchard Park Library and Highway Garage Roof Renovations Project. This project consists of the removal of existing roofing, replacement with new EPDM roofing, additional ventilation and insulation at the Orchard Park Library, and asbestos abatement, removal of existing roofing and installation of new EPDM roofing at the Highway Garage. The preliminary engineer's estimate is within the amount allocated for this project, and

**WHEREAS**, in order to stay on the project schedule, the Advertisement for Bids should be published on September 17, 2007. Plans will be available for purchase on September 24, 2007 and bid opening scheduled on October 15, 2007.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby accept the plans and specifications for the proposed Orchard Park Library and Highway Garage Roof Renovations Project as prepared by Wendel Duchscherer, and be it further

**RESOLVED**, that the Town Board does hereby authorize advertisements in the Southtowns Citizen, and The Buffalo News for sealed bids to be opened at 3:00 P.M. on October 15, 2007 in the Supervisor's Conference Room at the Orchard Park Municipal Center, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**Not listed on the Agenda – OP Library Applying for Grant for a New Roof**

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

**WHEREAS**, the Orchard Park Public Library is applying to the New York State Education Department, New York State Library, Division of Library Development, "\$14 Million Public Library Construction" grant program for funds to support the removal of the existing roof and the installation of a new roof and tapered insulation at the Orchard Park Public Library, a building owned and maintained by the Town of Orchard Park and located within the jurisdiction of this Orchard Park Town Board, and

**WHEREAS**, as a requirement of these programs, said public libraries must obtain "Certification of Project Approval from the local municipality,"

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve and endorse the request for \$53,750 submitted by the Orchard Park Public Library to the New York State Education Department, New York State Library, Division of Library Development, "14 Million Public Library Construction" grant program, and be it further

**RESOLVED**, that the Town of Orchard Park will contribute \$53,750 in cash as matching funds or 50% of the total eligible project cost of \$107,500. The Town has also pledged \$17,500 in eligible in-kind goods and services.

**The resolution was unanimously adopted.**

**New Business #5 Approve Change Order #1 to the Contract for Brush Mountain Park Master Plan**

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

**WHEREAS**, the Engineering Department is requesting Town Board approval of a change order to the contract with Peter J. Smith & Company, Inc. for the Brush Mountain Park Master Plan in the amount of \$810.00. This would increase the total contract amount to \$107,440.00, representing an increase of 0.76%, and

**WHEREAS**, this Change Order involves the cost for Peter J. Smith & Company, Inc. to prepare the Pt. 2 of a Long Form SEQR document for the above referenced project, which is required for the project to go to the public referendum, per the Town Attorney, and

**WHEREAS**, there is presently \$54,180.00 plus interest allocated under Capital Project H-51 "California Rd. Park Master Plan" for this project

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve Change Order #1 to the original contract with Peter J. Smith & Company, Inc. for Brush Mountain Park Master Plan in the amount of an increase of \$810.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #6 Approve Fireworks Permit for Angel Flight Benefit on September 15, 2007**

12) 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 Approve Public Fireworks Permit for Angel Flight Benefit on September 15, 2007.

**The resolution was unanimously adopted.**

**New Business #7 Authorize the Advertisement of Bids for Police Uniform Parts, September 21<sup>st</sup>**

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

**RESOLVED**, that the Town Board does hereby authorize the advertisement for a Bid Opening, for Police Uniform Parts, for Friday, September 21, 2007, at 10:00 AM in the Supervisor's Conference Room, as requested by the Chief of Police.

**The resolution was unanimously adopted.**

**New Business #8 Schedule a Public Hearing for a Local Law/Conservation Management Overlay**

14) 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 Schedule a Public Hearing for Wednesday, October 3, 2007 at 7:00 PM, for a Local Law for the Year 2007: Proposed Revisions to the Conservation Management Overlay District.

**The resolution was unanimously adopted.**

**New Business #9 Authorize the Recreation Department Appointments for Fall/Winter Programs**

15) 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 the Recreation Departments appointments for the 2007 Fall/Winter Programs dependent a upon the applicant providing the required certifications.

Name	Address	Position	Title	Rate
Stephanie Battaglia	Town of Orchard Park	PT-2B	Lg.	\$9.00
Colleen Calder	Town of Orchard Park	PT2-B	Lg.	\$9.00
Jenny Capriotto	Town of Orchard Park	PT2-B	Att.	\$9.00
Jennifer Carter	Town of Orchard Park	PT2-D	Att.	\$9.50
Elizabeth Devine	Town of Orchard Park	PT2-B	Att.	\$9.00
Elizabeth Dillon	Town of Orchard Park	PT2-B	Att.	\$9.00
Kyle Druding	Town of Orchard Park	PT1-C	Lg.	\$8.00
Karin Freyer	Town of Orchard Park	PT2-B	Att.	\$9.00
Meagan Gill	Town of Colden	PT2-B	Att.	\$9.00
Ryan Hayes	Town of West Falls	PT3-A	Att.	\$10.00
Rachel Hedges	Town of Orchard Park	PT1-C	Lg.	\$8.00
Matthew Horn	Town of Orchard Park	PT2-B	Att.	\$9.00
Joseph Huber	Town of Orchard Park	PT2-D	Att.	\$9.50
Elizabeth Imbirowicz	Town of West Seneca	PT2-B	Att.	\$9.00
Stephanie Karst	City of Olean	PT2-D	Att.	\$9.50
Katherine Kempa	Town of Orchard Park	PT2-D	Att.	\$9.50
Florence Kirkner	Town of Orchard Park	PT3-E	Att.	\$11.00
Matthew Kordrupel	Town of Orchard Park	PT2-B	Att.	\$9.00
Jackie Lex	Town of East Aurora	PT3-A	Att.	\$10.00
Shaun Looney	Town of Orchard Park	PT2-B	Att.	\$9.00
Gianna Mulville	Town of Orchard Park	PT2-B	Att.	\$9.00
Anne Muscatello	Town of Colden	PT2-B	Att.	\$9.00
Ray Rayeski	Town of Orchard Park	PT3-A	Att.	\$10.00
Lauren Reddington	Town of Orchard Park	PT1-C	Lg.	\$8.00
John Rennolds	Town of Depew	PT3-A	Att.	\$10.00
Stephanie Rowland	Town of Orchard Park	PT2-B	Att.	\$9.00
Liane Roy	Town of Cheektowaga	PT2-B	Att.	\$9.00
Nicholas Schott	Town of Orchard Park	PT2-B	Att.	\$9.00
Timothy Swyers	Town of Orchard Park	PT2-B	Lg.	\$9.00
Angela Tuchols	Town of Snyder	PT6- D	Lg.	\$15.00
Michelle Torella	Town of Hamburg	PT2-B	Att.	\$9.00

Natalie Vinti	Town of Orchard Park	PT2-B	Lg.	\$9.00
Kimberly Wilder	Town of Orchard Park	PT2-B	Att.	\$9.00
Christina Wojciechowski	Town of Orchard Park	PT2-B	Att.	\$9.00
Sarah Yates	Town of Orchard Park	PT2-B	Att.	\$9.00

**The resolution was unanimously adopted.**

**New Business #10 Accept the Resignation of Robert Praczkajlo, Part-time Dog Control Officer**

16) 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 accept the resignation with regret of Robert Praczkajlo, Part-time Dog Control Officer, effective August 21, 2007, as recommended by the Dog Control Officer.

**The resolution was unanimously adopted.**

**New Business #11 Authorize Appointment of Wendy Mulawka, Part-time Dog Control Officer**

17) 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 table the appointment of Wende Mulawka, 7453 Cole Road, Boston New York, 14025, as Part-time Dog Control Officer, retroactive from August 26, 2007, at the Part Time 2 (PT2) Pay Scale, Step A, as recommended by the Dog Control Officer.

**The resolution was unanimously adopted.**

**New Business #12 Proclamation to Declare September 17 - 23, 2007, Constitution Week**

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

**WHEREAS**, September 17, 2007 marks the 220<sup>th</sup> anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention, and

**WHEREAS**, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary and to the patriotic celebration which will commemorate the occasion, and

**WHEREAS**, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17<sup>th</sup> through the 23<sup>rd</sup> as Constitution Week

**NOW, THEREFORE**, be it

**RESOLVED**, that the Town Board does hereby authorize the Town of Orchard Park to issue a Proclamation to declare September 17<sup>th</sup> through the 23<sup>rd</sup>, 2007 as *Constitution Week*, and be it further

**RESOLVED**, to ask our citizens to reaffirm the ideals the framers of the Constitution had in 1787, by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

**The resolution was unanimously adopted.**

**New Business #13 (Tabled)** Appointment to the Board of Assessment Review Board.

**New Business #14 Approve the 2007-2008 Commercial Parking Permits**

19) 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 Approve the following 2007-2008 Commercial Parking Permits, as recommended by the Chief of Police and the Building Inspector.

*Augustine Carducci*, 3923 Southwestern Boulevard  
*David Tempestoso*, 3912 Southwestern Boulevard  
*Dana Lewis*, 5554 W. Webster Road  
*Frank & Vittoria Corsi*, 4297 Abbott Road  
*Giancarlo & Roberta Bruni*, 5100 Big Tree Road  
*John Mariano*, 3916 Southwestern Boulevard  
*Kenneth E. Doeing*, 3920 Southwestern Boulevard  
*Mark Leitzan*, 3808, 3816 Abbott & 3930 Sheldon Rds.  
*Michele & Robert McDaniel*, 4309 Abbott Road  
*Milligan's Restaurant*, 3864 & 3892 Abbott Road  
*Niagara Frontier Recovery*, 3958 Southwestern Blvd.  
*Ray & Sue Kowalski*, 3972 Southwestern Boulevard  
*On the Go Convenience*, 3975 Southwestern Boulevard  
*Rudolf Benes*, 3742 Southwestern Boulevard  
*Scott & Linda Smith*, 3879 Southwestern Boulevard  
*Savannah's South*, 3847 Southwestern Boulevard  
*Sue & Patrick Kane*, 3952 Southwestern Boulevard  
*Thomas & Paul Kam*, 3775 Southwestern Boulevard  
*Veronica Benes*, 3964 Southwestern Boulevard  
*W.J. Milligan*, 3892 Abbott Road

*Daniel DeMarco*, 4270 Abbott Road  
*Deborah McDonell*, 3904 Abbott Road  
*Dennis Przybl*, 3976 Southwestern Boulevard  
*Henry Whykas, Jr.*, 5528 Webster Road  
*Joe & Diane DeMarco*, 3964 California Road  
*Lee Wannemacher*, 3746 Abbott Road  
*Lisa Matwijow*, 4155 & 4170 Abbott Road  
*Michael & Karen Todd*, 3752 Abbott Road  
*Patrick Sullivan, Sr.*, 3819 Abbott Road  
*Quaker Boy, Inc.*, 5455 Webster Road  
*Red Carpet Inn*, 3940 Southwestern Boulevard  
*Richard Schosek*, 3878 Southwestern Boulevard  
*Ronald & Paul Yoviene*, 3763 Abbott Road  
*Sean Hanley*, 3944 California Road  
*Stadium Mobil*, 3856 Southwestern Boulevard  
*Stephen Tripodi*, 3800 Southwestern Boulevard  
*Thomas Carrow*, 4243 Abbott Road  
*Twin Oak Motel*, 3949 Southwestern Boulevard  
*Windom Comm. Church*, 3766 Abbott Road  
*Zachary Clark*, 4180 Abbott Road

**The resolution was unanimously adopted.**

**New Business #15 & 16 Refer to the Planning Board and Conservation Board:**

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

**RESOLVED**, that the Town Board does hereby refer the following items listed on the agenda to the Planning Board and Conservation Board: Quaker Millwork & Lumber Inc, 77 South Davis Street: Requesting to construct a 16'x 32' addition for cold storage. This is a property that is partially located in the Town of Orchard Park and partially in the Village of Orchard Park, and R.W. Painting, Inc., 65 Mid County Drive, Zoned I-1: Requesting to construct a 4,900 sq. ft. addition to the existing building for office and warehouse space.

**The resolution was unanimously adopted.**

**Elected Officials & Department Heads****Budget Transfers**

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 authorize the following budget transfers:

<b>From:</b> Town Clerk – Shared Clerk (75%)	\$26,872.00 – A.1410.0138
<b>To:</b> Tax Receiver – F/T. Clerical (25%)	\$26,872.00 – A.1330.0111
<b>From:</b> Sr. Citizens – Other Expenses	\$500.00 – A.7610.0419
<b>To:</b> Sr. Citizens – Maintenance & Repairs	\$500.00 – A.7610.0445

**The resolution was unanimously adopted.**

**(Not on the Agenda)**

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

**RESOLVED**, that the Town Board does hereby refer to the Public Safety Committee the posting of “STOP” signs, as requested by the residents of Ashwood Lane and Arrowwood and Graystone Lane.

**The resolution was unanimously adopted.**

Councilwoman Yeomans announced that on Monday, September 10<sup>th</sup>, 2007 at 7:00 PM in the Municipal Center, the Town would be honoring our local men and women serving in the Armed Forces with the “Wall of Heros” dedication. Everyone was invited to attend.

**(Not on the Agenda)**

23) 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 approve the request of the Orchard Park Jaycees to hold the 46<sup>th</sup> Quaker Arts Festival on September 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup>, 2007. The Town will supply the following items: one large dumpster; approximately 30 trash containers; picnic tables; supply and erect snow fencing to section off exhibitor areas; pick up and return cones and barricades from United Rentals, and be it further

**RESOLVED**, that the Orchard Park Jaycees have submitted a copy of the required insurance certificate.

**The resolution was unanimously adopted.**

Councilman Kaczor stated that he was notified by the New York State Department of Parks, Recreation and Historical Preservation, that the Town’s application for certification of Local Government had been approved. This means that the Town of Orchard Park has met state and national standards for historic preservation and allows for better protection of our assets in the community.

Councilman Dietrick stated that three weeks ago he had asked for the removal of Mark Romanowki's resume' from the file and for consideration for the Planning Board as a conflict of interest.

**(Not on the Agenda)**

**24) 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 the Supervisor to execute the easement agreement for the Newton Abbott Fire Company, as recommended by the Town Attorney.

**The resolution was unanimously adopted.**

Police Chief McCune stated that school begins September 6<sup>th</sup>, 2007 and wanted to remind the residents to be cautious around the schools and to be aware of school busses and students who are walking. The Police Department will be stepping up enforcement on the streets near the school buildings.

Highway Superintendent Piasecki reported on the road project and landscaping at Fay, Glen and Pilger.

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

**RESOLVED**, that the Town Board does hereby authorize the approval of all entries on Warrant #17 following auditing by members of the Town Board and in the funds indicated:

<b>General Fund</b>	\$ 327,579.66
<b>Part Town Fund</b>	\$ 14,788.42
<b>Risk Retention</b>	0
<b>Cemetery Fund</b>	0
<b>Highway Fund</b>	\$ 79,708.39
<b>Special Districts</b>	\$ 33,419.83
<b>Trust &amp; Agency</b>	\$ 12,842.01
<b>Capital Fund</b>	\$ 173,588.91

**The resolution was unanimously adopted.**

**Receive & File Communications**

**26) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILWOMAN ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILWOMAN YEOMANS, TO WIT:**

**RESOLVED**, that the Town Board does hereby receive and file the following Communications: Erie County Water Authority: Preliminary Notice of Claim, Hydrant Replacement by ECWA forces on August 10, 2007 for Penhurst Street, in the Town of Orchard Park, and the Town of Brant: Certified Resolution urging Governor Eliot Spitzer and the NYS Assembly to consider passing legislation to support the Senates (NY-Stop) Bill (S-6119) fully by totally eliminating school property tax by phasing it out over 5 years with a property tax freeze for senior citizens, setting up a tax reform commission and helping communities with a plan for mandated tax relief.

**The resolution was unanimously adopted.**



**Receive & File Reports**

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

**RESOLVED**, that the Town Board does hereby receive and file the following Reports: Animal/Dog Control Officer's has completed the mosquito larvicide program set up by the County of Erie for the Town of Orchard Park.

**The resolution was unanimously adopted.**

**BUSINESS FROM THE FLOOR**

**Marie Manley** – Mrs. Manley thanked Councilwoman Ackerman for her work on the Comprehensive Plan and saving the taxpayers money.

**Tom Casey** – Mr. Casey revisited Planning Board termination and appointment actions. Councilman Dietrick stated that the Ethics Board made their determination and no further comment should be warranted. Councilwoman Ackerman commented on Mr. Casey's statements and felt enough has been said and everyone should work together as citizens and governmental officials.

**Jim Lawicki** – Mr. Lawicki applauded Councilwoman Ackerman's for her efforts on the Comprehensive Plan.

**Chris Weyer** – Ms. Weyer stated that she has been before the Town Board several times to voice her displeasure with the brush pickup in the Town and asked them to revisit the terms of the contract.

**John Sawicz** – Mr. Sawicz commented on the need for more cooperation between Town Board members and on the appointment process for boards and committees. He thanked Councilwoman Ackerman for all her work on the Comprehensive Plan.

**Richard Zajac** – Mr. Zajac stated that he is a landscaper and the 2006 October Storm created an enormous amount of tree damage. He felt that the contractor has been working diligently and cleanup has been reasonable considering the amount of damage.

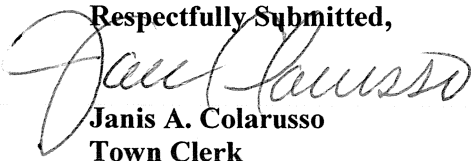
**Jane Shoemaker** – Ms. Shoemaker spoke out against the proposed Wal-Mart. She stated that in reference to the Comprehensive Plan, what good is any plan if it isn't followed.

**Nicholas Taneff** – Mr. Taneff stated that he hoped that the Comprehensive Plan would address the issues of property maintenance, which he has been committed to. Councilman Kaczor stated that he appreciated Mr. Taneff's efforts and after the Comprehensive Plan has been approved, a committee should be formed to deal with those specific issues to protect the community as well as home owners.

**Hal Fabinsky** – Mr. Fabinsky is concerned with inappropriate behavior at the Town Board meetings. He feels debate is fine, but to be disrespectful is not. Mr. Fabinsky suggested that rules of conduct might be considered.

There being no further business from the floor, on motion by Councilman Dietrick, seconded by Councilwoman Yeomans, to wit: the meeting was adjourned at 8:37 PM (local time).

**Respectfully Submitted,**

  
**Janis A. Colarusso**  
Town Clerk

