

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 1st day of November 2006 at 7:00 PM, (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 DIETRICK, TO WIT:

RESOLVED, that the minutes of the Meeting of the Town Board held on October 18, 2006 and the Special Meeting Minutes held on October 11 & 25, 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 for or against an Amendment to the Zoning Ordinance of the Town of Orchard Park to rezone .68 acres of land, between Rt. 219 and California Road, located at 5758 Big Tree Road, from R-3 to I-1 to convert/remodel the existing house on the property into offices and the land behind the house would be converted to additional parking for Polymer Conversions which is located immediately adjacent to this property on the east side, as requested by Jack Bertsch.

ALL THAT TRACT OR PARCEL OF LAND, situated in the Town of Orchard Park, County of Erie and State of New York, being part of Lot No. 31, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the center line of Big Tree Road distant 660 feet northwesterly from the point of intersection of the east line of Lot No. 31 with said center line of Big Tree Road as measured along said center line of Big Tree Road, which point of beginning is the southeast corner of land deeded to Dirk Hartmans and Renske Hartmans, his wife by deed recorded in Erie County Clerk's Office in Liber 1838 of Deeds at page 568, and the southwest corner of land deeded to Joe Copli by deed recorded in Erie

County Clerk's Office in Liber 1401 of Deeds at page 228; running thence northerly at an included angle of 83° 40' and on and along the division line between the lands deeded to Hartmans and Copli as aforesaid, 333.23 feet to a point; thence northwesterly at an included angle of 96° 20' and on and along a line parallel with the center line of Big Tree Road, 100 feet to a point; thence southerly at an included angle of 83° 40' and on and along a line parallel with the east boundary line of the within description, 333.23 feet to a point in the center line of Big Tree Road and thence southeasterly on and along the center line of Big Tree Road, 100 feet to the point of beginning.

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 asked if there was anyone in the audience who would like to speak for or against the petition to rezone the property owned by Mr. Bertsch.

OPPONENT:

Carol Trala, 3658 South Benzing Road: She stated that she is against rezoning. Her neighborhood was rezoned to Industrial along with Residential.

PROPONENT:

Wendy Bertsch, 3895 North Buffalo Road: She stated she is the daughter of Mr. Bertsch, and spoke on his behalf, along with Greg Schneider, the Architect from Aurora Architectural. The house in the proposal has been completely renovated from the exterior to the interior. It has a residential look, but the inside will be offices. The landscaping will be well maintained and will use as many of the existing trees as possible.

Jim Suplicki, 5560 Big Tree Road: He feels very strongly that from the renovation that have already been completed on the house involved in this rezoning, it appears to be a foregone conclusion that it has already been approved. The Town Attorney and the Building Inspector explained that the petitioner had another project going at the same time and he thought this was approved and started remodeling before he was notified. Mr. Suplicki said that he did not mind the rezoning petition and in fact, felt it was sensible, since everything around it was businesses already.

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 an Amendment to the Zoning Ordinance of the Town of Orchard Park, to rezone .68 acres of land, between Rt. 219 and California Road, located at 5758 Big Tree Road, from R-3 to I-1 to convert/remodel the existing house on the property into offices and the land behind the house would be converted to additional parking for Polymer Conversions which is located immediately adjacent to this property on the east side, as requested by Jack Bertsch, 3895 North Buffalo Road, Orchard Park, NY 14127, is hereby closed at 7:12 PM (local time).

The resolution was unanimously adopted.

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

WHEREAS, following due and timely notice, a Public Hearing relating to the matter of an Amendment to the Zoning Ordinance of the Town of Orchard Park was conducted at the Municipal Center, 4295 South Buffalo Street, Orchard Park, NY 14127, on the 1st day of November 2006, at which time all interested persons were given an opportunity to be heard, which amendment provides as follows:

To rezone .68 acres of land, between Rt. 219 and California Road, located at 5758 Big Tree Road, from R-3 to I-1 to convert/remodel the existing house on the property into offices and the land behind the house would be converted to additional parking for Polymer Conversions which is located immediately adjacent to this property on the east side, as requested by Jack Bertsch, and

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

WHEREAS, recommendations from the Town of Orchard Park Planning Board, 10/11/06, were received and filed with the Town Board with stipulations. This is an Unlisted SEQR action based on the submitted short EAF, parts One and Two, and a negative declaration is made. Acreage fees shall be paid in accordance with §144-70C of the Town Code.

NOW, THEREFORE, be it

RESOLVED AND ORDAINED, that the Zoning Ordinance and Zoning Map of the Town of Orchard Park be and are hereby amended by rezoning .68 acres of land located at 5758 Big Tree Road to I-1

ALL THAT TRACT OR PARCEL SITUATED in the Town of Orchard Park, County of Erie and State of New York, being part of Lot No.31, Township 9, and Range 7 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the center line of Big Tree Road distant 660 feet northwesterly from the point of intersection of the east line of Lot No.31 with said center line of Big Tree Road as measured along said center line of Big Tree Road, which point of beginning is the southeast corner of land deeded to Dirk Hartmans and Renske Hartmans, his wife by deed recorded in Erie County Clerk's Office in Liber 1838 of Deeds at page 568, and the southwest corner of land deeded to Joe Copli by deed recorded in Erie County Clerk's Office in Liber 1401 of Deeds at page 228; running thence northerly at an included angle of 83° 40' and on and along the division line between the lands deeded to Hartmans and Copli as aforesaid, 333.23 feet to a point; thence northwesterly at an included angle of 96°20' and on and along a line parallel with the center line of Big Tree Road, 100 feet to a point: thence parallel with the east boundary line of the within description, 333.23 feet to a point in the center line of Big Tree Road and thence southeasterly on and along the center line of Big Tree Road, 100 feet to the point of beginning.

And be it further

RESOLVED, that this ordinance shall take effect ten (10) days after publication and posting in accordance with law, and be it further

RESOLVED, that the Town Clerk publish and post a copy of said amendment in accordance with §264 & 265 of Town Law.

The resolution was unanimously adopted.

New Business #1 Appoint John Payne as Detective to the Orchard Park Police Department

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

RESOLVED, that the Town Board does hereby appoint Officer John Payne to the position of Detective, with the effective date being November 6, 2006, and be it further

RESOLVED, Detective Payne's salary will be according to the Collective Bargaining Agreement.

Councilman Dietrick commended Chief Sam McCune, Assistant Chief Andy Benz and Detective John Payne for the thorough and fair process of the appointment. The Town Board congratulated Mr. Payne and introduced him to the audience. The Town Board did comment to say, as the former D.A.R.E. Officer, Mr. Payne will be truly missed.

The resolution was unanimously adopted.

New Business #2 Authorize Code Enforcement Officer to Attend School and Complete Training

5) 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 Code Enforcement Officer, Andrew Geist, to submit an application for membership to the Code Enforcement Disaster Assistance Response Program and complete all necessary training, as recommended by the Town Board per NYS Municipal Law.

The resolution was unanimously adopted.

New Business #3 Appointment to the Recreation Department

6) 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 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>	<u>Rate</u>
Christen Michalek	13 Liberty Lane	PT2-B	\$9.00

The resolution was unanimously adopted.

New Business #4 Approve the Commercial Parking Permit for John Mariano

7) 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 2006-2007 Commercial Parking Permit for John Mariano, 3916 Southwestern Boulevard, as recommended by the Building Inspector and the Chief of Police.

The resolution was unanimously adopted.

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

8) 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 item listed on the agenda to the Planning Board and/or Conservation Board: Hortland Development, LLC, 3566 N. Buffalo Road, Zoned B-3, requesting a Change-In-Use from residential to office space.

The resolution was unanimously adopted.

ELECTED OFFICIALS & DEPARTMENT HEADS**CVS Pharmacy Store Rezoning (not on agenda)**

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

RESOLVED, that the Town Board does hereby deny the request for a Proposed Amendment to the Zoning Ordinance of the Town of Orchard Park, and declare a Negative SEQR, to rezone property located near the corner of Union & Michael Road (6531, 6539 and 6545 Michael Road and 3009 Union Road) in order to construct an 11, 945 sq. ft. building for a CVS Pharmacy Store, from R-3 to B-2.

Councilman Jemiolo stated that the Town Board has continued to receive communications from the residents of the Michael Road area since the Public Hearing on September 20, 2006, concerning the petition to rezone from R-3 to B-2 for the construction of a CVS Pharmacy Store. A work session was planned next week to discuss this issue, but the Town Board members are in agreement they would not vote in favor of this project, therefore, the decision was to take this action now.

Councilwoman Ackerman stated that she would like to explain her position on her vote, which would be to abstain. She stated that she had a conversation on Tuesday with Sean Hopkins, the Attorney for the petitioner, in reference to Councilman Jemiolo's request to revise the plans for a more reduced impact on the area from the CVS Store. She said that this was scheduled to be discussed at the work session next week and stated that until they had time to review it as a Town Board, she felt it was inappropriate to vote on it and would not do so. Councilwoman Ackerman said that it became clear that there were more votes on the Town Board to defeat the project than to sustain it. She could not contact Mr. Hopkins after repeated attempts, so she stated that she would not vote as she gave her word.

Councilman Kaczor stated that this is the second time the Town has dealt with the issue of a stand alone corner lot drug store. He hoped that it was noted by the media so that the message is sent to developers that there is a place for this type of building in Orchard Park. There tends to be more and more encroachment on residential areas and the Town Board would recommend to developers that they take more time and thought as to where they try to locate these facilities so there is not any negative impact on the residents.

Supervisor Travers Murphy	Aye
Councilwoman Ackerman	Abstain
Councilman Jemiolo	Aye
Councilman Kaczor	Aye
Councilman Dietrick	Aye

The resolution was duly adopted.

Councilman Dietrick recognized the Highway Department workers in the audience and commended them on the exemplary work during the October Storm.

Councilman Kaczor also thanked Bruce Wellington and Richard Maul who manage the Compost Site for their great contribution during the October Storm.

Building Inspector Geist thanked the Town Board for allowing him to apply for the Code Enforcement Disaster Assistance Response Team (CEDAR).

Highway Superintendent Piasecki reported that the Town was 70% cleaned up for the first time from the storm and will continue until completed. He stated how proud he was of the dedicated Town Highway employees.

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

RESOLVED, that the Town Board does hereby schedule a Public Hearing for Wednesday, December 6, 2006 at 7:00 PM (local time), for a Local Law for the Year 2006; Increase the Low Income Aged Senior Exemption Scale, and be it further

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

The resolution was unanimously adopted.

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

RESOLVED, that the Town Board does hereby authorize the approval of all entries on Warrant #21 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$173,373.39
Part Town Fund	6,548.10
Risk Retention	300.00
Cemetery Fund	0.00
Highway Fund	129,427.42
Special Districts	26,633.04
Trust & Agency	4,067.36
Capital Fund	3,692.61

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Tony Delmonte, 440 Vistula Avenue: He stated that he has worked for the Highway Department for over thirty years and had no knowledge of the position of Chairman to the Highway Department. He gave an overview of the jobs performed by the Highway Department and the pride they have in their work. He stated that the Highway Department has been very highly acclaimed with their accomplishments, especially with the number of personnel for the size of the Town. Mr. Delmonte stated that the Highway Department had an agreement with concessions, but the Town backed out of it, and it was not good faith bargaining. This in turn costs the taxpayers more money each month and he is also a taxpayer in Orchard Park.

Mr. Delmonte stated that this is part of Councilman Jemiolo's claim of medical insurance reform, that the Highway Department does not receive a raise for two years. He stated that the Highway Department negotiated in great faith, not just good faith, showing how the Town could save a substantial amount of money.

Nicholas Taneff, 279 Summit Avenue: He was glad that the Town Board rezoned Milestrip Road from Industrial to Commercial. He commended builders Buchheit and Benderson for their attractive projects and the generated tax revenue. He added that if there were a buffering law it would speed up the process for the Conservation Board and developers.

David Stott, 15 Locust Drive: He congratulated Detective Payne on his promotion and praised the Highway Department for their work. He lives behind the new plaza on North Buffalo Road and inquired as to more parking space. Building Inspector Geist stated that the all proper procedures have been followed and permits issued. The parking concern of the Planning Board was due to *Panera Breads* request for outdoor seating. The Planning Board will review this in one year and if affects the parking, the permit would not be renewed for the outdoor seating.

Councilman Dietrick thanked the Highway Department for attending the meeting and Mr. Delmonte for his comments. He stated that retroactive pay raises are holding up the negotiations with their contract. He stated that Councilman Jemiolo and Supervisor Travers Murphy were asked to do a difficult task for this community and brought a proposal to the Town Board. The proposal was a result of the negotiation and it did not have three votes from the Town Board, he being one of those votes. He stated it was unfair to blame Councilman Jemiolo and the majority of the Town Board is not in favor of the negotiated settlement. In his opinion, the taxpayers should not have to pay for retroactive pay raises when the Highway Department is accepting a proposal put forth by the Town over a year ago.

David Magill, 7519 Crestwood Circle, Town of Boston: He has worked for the Highway Department for almost fourteen years and had questions concerning the title of Chairman of Highways. Town Board members explained that the Chair to designated departments is actually a liaison and these are divided among them and are voted on at the Organizational Meeting in January every year.

Suzann Cushman, 27 Hawthorne Avenue: She hoped that Councilman Dietrick's comments did not create an unfair labor practice concerning negotiation confidentiality and he stated they did not. Ms. Cushman brought up the topic of retroactivity relating to part-time Town Board members' sick days after ten years of service.

Joanne and Sharon Schiffauer, 6587 Michael Road: They thanked the Town Board for the decision on the CVS rezoning now and hopefully any proposal in the future.

Ronald Klavoon, 140 Michael Road, West Seneca: He was disappointed the Town Board did not carry through with the CVS project and his neighbors have done an injustice to the petitioner. He lives across the street from the proposed site and he thought it would be an excellent project, much better than a deteriorating vacant building.

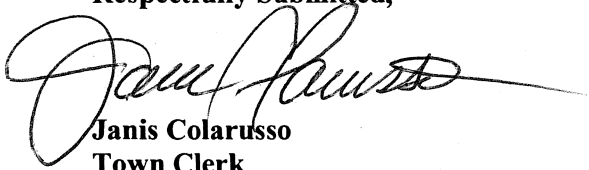
Peter Sorgi, Attorney for CVS Pharmacy: He wanted it known that the petitioner worked with the neighbors for over six months along with all the Town Boards to make it a workable project.

Carla Trala, 3658 S. Benzing Road: She thanked the Town and workers from other areas for the clean up from the October storm. She stated that she hoped that the decision from the Town Board on the denial of the CVS rezoning because of the impact on residents would help them decide the outcome of the Fisher Bus proposal in her neighborhood. That project would affect their quality of life, natural balance and pollution.

Eric Hudack, 27 Renee Drive, West Seneca: He felt that businesses are needed and unfortunately some trees must be cut down to make way for them.

There being no further business from the floor, on motion by Councilman Dietrick, seconded by Councilman Kaczor, to wit; the meeting was adjourned at 8:12 PM (local time).

Respectfully Submitted,



Janis Colarusso
Town Clerk