

A Meeting of the Town Board of the Town of Orchard Park, Erie County, New York, was held at the Orchard Park Municipal Center, S4295 South Buffalo Street, Orchard Park, New York on the 18th day of October 2006 at 7:00 P.M., (local time). The meeting was called to order by the Supervisor and there were:

PRESENT AT ROLL CALL:	Mary Travers Murphy	Supervisor
	Nancy W. Ackerman	Councilwoman
	Stanley A. Jemiolo, Jr.	Councilman
	David R. Kaczor	Councilman
	Mark C. Dietrick	Councilman
	Janis Colarusso	Town Clerk
	Leonard Berkowitz	Town Attorney
	Andrew Geist	Building Inspector
	Samuel McCune	Chief of Police
	Frederick Piasecki, Jr.	Highway Superintendent
	Wayne Bieler	Town Engineer

The Supervisor read into the record the following: *"If anyone appearing before the Town Board has a family, financial or business relationship with any member of the Board, it is incumbent upon that person to make it known under State Law and the Town Code of Ethics."*

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

RESOLVED, that the minutes of the Meeting of the Town Board held on September 20, 2006, & October 4, 2006 and the Special Meeting Minutes held on September 27, 2006, 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 regarding the 2007 Ad Valorem and the Benefit Basis Special Districts Preliminary Budget of the Town of Orchard Park for the Year beginning January 1, 2007.

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.

Supervisor Travers Murphy stated that this proposed budget is the Supervisor's preliminary budget for spending and revenue estimates for Orchard Park Government in 2007. The Town Board has until November 20th, 2006 to adopt a budget.

At this time Supervisor Travers Murphy introduced Mr. Wayne Drescher of Drescher & Malecki, the Town of Orchard Park's Accounting Firm, who assisted in the preparations of the budget. Mr. Drescher gave an overview of the budgets to the audience.

Supervisor Travers Murphy asked if there was anyone in the audience that would like to speak for or against the proposed budget for the Year 2007: **No one spoke.**

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

RESOLVED, that the Public Hearing in the matter of the 2007 Ad Valorem and the Benefit Basis Special Districts Preliminary Budget of the Town of Orchard Park for the Year beginning January 1, 2007, is hereby closed at 7:06 PM (local time).

The resolution was unanimously adopted.

Public Hearing

At 7:07 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 2006:

Conservation Management Overlay (CMO) District Village Homes – Detached Single Family Updated August 3, 2006

1.0 Intent:

To create a floating zone to provide areas within the town's R-1 Residential Districts for single family detached residential development in groups on lots which vary in size but where the maximum gross density within the overall development does not exceed the density limits for R-1 Districts in order to preserve the natural and scenic qualities of open land. The maximum gross density is determined by submission of an overall plan in accordance with the R-1 supplemental height, lot, yard and bulk regulations. This overlay district is intended to permit single family detached housing to be sited in closer proximity to each other, with privately contracted maintenance provided by formation of a homeowner's association approved by the New York State Department of Law (Attorney General's Office) and to further provide greater flexibility and creativity in the location of structures on the land and to utilize topography and site features to best advantage.

2.0 Permitted Structures and Uses.

2.1 Any structures or use permitted in the R-1 Districts.

2.2 Open space. (Common Area)

3.0 Standards and General Requirements.

3.1 Minimum Area.

The minimum area required to qualify for the Conservation Management Overlay District shall be fifty (50) contiguous acres or fifty (50) acres contiguous to parkland.

3.2 Permitted District.

The Conservation Management Overlay District shall only be permitted within the R-1 Residential District.

3.3 Maximum Density.

The maximum gross density for the entire subdivision shall not be more than the maximum density permitted in the R-1 Residential District. The maximum gross density is determined by submission of an overall plan in accordance with the R-1 supplemental height, lot, yard, and bulk regulations. In calculating the maximum gross density, land which may not be developed shall be excluded. That is, land such as wetlands, steep slopes, and other undevelopable land shall be excluded.

3.4 Buffer Strips.

A buffer strip consisting of at least forty (40) feet shall be provided between the subject property and adjacent properties or roads. These buffer strips shall be part of the common area owned and maintained by the homeowner's association. No buildings shall be less than sixty (60) feet from any exterior lot line. A buffer strip may be crossed to access an exterior public street from an interior public street. Such road shall comply with the minimum requirement of roads in the Town of Orchard Park.

3.5 Open Space Regulation.

Overall, the minimum amount of open space preservation shall be no less than twenty-five percent (25%) of the gross acreage of the parcel or parcels to be developed. Designated open space shall not include setbacks and lawns, and existing rights-of-way and utility easements. At least seventy-five percent (75%) of designated open space shall be contiguous. At least fifty percent (50%) of designated open space shall be designated as "green space" and shall be maintained in a natural, undisturbed condition. Limited access to green space may be allowed in the form of a walking or biking path. All paths are subject to approval by the Planning Board.

The remaining designated open space may be designated as "common area" and may be used for passive or active recreation. If used for active recreation, impervious surface shall not exceed 5% of this area.

3.6 Open Space Management.

Open space or "common area" in the Conservation Management Overlay District, is a parcel or parcels of land, together with improvements thereon, for the use and enjoyment of which are shared by the owner-occupants of the individual building sites. Where such property exists, the landowner shall provide for and establish a homeowner's association, approved by the New York State Department of Law (Attorney General's Office), for the ownership and maintenance of any common property. Each lot owner shall be required to be a member of a homeowner's association, which shall be formed prior to conveyance of the first lot. Such homeowner's association shall not be dissolved, nor shall it dispose of any common property by sale or otherwise. Development in designated open spaces is prohibited.

3.7 Landscape Design Standards.

3.7.1 Landscape treatment for roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire site.

3.7.2 Primary landscape treatment shall consist of shrubs, ground cover and street trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to local growing conditions.

3.7.3 Whenever appropriate, existing trees shall be conserved and integrated into the landscape design plan.

3.7.4 Landscape plans shall be submitted to the Conservation Board for recommendation to the Planning Board.

4.0 Design Regulations – Principal Structure and Uses.**4.1 Minimum Lot Area.**

Having achieved all goals of the Conservation Management Overlay District, the minimum lot size may be reduced to no less than six thousand five-hundred square feet (6,500 sq. ft.), provided that any and all such area that is not designated to serve as residential areas, roads, or other public purposes, be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland, or recreational purposes of an active or passive nature.

4.2 Minimum Lot Width.

The required minimum lot width shall be no less than sixty (60) feet.

4.3 Minimum Front Setback.

4.3.1 Interior Public Streets. Minimum front setback measured from the right-of-way is ten (10) feet.

- 4.3.2 **Exterior Public Streets.** Minimum setback measured from the right-of-way is sixty (60) feet and shall meet Town of Orchard Park design standards.
- 4.4 **Minimum Side Setback.**
The side setback may vary depending on the design and arrangement of the building, drives and common open space. However, there shall be a minimum setback distance of five (5) feet from any property line. Additionally, the minimum distance between adjacent dwellings shall not be less than twenty (20) feet.
- 4.5 **Minimum Rear Setback.**
No principal building shall extend closer than twenty (20) feet to the rear lot line. The minimum distance between dwellings backing up to each other shall not be less than forty (40) feet.
- 4.6 **Maximum Structure Height.**
The maximum structure height shall not exceed two (2) stories or thirty-five (35) feet and shall be in accordance with R-1 Residential Districts, Town of Orchard Park.
- 4.7 Minimum habitable floor area, for dwellings only, shall be in accordance with R-1 Districts, Town of Orchard Park minimum.
- 4.8 **Arrangement, Access and other Requirements.**
- 4.8.1 Dwelling units may only be arranged on interior public streets.
- 4.8.2 Each dwelling unit must be accessible by means of a public street to service vehicles and emergency vehicles.
- 4.8.3 The standards of design and construction for interior public streets shall meet applicable town specifications for public streets. However, pavement widths may be reduced to twenty-four (24) feet wide and two (2.5) foot gutter curbs on each side.
- 4.8.4 Within the CMO District, the centerline radius of curves can be reduced to a minimum of one-hundred (100) feet.
- 4.8.5 The location, design, and construction of all public facilities shall meet all applicable specifications and must be adequate to serve the needs of the development.
- 4.8.6 The procedures for the preservation and maintenance of all pedestrian ways and common open space shall be the responsibility of the homeowner's association identified in Section 3.6.
- 5.0 **Site Plan Review.**
- 5.1 A Petitioner seeking to create a Conservation Management Overlay District shall make application in compliance with Article 10 of the Zoning Ordinance: Amendments. Creation of a Conservation Management Overlay District shall be considered an Amendment to the Zoning Ordinance.
- 5.2 The Planning Board shall review the proposed development in accordance with the subdivision review process, landscape and screening regulations in section §144-46 C (5): Proper Landscaping.
- 5.3 Subdivision lots shall be created to allow owners flexibility in the private use of their lot. The homeowner's association shall regulate and control any changes to private lots that are requested by the owner of the lot. The minimum lot size for each dwelling unit is in accordance with supplemental height, lot, yard and bulk regulations as listed in Section 4.0.
- 5.4 All other lands are to be common (area) property which is a parcel or parcels of land, together with improvements therein, the use and enjoyment of which are shared by the owner/occupants of the single family detached housing and are members of the homeowner's Association approved by the New York State Department of Law (Attorney General's Office).

- 5.5 The architectural style of all new structures must be reviewed and approved by the Planning Board. The applicant shall provide the Planning Board with building elevations, plans, and renderings. A list of proposed building design materials should also be provided.
- 5.6 Any applicant seeking a Conservation Management Overlay District designation will be prohibited from using section 339-y of the Real Property Law of New York State.

Definitions:**Buffer Strip:**

The area between the subject property and the adjacent property or road, consisting of various forms of vegetation in order to provide visual screening. The buffer strip can consist of landscaping, natural vegetation, or a combination of the two. The area is mainly used for aesthetic mitigation for existing or future adjoining land uses.

Common Area:

Property that is owned by the homeowner's association, together with improvements therein, that is for the shared use and enjoyment by the owner/occupants of the single family detached housing.

Contiguous Parcels:

Two or more parcels that are located directly adjacent to each other.

Exterior Public Street:

Those public streets which were in existence prior to the creation of the Conservation Management Overlay District and the construction of the interior public streets in the Conservation Management Overlay District. Exterior public streets provide access to the interior public streets from highways which existed prior to the creation and construction of the Conservation Management Overlay District.

Floating Zone:

A floating zone defines a use that the community wants to encourage. The floating zone may be affixed to a qualifying parcel of land, after application by the parcel's owner, with the approval of the Town Board. Upon approval, the parcel is rezoned to reflect the new use and becomes a small zoning district; its development is governed by the use and provisions of the floating zone ordinance.

Green Space:

Open space maintained in a natural, undisturbed or revegetated condition.

Homeowner's Association:

An association created for the ownership and maintenance of any common property, including but not limited to common space, private roads, and pedestrian paths, located within a development. The association must be approved by the New York State Department of Law (Attorney General's Office). Each lot owner in the development shall be required to be a member of a homeowner's association, which shall be formed prior to conveyance of the first lot. Such homeowner's association shall not be dissolved, nor shall it dispose of any common property by sale or otherwise.

Interior Public Streets:

Those streets which are built by the developer and which did not exist prior to the development of the Conservation Management Overlay District.

Maximum Gross Density:

The total number of dwelling units per acre that can be built upon developable land for an entire subdivision in accordance with R-1 supplemental height, lot, yard, and bulk regulations.

Non-Contiguous Parcels:

Two or more parcels that are not located adjacent to one another.

Open Space:

A portion of a development site that is permanently set aside for public or private use and will not be developed. Open space may be used as community open space, or preserved as green space.

Parcel:

Any subdivision of land within the Town of Orchard Park.

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.

Councilman Jemiolo stated that an Ad-Hoc Committee studied different concepts to replace the Cluster Development Zoning that was removed from the Town Code, and they developed the Conservation Management Overlay District. The goal of the Conservation Management Overlay (CMO) District (Village Homes-detached single family) is to preserve green space, reduce the cost of maintenance by the Town, and to provide alternative housing to people who want a carefree living environment. The minimum acreage for this type of development would be 50 acres, with a minimum of 25 acres to be kept green. CMO's would reduce setbacks, and the footage required in the front, side and back yards, reducing the infrastructure required for the development. The people who purchase these homes will not have to worry about any up keep. A maintenance fee will be required from the residents so that the association for that develop.

Councilman Jemiolo stated that the Town Board will not take any action on this tonight and wished to place two written communications regarding the CMO district in the record.

Robert Lennartz, Chairman of the Zoning Board of Appeals: Mr. Lennartz stated that he is in favor of this concept.

Richard Schechter, Chairman of the Conservation Board: Mr. Schechter stated he had a number of suggestions that he would like the Town Board to consider before approving the Conservation Management Overlay District.

Supervisor Travers Murphy then asked if there was anyone in the audience that would like speak:

Barbara Little, 44 Diller Drive: Ms. Diller asked if there was going to be only one development like this in Orchard Park, or will there be more. She wanted to know if a developer could decide if they wanted a regular development, or build a CMO, and she wanted to know if there was a developer interested in building this type of housing at this time. Councilman Jemiolo stated that if this Local Law is adopted, developers will be able to petition the Town Board to build this type of development, according to the regulations. They cannot just decide to do this kind of development. He stated that there are developers interested in building this type of development at this time.

Ed Martindale, 190 Lawrence Place: Mr. Martindale, a former member of the Planning Board, stated that he feels that this concept is a good one, but he does not like the idea of an overlay district. He feels that the Town should inventory the A-1 zoned areas, and decide where they would like to apply this concept and then rezone those areas to make it specific. Mr. Martindale stated that he is definitely not in favor of §515, Architectural Review. He said that Orchard Park does not have a specific enough area to regulate architectural features. This section should be eliminated.

Linda Flowers, 66 Woodview Court: Ms. Flowers stated that she is concerned about this proposed zoning concept as there is a water study that needs to be conducted because of all the flooding that occurs in Orchard Park. It does not make sense to make a decision about land usage in an area that will be involved with the water study. The water study should be completed, recommendations made, and improvements implemented regarding the flooding/drainage issues in Orchard Park before any major decisions regarding land use are put into the Town Code. This way, the Town will avoid any litigation regarding future building.

Ron Plants, 5027 Bussendorfer Road: Mr. Plants stated that the residents in the Bussendorfer Road area have been dealing with flooding issues for a long time, and there are studies dating back 20 years or more. He asked if the drainage study being conducted at this time is completed yet. Town Engineer Bieler said the study is not completed yet, but they are going to meet with the consultants on Friday. Mr. Plants said he would like to formally request that the water/drainage study be completed, and see where the Town is in regards to the drainage issues, before the Town moves ahead with any other development strategy. He has heard about the possibility of developing drainage districts and would like to know more about that. Mr. Plants stated that he does not want retention/detention ponds being used in developments, as that is the easy way out. He has done some stories recently regarding detention ponds, and there are concerns with liability. In his neighborhood there are existing detention ponds and with the natural drainage system, they have filled in with sediment. He asked whose responsibility it was to clean them out. He would like to have the drainage study completed to know where we are before looking at the idea of more development and putting more water into neighborhoods.

3) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN JEMIOLO, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KAZCOR, TO WIT:

RESOLVED, that the Public Hearing in the matter of the Proposed Local Law for the Year 2006: Conservation Management Overlay (CMO) District Village Homes – Detached Single Family – Updated August 3, 2006, is hereby closed at 7:28 PM (local time).

The resolution was unanimously adopted.

Old Business #1 Quaker Crossing East Landscape Plan and Site Plan

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

RESOLVED, that the Town Board does hereby approve the Landscaping Plan submitted to the Conservation Board on, 11/7/05, and approve the site plan received 11/7/05, for Quaker Crossing East, Vacant land bounded by Milestrip Road, North Benzing Road, Amelia Drive and Amanda Lane, Zoned B-1, as recommended by the Planning Board, 10/11/06, with the following stipulations:

- A Positive Declaration and Finding to approve were issued by the Town Board on 9/7/05.
- The site lighting is limited to those fixtures and poles indicated on the approved site lighting. Light fixtures shall have flat lens and zero cut-offs. Building lighting will be subject to submission to the Planning Board approval as tenants are identified. Light design will be consistent with approved lighting on existing buildings. (The style of wall packs shall match the style used on the Borders store.)
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
- General plaza litter control shall be in accordance with previous agreement for Quaker Crossing.
- Engineering approval was granted on 10/5/05

- Landscaping and site approval for three (3) out parcels identified on the site plan along Amelia Drive identified as proposed retail (2 buildings) and proposed bank shall be submitted for review and approval by the Town Conservation Board, Planning Board and Town Board.
- The Town Board shall review the landscaping along Amanda Drive, upon installation, to insure that acceptable screening is provided from the building. The Town Board will require additional screening if it deems necessary.
- The Planning Board has recommended that the Town Board approve a Building Permit, along with these stipulations.

Supervisor Travers Murphy stated that she has received some negative feedback on the way the Ashley Furniture store looks, and the way that Plaza looks overall. She has had numerous comments from the public, saying that it is starting to look a little crowded and is somewhat of an eyesore. The Supervisor stated she and the Council members will review the landscaping to make sure the additional screening for the landscaping is appropriate.

The resolution was unanimously adopted.

Old Business #2 M.A. Carr, Vacant land on North Buffalo Street

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

RESOLVED, that the Town Board does hereby authorize a Building Permit for a 3,360 sq. ft. Bridal Dress Shop and approve the site plan received, 10/4/06, for M.A.Carr, vacant land located on the west side of North Buffalo Street adjacent to the Legion Post #567 and the Village Fireplace Shop, Zoned B-3, as recommended by the Planning Board 10/11/06 with the following stipulations:

- This is an unlisted SEQR action based on the submitted Short EAF, Parts One and Two and a Negative Declaration is made.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lens.
- No outside storage or display is permitted.
- If the applicant decides to use a dumpster, it shall be screened, in accordance with Section 144-25 of the Town Code.
- Engineering approval was granted on 10/17/06.
- The landscape completion bond in accordance with the Conservation Board minutes shall be provided for the approved landscape plan, which includes 47% green space prior to the receipt of a Building Permit. The two year landscape completion Bond shall be in the amount of \$6,824.00 or a certified check for \$3412.00.
- The Zoning Board of Appeals granted a setback variance on 10/02/06.

Councilwoman Ackerman stated that she has met with Ms. Carr and her architect to work on the facade design. Some changes were made and now she feels it will be a very attractive project.

The resolution was unanimously adopted.

Old Business # 3 Niagara Frontier Recovery, 3958 Southwestern Blvd. request for Change in Use.

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

RESOLVED, that the Town Board does hereby approve the request for a Change-In-Use, at 3958 Southwestern Boulevard to allow a rear pole barn building located on the property to be used as a key making facility for late model running cars and light pick-up trucks as petitioned by John Henderson of Niagara Frontier Recovery, 3958 Southwestern Boulevard, North side of Southwestern Boulevard, Zoned B-2, as recommended by the Planning Board 10/11/06 with the following stipulations:

- This is a Type II SEQR Action and therefore no determination of significance is required.
- If the lighting is revised the applicant must provide a lighting plan with a photometric study and cuts of the fixtures and the height of the poles. Flat lens fixtures must meet our requirements so that we do not create a problem for the adjacent neighbors.
- If the use of the site is changed to vehicle storage or a holding area for repossessed vehicles the applicant is to return to the Planning Board.

The resolution was unanimously adopted.

Old Business #4 Cosmas Leigh, 3445 Orchard Park Rd. request for a Change-In-Use

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

RESOLVED, that the Town Board does hereby approve the requested Change-In-Use from residential to business in order to open a chiropractic practice as petitioned by Cosmos Leigh, 3445 Orchard Park Road, located on the east side of Orchard Park Road, Zoned B-3, as recommended by the Planning Board, 10/11/06, with the following stipulations:

- This is a Type II SEQR Action and therefore no determination of significance is required.
- The Zoning Board of Appeals granted two variances on 9/20/06.

The resolution was unanimously adopted.

New Business #1 Schedule a Public Hearing for 5758 Big Tree Road Rezoning from R-3 to I-1

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

RESOLVED, that the Town Board is hereby authorized to schedule a Public Hearing for November 1, 2006, at 7:00 PM (local time) in the matter of a petition by Jack Bertsch of Polymer Conversions, 5758 Big Tree Road, to rezone the property from R-3 to I-1, to convert and remodel an existing house into offices, and the land behind it will be for additional parking, and be it further

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

The resolution was unanimously adopted.

New Business #2 Schedule a Public Hearing for 5997 Benning Road, Conservation Easement

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

RESOLVED, that the Town Board is hereby authorized to schedule a Public Hearing for November 15, 2006 in the matter of the request by Mr. David & Ms. Virginia Archabald, 5997 Benning Road, to place 48.80 acres of their land into a perpetual Conservation Easement, and be it further

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

The resolution was unanimously adopted.

New Business #3 Final Change Order & Release of Retention for the Contract w/Sicar, Inc.

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

WHEREAS, the construction work on the Baker Road Reconstruction Project has been completed. On June 2, 2006, a final inspection was conducted and all of the work has since been satisfactorily completed in accordance with the contract documents and specifications, and

WHEREAS, a two(2) year maintenance bond in the amount of \$3,117,145.50 has been submitted along with the affidavit of Release of Liens, Affidavit of Subcontractor Payment, and necessary legal documents, and

WHEREAS, the Over/Under sheet lists the final adjustments to the quantities for each bid item and shows there will be a net decrease of \$31,221.19. This represents a decrease of 0.99% from the original amount bid and

WHEREAS, the Town has appropriated funding for the Baker Road Reconstruction Project under Capital Project H-20, but as mentioned in memos dated 8/18/04, 8/10/05 and 8/9/06, additional funding will be needed for wetland design/mitigation construction, land and easement acquisitions, legal fees, utility conflicts and construction inspection which were charged to this account but actual costs were unknown at the startup.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the transfer of \$40,884.61 from T-087 Public Improvement Permit Trust Account to H-20 Baker Road Reconstruction Capital Project, and be it further

RESOLVED, that the Town Board does hereby approve the final payment and authorize release of retention for Baker Road Reconstruction Project to Sicar, Inc. 1128 Jamison Rd., Elma NY 14059 in the amount of \$155,857.27, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #4 Final Change Order & Release of Retention to the Contract w / E.J. Militello

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

WHEREAS, the construction work on the Nieman Drive and North Lane Reconstruction Project-Installation of Concrete Gutters has been completed, and on 9/21/06 a final inspection was conducted and all of the work has been satisfactorily completed in accordance with the contract documents and specifications, and

WHEREAS, a two year maintenance bond in the amount of \$35,131.20 has been submitted along with the Affidavit of Release of Liens, and the necessary legal documents, and

WHEREAS, the Over/Under sheet lists the final adjustments to the quantities for each bid item and shows there will be a net decrease of \$5,893.80, and this represents a decrease of 14.37% from the bid contract amount

NOW, THEREFORE, be it

RESOLVED, that the Town Board is hereby authorized to approve the final payment and authorize release of retention for Nieman Drive and North Lane Reconstruction Project-Installation of Concrete Gutters to E. J. Militello, 8957 Stonebriar Drive, Clarence NY in the amount of \$1,756.56, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #5 Appointment to the Orchard Park Sewer & Lighting Department

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

WHEREAS, the Sewer & Lighting Department has always operated with six permanent employees, supplemented by seasonal employees in the summer, and

WHEREAS, with the retirement of one permanent employee and the departure of the two seasonal employees, it is necessary to address the vacant permanent position even though the Town Board has made a determination that the Sewer & Lighting District be downsized to four permanent positions at the time that the operation of all of our public water system was turned over to the Erie County Water Authority, and

WHEREAS, the Town Board is now investigating an Erie County Sanitary Sewer District takeover of the Sanitary Sewer System, which if it does take place, will take more than two years to complete proper studies, agreements and implementation, and

WHEREAS, in the interim, the Department needs to be a full strength to properly carry out its duties and responsibilities, so the position was posted and advertised as a Laborer Union Level 1 position, and nineteen applications were received, and

WHEREAS, all the applicants were interviewed by the Town Engineer and the General Crew Chief and informed of the possible downsizing or elimination of the Department, and potential layoff or transfer of all employees with the lowest seniority in 2007, and

WHEREAS, it was concluded that Jordan J. Kellerman should be appointed to fill the vacant Laborer Position as he has worked as summer help in 2006, is a dedicated employee and has demonstrated the necessary work ethic and skills that are required for this position

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby approve of the appointment of Mr. Jordan Kellerman, 6195 Scherff Road, Orchard Park NY 14127, to the position of Laborer in the Sewer & Lighting Department at Job Level 1, Step A, of the current wage schedule for CSEA Local Unit 815, effective January 1, 2004, pending contract settlement and meeting all requirements, as recommended by the Town Engineer

The resolution was unanimously adopted.

New Business #6 Appointment to the Orchard Park Police Department

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

RESOLVED, that the Town Board does hereby approve the appointment of Lieutenant Patrick McMaster to the position of Lieutenant of Detectives to the Orchard Park Police Department, to be effective October 23, 2006, as recommended by the Chief of Police, Samuel McCune. The salary is per the Collective Bargaining Agreement and Step H of the Police Payroll Schedule.

The resolution was unanimously adopted.

New Business #7 Appointments to the Orchard Park Recreation Department

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

RESOLVED, that the Town Board does hereby authorize the following Fall/Winter 2006-2007 Staff Appointment(s) to the Town of Orchard Park Recreation Department, dependent upon the applicant providing the required certifications, as recommended by the Recreation Director.

<u>Name</u>	<u>Address</u>	<u>Position</u>
Sylvia Plenz	10909 Matteson Corners Rd.	Att.
Brandon Drummond	Buffalo State College	Att.
Rosalina Buyer	2 Queens Place	Att
Carolyn Kiddy	178 Margaret Rd.	Att.

The resolution was unanimously adopted.

New Business #5 Approve 3766 Abbott Road 2006–2007 Commercial Parking Permit

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

RESOLVED, that the Town Board does hereby approve the following 2006-2007 Commercial Parking Permit, Windom Community Church, 3766 Abbott Road, as recommended by the Building Inspector & Chief of Police:

The resolution was unanimously adopted.

ELECTED OFFICIALS & DEPARTMENT HEADS

The Supervisor and Town Board Members expressed their heartfelt thanks and appreciation to all the agencies and individuals who came together to help the Town through the aftermath of the October Snow Storm that was a surprise to all. The professionalism, expertise, commitment and cooperation that were displayed by all the agencies involved with this disaster were exceptional. Police Chief McCune and his staff of officers worked tirelessly to answer all the calls and help the residents of the Town. The firefighters and emergency officers generously gave their time to man the fire halls and emergency shelter, pump out residents' basements, transport seniors and deliver medical care. Bob Simpson and Bob Benning coordinated the efforts of the Orchard Park Fire District with the Town, and kept Town Officials updated on the emergency operations. The Town Highway Superintendent, Fred Piasecki and his crew worked tirelessly, and still are, cleaning up the Town and assisting in any way they can.

The Village Highway Superintendent, Paul Barker, and his crew have been working to clean up the roadways and sidewalks on the Village streets. The Community came together as well, showing its generous spirit by sharing resources, helping each other out, and taking care of neighbors. The people from NYSEG were in constant contact with Supervisor Travers Murphy, keeping her informed, and promising to do everything possible to get the residents power back.

During the State of Emergency, the Supervisor, Town Board members, Highway Superintendent, Village Mayor, Village DPW Superintendent, Fire District Officials and School Officials met on a regular basis under the leadership of Police Chief McCune to keep everyone updated on the status of the Town, and what the next step would be.

Several weeks ago, the Town Elected and Appointed Officials, the Fire & Emergency Officials participated in a NEMS (National Emergency Management System) which was developed on a National level following 9/11. The NEMS Training Program demonstrated how to respond to emergency situations. This was the Town's first experience after the training, and the Town responded to the emergency in the most professional, well coordinated manner. Once again the Board Members said thank you to all.

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

RESOLVED, that the Town Board does hereby accept, with regret, the resignation of William Manley from the Economic Development Committee.

Councilman Kaczor stated that Mr. Manley is one of the real mainstays of the committee, and always worked hard for the Town's interests.

The resolution was unanimously adopted.

17) 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 the request of the Village to use Town property at the Train Depot and Library grounds to celebrate "Holiday in the Park" on Friday, November 6th.

The resolution was unanimously adopted.

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

RESOLVED, that the Town Board does hereby authorize Assistant Police Chief, Andrew Benz, to attend the Great Lakes Leadership Forum at the Niagara Falls Airbase, October 23rd -27th, as requested by the Chief of Police.

The resolution was unanimously adopted.

Police Chief McCune thanked everyone in the Community, and everyone in between for their cooperation that was received during the unusual snow event this past week. He stated it was a team effort between the Town, Village, the Schools and the Fire Company, and it worked. "We got through this event, and will be a little more prepared for the next one – I just hope it does not come very soon".

19) 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 approve the request of the Town of Hamburg to dispose of their tree debris from the storm at the Town Compost site, with tipping fees of \$25.00 per truck.

The resolution was unanimously adopted.

Highway Superintendent Fred Piasecki said that the Highway Dept. has three big crews out picking up the debris. One crew is concentrating on the north part of town where the damage was the worst. The trucks are bulk loading the debris and taking it to the compost site. He advised everyone, that even after the Town picks up the debris, bring out any other limbs and branches you may have because they are going to sweep the Town a second time. The Highway department is going to be working seven days a week.

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

RESOLVED, that the Town Board does hereby authorize the approval of all entries on Warrant #20 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$129,863.77
Part Town Fund	\$2,514.35
Risk Retention	\$0.00
Cemetery Fund	\$0.00
Highway Fund	\$18,627.63
Special Districts	\$109,201.18
Trust & Agency	\$1,434.15
Capital Fund	\$226,269.91

The resolution was unanimously adopted.

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

RESOLVED, that the Town Board is hereby authorized to receive & file the Communications and Reports listed on the agenda:

Communications: Erie County Department of Environmental & Planning has sent a notice stating the Erie County Legislature is designating November 1st through November 30th as the annual thirty-day time period within which a land owner may request predominantly viable agricultural land for inclusion to a certified agricultural district in accordance to Section 303 of NYS Agricultural and Market Law. Land owners may obtain a copy of the form from the Orchard Park Town Clerk's office, or by calling John Opalka, Erie County Department of Environmental and Planning at 858-6229, and the Erie County Department of Health has sent a notice with the proposed revisions to the Erie County Sanitary Code, Article I, Section 9 (Permits Generally). A Public Hearing, relative to the proposed revisions, will be held October 31, 2006 at 3:00 PM, Room 904 of the Rath County Office Building.

Reports: Chief of Police's Monthly Report for September 2006, and the Building Inspector's Monthly Report & Building Permits for September 2006.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Bob Walsh, Attorney for Quaker Crossing: Mr. Walsh wished to refute the statements made by Mr. Tom Casey at the last board meeting regarding himself and the Quaker Crossing Projects.

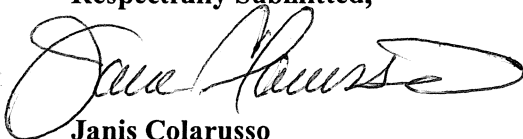
Tom Casey, 12 Harvard: Mr. Casey stated that he does his research and stands by the facts. He is going to request another investigation by the Board of Ethics.

Robert Frantsits, 4270 California Road: Mr. Frantsits had questions about the construction taking place at Fox Run and wanted to know where all the excess water was being pumped to.

Sharon Schiffhauer, 6587 Michael Road: Ms. Schiffhauer stated the attorney for the CVS developer called for a meeting of the residents around the proposed new CVS store. She stated that the residents are still firmly opposed to this project and outlined some of the concerns.

There being no further business from the floor, on motion by Councilman Jemiolo, seconded by Councilman Dietrick to wit; the meeting was adjourned at 8:28 PM (local time).

Respectfully Submitted,



Janis Colarusso
Town Clerk

