

A Meeting of the Town Board of the Town of Orchard Park, Erie County, New York, was held at the Orchard Park Municipal Center, S4295 South Buffalo Street, Orchard Park, New York on the 19<sup>th</sup> day of November 2008 at 7:00 PM. The meeting was called to order by the Supervisor and there were:

<b>PRESENT AT ROLL CALL:</b> Mary Travers Murphy	Supervisor
Nancy Ackerman	Councilwoman
David Kaczor	Councilman
Mark Dietrick	Councilman
Edward Graber	Councilman
Janis Colarusso	Town Clerk
Leonard Berkowitz	Town Attorney
Andrew Geist	Building Inspector
Andrew Benz	Chief of Police
Frederick Piasecki, Jr.	Highway Superintendent
Wayne Bieler	Town Engineer

**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."*

On the morning of Thursday 11/20/08, the Planning Department stated to the Town Clerk, the action below (Conservation Easement for Timothy Roberts) needs to have a public hearing scheduled. Listed on the 12/3/08 agenda, you will find the below resolution rescinded and scheduled for January 21, 2009 public hearing.

**Old Business #1 Town Board to Approve the Conservation Easement for Timothy Roberts** \*RECEIVED 12/3/08

1) 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 approve the Conservation Easement for Mr. Timothy Roberts, 6350 Cole Road, 8.7 acres of land, Zoned A-1, as recommended by the Conservation Board.

**The resolution was unanimously adopted.**

**Old Business #2 Western NY Pediatrics, 5800 Big Tree Road, Approve Building Permit**

2) 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 approve the request from Western New York Pediatrics, 5800 Big Tree Road, Zoned I-1 for a building permit for an 8,000 sq. ft. parking lot expansion as an addition to the existing 17,000 sq. ft. parking area for a total of 61 parking spaces based on the site plan received on 10/16/08, as recommended by the Planning Board 11/12/08, with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Long EAF, Parts One and Two and a Negative Declaration is declared.
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lens

- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
- Town Engineering Approval was granted on 11/12/08.
- A Landscape Bond of \$5,450.00 in accordance with the Conservation Board Minutes shall be provided for the approved Landscape Plan, which includes 10% green space, prior to the receipt of a Building Permit.

**The resolution was unanimously adopted.**

**Old Business #3 Designation of Historic Property located at 7295 Jewett Holmwood Road (Tabled):** Town Board to consider the designation of the "Harry Yates" main barn, the attached two ceramic silo structures and site located at 7295 Jewett Holmwood Road as a Historic Landmark. (Public Hearing August 20, 2008)

Councilwoman Ackerman & Councilman Kaczor stated that the reason this item is being tabled this evening is that the Town Board needs to meet with the Attorney who has been retained to represent the Town in this matter.

**Old Business #4 Traffic Order "15 MPH School Zone" to be Posted Near Eggert Road School**

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

**WHEREAS**, upon recommendation of the Traffic Safety Committee and pursuant to the authority granted by Section 1662-A of the Vehicle and Traffic Law of the State of New York, and

**WHEREAS**, at a meeting of the Public Safety Committee, 10/21/08, a request from Dwight Mateer, 36 Hobby Lane, for two "15 MPH School Zone" signs by the Eggert Road Elementary School was discussed.

**NOW, THEREFORE, it is hereby**

**ORDERED**, the posting of two (2) "15 MPH School Zone" signs at the Eggert Road Elementary School on Eggert Road, and be it further

**ORDERED**, that the Orchard Park Highway Superintendent is hereby directed to post the proper and necessary signs indicating the area speed limit on the above referenced highway.

**The resolution was unanimously adopted.**

**New Business #1 Appointment of Members to the Orchard Park Comprehensive Plan Committee**

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

**RESOLVED**, that the Town Board does hereby appoint Planning Board Member John Bernard and Zoning Board of Appeals Member Richard Zajac to the Orchard Park Comprehensive Plan Implementation Committee.

The appointment process has now been completed with these two appointments for the Orchard Park Comprehensive Plan Implementation Committee.

**The resolution was unanimously adopted.**

**New Business #2 Appointments to the Orchard Park Recreation Department**

5) 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 following appointments to the 2008/2009 "Seasonal" Staff of the Orchard Park Recreations Department, dependent upon the applicant providing the required certifications, as recommended by the Recreation Director.

<b>Name</b>	<b>Address</b>	<b>Position</b>	<b>Rate</b>
Jim Crow	8 Creekside Drive	PT6-D (Att.)	\$15.00
Tina Reed	61 Rolling Hills Drive	PT2-B (Att.)	\$9.00

**The resolution was unanimously adopted.**

**New Business #3 Village of Orchard Park Request to use Town Property for "Holiday in the Park"**

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

**RESOLVED**, that the Town Board does hereby approve the request from The Village of Orchard Park for the use of Town owned property, East of the Orchard Park Railroad Depot, for their Annual "Holiday in the Park" Celebration, December 6 & 7, 2008 through to January 7, 2009, to display the decorated trees, and be it further

**RESOLVED**, a Certificate of Liability Insurance has been filed with the Town Clerk.

**The resolution was unanimously adopted.**

**New Business #4 Village of Orchard Park Request Use of Town Hall for 2009 Village Elections**

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

**RESOLVED**, that the Town Board does hereby approve the request from the Village of Orchard Park to use the basement conference room at the Town of Orchard Park Municipal Center, 4295 S. Buffalo Street, for the upcoming Village Elections, Wednesday, March 18, 2009, from 12:00 Noon to 9:00 PM.

**The resolution was unanimously adopted.**

**New Business #5 Supervisor to Submit Application to NYS Office of Parks & Recreation for Grant**

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

**WHEREAS**, per the November 12, 2008 Town Board Work Session, the Engineering Department with Lucy Curley (Grant Writer) have prepared an application for the New York State Office of Parks, Recreation and Historic Preservation's Recreational Trails Yates Park Grant for Yates Park, and

**WHEREAS**, this grant will, if awarded, help significantly fund the construction of a handicapped accessible trail that will connect the Town's Yates Park, Orchard Park neighborhoods and other recreational amenities with Thorn Avenue, Duerr Road, Bank Street and South Buffalo Street, as well as the Duerr Road, Thorn Avenue and South Buffalo Street Greater Buffalo Niagara Regional Transportation Commission bike routes.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to submit an Application to the New York State Office of Parks, Recreation and Historic Preservation requesting \$195,000 to construct a handicapped accessible trail that will connect the Town's Yates Park, Orchard Park neighborhoods and other recreational amenities with Greater Buffalo Niagara Regional Transportation Commission bikeway, and be it further

**RESOLVED**, grant funds will be matched by the town with \$48,000, in cash and \$7,000, in in-kind services or 22% of the total project cost of \$250,000, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #6 Supervisor to Send Letter to New York State Department of Transportation**

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

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to send a letter to New York State Department of Transportation for the placement of a ***"Do Not Block Side Road"*** at the entrance of the Crossroads Plaza and The Hammocks Development off of North Buffalo Road, so that emergency vehicles can have access, as recommended by Public Safety Committee.

**The resolution was unanimously adopted.**

**New Business #7 Town Clerk to Publish Notice for Town of Orchard Park Fiscal Affairs**

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

**RESOLVED**, that the Town Board does hereby authorize the Town Clerk, Pursuant to §35 of the General Municipal Law, a publish a Public Notice in the official newspaper of the Town, stating the New York State Office of the State Comptroller has completed and filed with the Town the report of examination of the fiscal affairs of the Town of Orchard Park for the audit "Building Energy Program".

**The resolution was unanimously adopted.**

**New Business #8 Release \$2,000 held in Escrow for the Excavation Permit #2007-02**

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

**WHEREAS**, the Engineering Department has received from Mr. Jack Bertsch, 3895 North Buffalo Street, Orchard Park, a request to return his \$2,000.00 cash security held in lieu of security bond for Excavation Permit No. 2007-02 for the placement of 1,700 cubic yards for decorative berms construction on his vacant property near North Buffalo Street and Webster Road, and

**WHEREAS**, the Excavation Permit has now expired and all work has been completed to Town standards. The fill was generated from his own site work at Polymer Conversions at 5732 Big Tree Road.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Town Clerk to release the \$2,000 cash security held for the Excavation Permit #2007-02 for the vacant property at North Buffalo Street and Webster Road to Jack Bertsch, 3895 North Buffalo Street, in the Town of Orchard Park, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #9 Refer to the Planning Board and/or Conservation Board**

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

**RESOLVED**, that the Town Board does hereby refer the following item to the Planning Board and/or Conservation Board: Woodbridge Contracting seeking to have property located at 5285, 5287 and 5255 Chestnut Ridge Road, on the East side of Chestnut Ridge Road, rezoned from Special Exception Use R-3 Medical Office to Special Exception Use R-3 Multi-Family Townhouses.

**The resolution was unanimously adopted.**

**New Business #10 & 11 Refer to the Public Safety Board**

**13) 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 refer the following items, listed on the agenda, to the Public Safety Committee:

- Robin Testa from Lake Avenue requesting a "Slow/Children at Play" sign placed in her neighborhood due to the children in the area and the speed on Lake Avenue.
- Judy Johannsen from Bridle Path requesting a "Stop" sign placed on Fairway and Midway at the intersection with Bridle Path due to traffic congestion.

**The resolution was unanimously adopted.**

**Business from the Floor**

**Kathryn Gorkiewicz** – Ms Gorkiewicz stated that the proposed Wal-Mart in Orchard Park is only a little over 2,000 sq. ft. bigger than the existing one a few miles away. She also requested the Wal-Mart DEIS be put on the Town website.

**Bill & Sue Brennan** – Mr. & Mrs. Brennan would like the Town to have a moratorium on the trapping and killing of the beavers in Birdsong Park, so that they could explore relocating the beavers to Beaver Meadow in Java.

**Ann Bergantz, Chairwoman of the Trails Task Force & a member of the Erie Cattaraugus Rails Trail, & Mark Romanowski, Acting Counsel for the Erie Cattaraugus Rail Trail organization** - They stated the organization is formed by residents in the communities along the Pittsburg-Buffalo Railroad line and is currently trying to do community outreach and open their doors to the individuals who live along this line. A website ([www.ecattrail.org](http://www.ecattrail.org)) was created to help people understand the process and what is happening.

The following individuals spoke in favor of the Rails Trails, with their following comments:

**Berdet Latimore  
John Biblin  
Rick LeFeber**

**Dave Selig  
Dwight Mateer**

**Judy Selig  
Howie Holmes**

**Peter Accetta  
Doug Miller**

- There are trails in communities all over the United States and in many European Countries and several of the people who spoke in favor have lived in areas where there were trails, and the trails were a great asset to the community and drew a lot of people to the area.
- To try to get that much land between towns to develop trails would be impossible now, this is an opportunity that should not be squandered, as we will never have this chance again.
- The corridor is already there, and is more dangerous as an abandoned rail than a developed trail.
- The people who live along the rail line experience problems now, developing a trail may help keep some of the crime down.
- The communities that had trails in them continued to develop more trails as they were a positive influence and the home values increased.
- It is a vital link where people can bike, walk, skate, etc., without worrying about vehicles.
- It keeps potential infrastructure intact.

The following individuals spoke against the Rails Trails in Orchard Park, with their following comments:

**Greg Haskell,  
Laura Davis Walber  
Sharon Azuring  
Chris Mikulec  
Michelle Wright  
Jeff Owczarczak  
Greg Tomani**

**Jacqueline Alberts  
Jeffery Walber  
Franklin Thompson  
Don Larson  
Renee Wall  
Richard Lofgren  
Paul D'Oshroph.**

**Steve Rachic  
Tom Pieczyniski  
Adam Zaccardi  
Damien Redlinski  
Barbara Lesh  
Joyce Wessel**

**Tom Johnson  
Marlene Davis  
John Marlow  
Alan Kroll  
Carolyn Cappola  
Ron Wessel**

- Only people who live along the railroad line should have input into this project, as they have everything to lose.
- Fears for children and women, safety will be compromised, will not feel safe in own home.
- Remote public area, as opposed to an open area.
- There will be trespassing, noise, trash and destruction of private property, which has already taken place on the properties next to the abandoned rail road line.
- Destruction of natural environment.

- Devaluation of property.
- Not enough research, or due diligence has been done, this is a major project, with major implications which needs to be diligently scrutinized, with all information available to the public.
- Security, Maintenance and Liability issues.
- There will be contamination from the reconstruction process, what will the remediation consist of, and who will have to pay for it.
- Bought home for tranquility and peace of mind, not to have it directly connected to a public access.

**Jack Bouquin, Representative for the West Falls Conservation Society** – He stated that if the Rails to Trails comes to fruition, it may adversely impact the recreational opportunity offered at the Conservation Society which has been there since 1941. The trap fields are adjacent to the rail line, and they shoot across it. If the Trail line does come through, it will negatively affect their club.

**Adam Zaccardi, IV – 3<sup>rd</sup> Year Cub Scout** - He stated that he had a solution. Orchard Park can form a not for profit group to purchase the railroad line from the Depot to the Stadium and put in a signature trail. The Industrial Parks near Target can purchase that portion, and the rest could be purchased by the land owners whose property adjoins the rail line. Rails to trails would be easier, but anything good is not easy.

**Howie Holmes** – Mr. Holmes said it was quite nice to go through the election season without having the signs in Orchard Park. He stated that he would like to see the beavers relocated from Birdsong Park, as they are doing serious damage.

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

14) 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 following Budget Transfer for the Maintenance Department:

\$ 5,000.00                      From: A.1620.0422  
    To:     A.1620.0405

**RESOLVED**, that the Town Board does hereby authorize the following Budget Transfer for the Planning Department:

\$100.00                      From: B.8010.0413 Travel & Conference  
    To:     B.8010.0440 Office Supplies

**RESOLVED**, that the Town Board does hereby authorize the following Budget Transfer for the Building Department:

\$333.20                      From: B.3620.0412 Mileage reimbursement  
    To:     B.3620.0445 Vehicle repair & maintenance

\$49.79                      From: B.3620.0202 Safety inspection vehicle  
    To:     B.3620.0413 Travel & Conference

**RESOLVED**, that the Town Board does hereby authorize the following Budget Transfer for the Highway Department:

\$3,000.00	From: A.7110.0238 Parks – Lake Water Quality To: A.7110.0402 Parks - Supplies
\$647.47	From: A.7110.0423 Parks - Water To: A.7110.0425 Parks Portable Bathrooms
\$1,160.00	From: A.7110.0445 Parks – Vehicle Repair To: A.7110.0477 Parks – Contract Mowing
\$11,5000.00	From: DA.5130.0200 Machinery - Hwy Equipment To: DA.5110.0472 Highway – Stone, Gravel
\$500.00	From: DA.5130.0200 Machinery – Hwy Equipment To: DA.5110.0473 Ready Mix Manholes
\$10,000.00	From: DA.5130.0200 Machinery – Hwy. Equipment To: DA.5130.0419 Machinery – Other Expenses
\$1,667.00	From: A.7110.0215 Parks Equipment To: A.5132.0445 Highway Garage – Building Maintenance

**The resolution was unanimously adopted.**

Councilwoman Ackerman stated that the proposed work on the Library has begun, and the public has handled the inconveniences quite well. She stated that there has been quite a bit of work done regarding the Orchard Park North Buffalo Overlay District that the Town would like to implement. Its main purpose is to maintain and enhance the unique character of North Buffalo Road from Southwestern Boulevard to the north Village line in keeping with its small-town character. An ordinance has been written which will incorporate the development of an Architectural Review Board.

**15) 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 authorize a Public Hearing, to be held by the Town Board of the Town of Orchard Park, Wednesday, December 17, 2008 at 7:00 PM (local time) at the Orchard Park Municipal Center, S4295 South Buffalo Street, Orchard Park, New York, regarding a Proposed Local Law for the Year 2008: This local law provides for the adoption of the “North Buffalo Street Architectural Overlay District” Legislation, and be it further

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

**The resolution was unanimously adopted.**

Councilman Graber announced that the Village is hosting the Holiday in the Park celebration, on Saturday December 6<sup>th</sup> and all are welcome to attend this fun event.



Councilman Kaczor thanked everyone who participated in the special Historic Preservation event held at the Quaker Meeting House last evening. Julian Adams, the liaison for the NYS Dept. of Recreation & Historic Preservation, gave a very informative program showing the benefits of Historic Preservation and dispelled some of the myths associated with the Historic designation.

Councilman Dietrick stated that with the concerns presented tonight regarding the Rails to Trails movement, he feels that this should be more thoroughly evaluated at a future work session.

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

**WHEREAS**, companies would like to contribute to and support activities in our Recreation Department, but they are not allowed to donate directly to Town or any types of government, and

**WHEREAS**, the Town needs to create a Not-for-Profit organization to receive funds that would support the recreation department, and

**WHEREAS**, in order to complete that process an application needs to be submitted to the Internal Revenue Service to create a "501C3" corporation,

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby retain Bevilacqua & Co. CPA., PC to complete the work to create the "501C3" corporation for the Town of Orchard Park at a sum not to exceed \$1,000.00

**The resolution was unanimously adopted.**

Highway Superintendent Fred Piasecki stated that he will contact the DEC tomorrow regarding the Beaver Trapping permit for Birdsong to see if anything else can be done.

**17) 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 #22 following auditing by members of the Town Board and in the funds indicated:

<b>General Fund</b>	\$ 62,674.49
<b>Part Town Fund</b>	\$ 1,779.20
<b>Risk Retention</b>	0
<b>Cemetery Fund</b>	0
<b>Highway Fund</b>	\$89,560.49
<b>Special Districts</b>	\$ 129,936.38
<b>Trust &amp; Agency</b>	\$ 366.40
<b>Capital Fund</b>	\$ 12,262.40

**The resolution was unanimously adopted.**

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

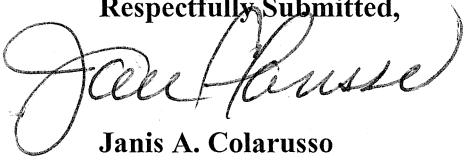
**RESOLVED**, that the Town Board does hereby receive and file the following Communications listed on the agenda: NYS Department of Public Service: announcement launching a public awareness campaign called "HeatSmartNY" which provides one-stop shopping where consumers can learn about simple tips to cut energy usage, save money and offers programs to help manage energy bills. For more information go to; [www.HeatSmartNY.org](http://www.HeatSmartNY.org), and be it further

**RESOLVED**, that the Town Board does hereby receive and file the following Reports listed on the agenda: Building Inspector's Monthly Report and Building Permits for October 2008.

**The resolution was unanimously adopted.**

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilman Graber, to wit, the meeting was adjourned at 9:08 PM (local time).

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Janis A. Colarusso".

**Janis A. Colarusso**  
Town Clerk