

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 3rd day of December 2008 at 7:00 PM. The meeting was called to order by the Supervisor and there were:

PRESENT AT ROLL CALL:	Mary Travers Murphy	Supervisor
	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
Absent:	Nancy Ackerman	Councilwoman

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."*

Presentation for the Orchard Park High School State Champions

This evening the Town Board honored the Orchard Park School State Champions for the Class A Volleyball Team, and the Class AA Football League. Councilman Dietrick stated both these teams competed in the New York State Public High School Athletic Association and they both finished the season with a perfect undefeated records which resulted in both teams ranking #1 for Western New York and New York State. John Corto, a linebacker for the Buffalo Bills Football Team and an Orchard Park graduate of 2003 who participated in football and lacrosse, assisted in the presentation. Councilman Dietrick introduced the Volleyball Coaches Walt Stefani and Matthew Lexner and the Football Head Coach, Gene Tundo and Assistant Coaches, Bob Ferrentino, Steve Ferrentino, Dave Bonecquisti, and Will Theil along with the Athletic Director, Jim Higgins. Councilman Dietrick finished with the following resolutions:

1) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION WITH A UNANIMOUS SECOND BY THE TOWN BOARD, TO WIT:

WHEREAS, the Orchard Park Boys Volleyball Team competes in the New York State Public High School Athletic Association, and

WHEREAS, the Orchard Park Boys Volleyball Team competes in the Class A Volleyball League, and

WHEREAS, the Orchard Park Boys Volleyball Team is coached jointly by both Mr. Walt Stefani and Mr. Matthew Lexner, and

WHEREAS, the Orchard Park Boys Volleyball Team finished the season with a perfect undefeated record of 34 wins and 0 losses, and

WHEREAS, the Orchard Park Boys Volleyball Team was ranked #1 in both Western New York and New York State Polls, and

WHEREAS, the Orchard Park Boys Volleyball Team competed for, and won, the New York State, Class A, Boys Volleyball Championship.

NOW, THEREFORE, be it

RESOLVED, that the Town of Orchard Park, its residents, and our entire community takes this time to acknowledge and congratulate the *Orchard Park High School Boys Volleyball Team*, their coaches, their support staff, the school administration and their parents for their State Championship and for the way they have represented Orchard Park both on and off the court.

The resolution was unanimously adopted.

2) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION WITH A UNANIMOUS SECOND BY THE TOWN BOARD, TO WIT:

WHEREAS, the Orchard Park Football Team competes in the New York State Public High School Athletic Association, and

WHEREAS, the Orchard Park Boys Football Team competes in the Class AA Football League, and

WHEREAS, the Orchard Park Boys Football Team is coached by Head Coach Gene Tundo and Assistant Coaches, Bob Ferrentino, Steve Ferrentino, Dave Bonecquisti, and Will Theil, and

WHEREAS, the Orchard Park Boys Football Team finished the season with a perfect undefeated record of 13 wins and 0 losses, and

WHEREAS, the Orchard Park Boys Football Team was ranked #1 in both Western New York and New York State Polls, and

WHEREAS, the Orchard Park Boys Football Team competed for, and won, the New York State, Class AA, Boys Football Championship.

NOW, THEREFORE, be it

RESOLVED, that the Town of Orchard Park, its residents, and our entire community takes this time to acknowledge and congratulate the *Orchard Park High School Boys Football Team*, their coaches, their support staff, the school administration and their parents for their State Championship and for the way they have represented Orchard Park both on and off the field.

The resolution was unanimously adopted.

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

RESOLVED, that the minutes of the Meeting of the Town Board held on September 3, 2008, October 15, 2008, November 5 & 19, 2008 & Special Meeting Minutes for November 12, 2008, as presented by the Town Clerk, are hereby approved, and be it further

RESOLVED, that the reading of these minutes be dispensed with as each member of the Town Board has previously received copies thereof.

The resolution was unanimously adopted.

PUBLIC HEARING

At 7:15 PM, the advertised time, the Supervisor called for the Public Hearing to hear all interested persons for or against an Amendment to the Zoning Ordinance of the Town of Orchard Park for a Special Exception Use in a B-1 Zone at Quaker Crossing East Out-Parcel, for a 6,100-6,500 sq. ft. restaurant.

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

At this time the Supervisor opened the Public Hearing to hear all interested persons for or against the Proposed Special Exception Use.

Spoke in favor: Attorney Robert Walsh, who represents the developer for Quaker Crossing East, Out-Parcel, discussed the need for the permit and gave highlights about the restaurant and the parking configuration. He believes this project will be an asset to Quaker Crossing and asked the Town Board to consider the Special Exception Use Permit.

Spoke in opposition: The following individuals commented at the public hearing and gave their opinions which are listed below:

John Marlow

Kathryn Gorkiewicz (statement submitted)

Ron Stadelmaier (statement submitted)

Jim Crow

Louis Boehm

- Planning Board voted against this proposal 3 to 1 at the October 8, 2008 meeting.
- The all-way stop at Quaker Crossing is a difficult intersection and will eventually need improvements
- There is a shortage of 152 parking spaces for the new restaurant and it would be wrong to rely on the Ashley Furniture lot, since businesses can relocate or close.
- The "Black Friday" shopping day is not a typical occurrence and is not an adequate measure for heavy traffic patterns on a normal weekend.
- This building is much bigger than the other restaurants in the plaza and won't have room for any landscaping.
- Impact with vehicle traffic in the surrounding areas.
- Impact with pedestrian (foot traffic) at Quaker Crossing.
- NFTA and daily Metro Bus service issue unresolved for drop off in the plaza.
- Against changing rezoning law.

All statements submitted to the Town Clerk were copied and given to all Town Board Members.

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

RESOLVED, that the Public Hearing in the matter of the application for a Special Exception Use at Quaker Crossing East, out-parcel, located in a B-1 Zone, for a 6,100-6,500 sq. ft. restaurant, is hereby closed at 7:27 PM (local time).

The resolution was unanimously adopted.

Adoption of Special Exception Use at Quaker Crossing East, Out-Parcel; Buffalo Wild Wings

5) 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 approve a Special Exception Use Permit for Quaker Crossing East, out-parcel, Zoned B-1, for 6,100-6,500 sq. ft. restaurant, in the Quaker Crossing East Out-Parcel, near the entranceway along Amelia Drive, Zoned B-1, based on the submitted letter of intent received on 9/9/08. The Planning Board, 10/14/08, recommends the Town Board approve the request with the following conditions and stipulations:

- This is an Unlisted SEQR Action based on the submitted Short EAF, Parts One and Two and a Negative Declaration is declared.
- Fees shall be paid in accordance with §144-70C, of the Town Code prior to publication of the Public Hearing Notice.
- The recommendation is contingent upon the applicant completing the project as proposed in the letter of intent received on 9/9/08, and shall revert to its original Zoning Classification if the project is not completed per §144-67 of the Town Code.
- The applicant has demonstrated a need for the project.
- The project is compatible with adjoining land uses and proposed developments and will not have a negative impact on the adjacent land value or public safety.

Supervisor Murphy stated she would be not be voting for the Special Exception Use Permit. She stated there are still issues that need to be resolved in Quaker Crossing; parking, sidewalks, the 4-way stop signs, traffic congestion, shelter/buses, and pedestrian safety. The Supervisor also believes the petitioner, Jerry Buchheit, refuses to allow the NFTA buses to come onto his commercial property claiming it is not pedestrian friendly. She finds it difficult to grant him a Special Exception Use Permit when she believes he has not been cooperative in attempting to insure the safety of the passengers who work, shop and dine at the plaza.

Councilman Dietrick stated he believes the Supervisor is trying to link the NFTA to this project. He stated that the NFTA, NYSEG, National Fuel and New York State all have restrictions and it is not fair to put the burden on the property owner. He stated we should solve some of these problems with these other organizations and the Town Board can start with the NFTA. Councilman Dietrick stated that Target never even asked the NFTA to make a stop in this plaza.

Councilman Kaczor stated that this particular development was never meant to be a pedestrian mall. Councilman Kaczor stated this is an "open air mall" and it is meant to be a destination place. It was not designed for people to be walking from store to store and it was not designed for sidewalks. He stated that engineering believes it would only create a greater hazard to add sidewalks now with the current structure. He stated he is still concerned about the bus situation and the NFTA, but stated that the bus concern and this request are separate issues.

The following resolution resulted in a roll call vote, which resulted as follows:

Supervisor Travers Murphy	Nay
Councilwoman Ackerman	Absent
Councilman Kaczor	Aye
Councilman Dietrick	Aye
Councilman Graber	Aye

The resolution was duly adopted.

Old Business #1 Schedule Public Hearing for a Conservation Easement 6350 Cole Road

6) 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 authorize the Town Board to rescind resolution #1 under old business from the 11/19/08 Town Board Meeting Minutes, and be it further

RESOLVED, that the Town Board does hereby schedule a Public Hearing for Wednesday, January 21, 2009 for a 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.

New Business #1 Schedule Bid Opening for One New ½ Town Pick-Up Truck/Recreation Dept

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

RESOLVED, that the Town Board does hereby authorize the Orchard Park Recreation Director to receive sealed bids for one (1) "New ½ Ton Pick-Up Truck" for, Wednesday, December 17, 2008, at 11:00 AM, in the Supervisor's conference room, at the Municipal Center, 4295 S. Buffalo Street, in the Town of Orchard Park, and be it further

RESOLVED, that the Town Board does hereby authorize the Town Clerk to put due notice in the official paper of the Town.

The resolution was unanimously adopted.

New Business #2 Appointment of Joe Kadi to Detective of the Orchard Park Police Department

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

RESOLVED, that the Town Board does hereby approve the appointment of Officer Joseph S. Kadi, to the vacant position of Detective, with the rate of pay that is described in the Collective Bargaining Agreement between the Town of Orchard Park and the Orchard Park PBA, effective December 6, 2008, as recommended by the Chief of Police.

Police Chief Benz gave Joe's history of 19 years as a member of the Orchard Park Police Department. He is a firearms instructor, field training officer, member of the Emergency Response Team and senior team leader. Chief Benz stated that he was confident that Joe will do a great job and is looking forward to Joe bringing his experience and work ethic to the Detective Bureau. Joe introduced his wife, Sherry, his stepson, Justin and his parents Gene and Barbara. Joe's daughter, Joelle, was not present as she was participating in a Junior Varsity Basketball game. Detective Lieutenant, Pat McMaster, was also present in the audience.

The resolution was unanimously adopted.

New Business #3 Promotional Appointment of Thomas Ostrander to Asst. Municipal Engineer

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

WHEREAS, at the October 29, 2008 Town Board Work Session, the Town Board approved the filling of the Assistant Municipal Engineer position by promotion. Erie County Department of Personnel prepared an open competitive examination and Civil Service List for Assistant Municipal Engineer which Thomas Ostrander, Junior Engineer of the Engineering Department is currently ranked number one, and

WHEREAS, due to the Department work load and the need to use Thomas Ostrander to perform out of title work, Dave Yates only working part time due to retirement, a request to fill the position was made, and

WHEREAS, a candidate must be a graduate from a regionally accredited or NYS registered college or university with a Bachelor Degree in Engineering and three years of experience in engineering, one year of which must be in a supervisory capacity, and

WHEREAS, an **Assistant Municipal Engineer** supervises and performs engineering duties and liaison work in connection with the design, construction and maintenance of municipal projects; assists in planning projects; supervises the preparation of special district maps (water, sewer, drainage, refuse, lighting, park) and suggests financing for same; supervises the preparation of descriptions for special districts; supervises the preparation of reports and estimates for districts; advises assessors on special district cost distribution; designs sanitary sewer systems and storm drainage systems and other municipal projects makes applications for government projects; monitors construction projects; advises on maintenance projects using sound engineering practices; computes engineering data; supervises the preparation of engineering drawings and specification for municipal projects; acts as engineer in charge on minor construction projects; designs minor heating, ventilating, electrical, plumbing, recreation and architectural projects, and

WHEREAS, Mr. Ostrander has thirteen years experience in Civil Engineering related work in the private sector and an additional four year in the management and completion of various projects in this Department since April 1, 2004 as a Junior Engineer. Thomas Ostrander has accepted the challenge of the added duties and responsibilities of this position with enthusiasm and has performed his assignments with diligence and effectiveness. Throughout his four years of service with the Town, Thomas Ostrander has proven to be a dedicated and dependable employee.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby approve the change in the Civil Service Classification for Mr. Thomas Ostrander, 16 Hazel Court, West Seneca, NY 14224, to the promotional appointment of the position of Assistant Municipal Engineer in the Orchard Park Engineering Department at the Job Class 32 salary, Step A of non-union wage schedule effective January 1, 2009 and pending meeting all Civil Service rules and regulations, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #4 Eagle Heights Subdivision Part 8, Phase 2, PIP 2008-01, Release of Escrow

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

WHEREAS, on September 17, 2008, the Town Board accepted dedication of the public improvements constructed in the above referenced subdivision with the stipulation that funds paid by the developer be held in escrow until that work was completed, and

WHEREAS, the developer has since installed the required decorative street lighting and completed 95% of the landscaping on Redbrick Road and the portion of Hearthstone Terrace constructed within this phase. The work was inspected by the Engineering Department and found to be in compliance with Town specifications; except for the following: consolidation of topsoil/fill piles into two respective piles, proper grading & seeding to achieve 1 on 2 embankment slopes for transition between the right-of-way & sublots, seeding catch, and

WHEREAS, the Town of Orchard Park is retaining \$2000 in escrow until the final grading and seeding can be completed in the spring.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the Town Clerk to release to Cimato Brothers Construction, Inc., 9220 Transit Road, East Amherst, New York 14051, the \$28,000 held in escrow for the installation all light poles, fixtures, conduits and wiring, and \$22,000 of the \$24,000 held in escrow for the completion of topsoiling, seeding & grading for Eagle Heights Subdivision Part 8, Phase 2, PIP #2008-01, as recommended by the Town Engineer.

The resolution was unanimously adopted.

Business from the Floor

Sal Cerrone – He questioned why there are owned roads on private properties, such as at Quaker Crossing and the proposed Wal-Mart. He stated that these stores have a corporate responsibility and wondered about the proposed Walmart.

Don Larson – He opposes the Rails to Trails and showed pictures of signs and barricades at Green Lake and Birdsong Park that are contrary to welcoming visitors from other towns.

Louis Boehm – He is in favor of the Rails to Trails. He stated he has used numerous bike paths over the past 30 years and has never witnessed any remarkable event. (statement submitted)

Joe Owczarczak – He stated the Rails to Trails would negatively impact the community in terms of cost and safety factors i.e.: Jewett Holmwood Road. Especially the problems with the bridge overpass over South Buffalo Road and the costly repairs to the bridge. He stated the Country Club is dangerously close to the proposed trail and would need a barrier.

Jacqueline Alberts – She stated that the Town's responsibility is to make sure that the research is true and exact in regard to the Rails to Trails. Ms. Alberts wants to be sure that wildlife and the residents are considered in the Rails to Trails decision. (statement submitted)

Stephen Ratchuk – He read a list of statistics regarding the reasons why children do not effectively use the many facets of physical recreation available to them in his objection to the Rail to Trails. (statement submitted)

Franklin Thompson – He is against the Rails to Trails and would rather have it used as a recreation train system.

Valerie Will – She stated that there is a better way than trapping to control the beavers for damages at Birdsong Park. It would be more humane and cost effective. She asked the Town Board to set up a policy when there is a problem with wildlife in the Town, to contact people to guide them, such as the DEC Humane Society, NYS Wildlife Watch or a local organization.

Ron Guido – He supports the Rails to Trails and believes it would offer opportunities not currently available and the benefits would significantly outweigh the cost, especially if everyone worked together.

Jack Bouquin – He lives in Colden and lives 20' from the rail bed. When the train was running, it was not problematic, but there was trespassing once they stopped. He stated that it could be rail banked and kept available for a potential rapid transit system in the future. There are many other alternatives for recreational use.

Patrick Keem – He is in opposition to the Rails to Trails. He stated that the residents living in close proximity to the trails are concerned for the safety of their young children, wildlife, snowmobiles and noise. Mr. Keem commented on the differences in shopping malls and felt that Quaker Crossing is not a pedestrian mall and should be handled as such.

John Marlow – He stated that the Eagle Heights trail was rescinded for the same reasons that have been brought up with the Rails to Trails. These concerns have not been addressed and wondered why the Town Board passed this resolution. He encouraged the Town Board to consider alternative modes of energy efficiency. He asked that the Town Board consider with the next budget, a 100% market reassessment for the real estate in Orchard Park, since it hasn't been done in 18 years.

Kathryn Gorkowicz – She stated in regard to Quaker Crossing, the utility right-of- ways should have addressed years ago, when the buildings were built and should have been taken into consideration at that time.

Allison Mann – She is opposed to the Rails to Trails because of safety and privacy issues.

Howie Holmes – He stated that the Birdsong Park is far from a fiasco.

Ron Wessel – He presented a disc to the Town Board which has all of the files that were used in the Town of Amherst to defeat the extension of the *Peanut Line*. (submitted disc)

Greg Tomani – He presented an informational binder to the Town Board against the Rails to Trails. He asked that the Town Board consider a new resolution in opposition. (submitted binder)

All statements submitted to the Town Clerk are copied and given to all Town Board Members.

Elected Officials & Department Heads

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 following Budget Transfer(s) for the *Town Clerk*:

\$ 158.35	From: A.1410.0200	Office Equipment
	To: A.1410.0419	Other Expenses

RESOLVED, that the Town Board does hereby authorize the following Budget Transfer(s) for the *Superintendent of Highways*:

\$ 220.00	From: A.5132.0422	Hwy. Garage-Gas
	To: A.5132.0455	Hwy. Garage-Bldg. Maint.
\$ 212.00	From: DA.5130.0200	Machinery-Hwy. Equip.
	To: DA.5130.0419	Machinery-Other Expenses
\$ 461.00	From: A.7020.0423	Parks-Water
	To: A.7110.0402	Parks-Supplies

RESOLVED, that the Town Board does hereby authorize the following Budget Transfer(s) for the *Town Engineer*:

\$ 2,500.00	From: 001.8346.250	General Equipment
	To: 001.8346.475	Gasoline

RESOLVED, that the Town Board does hereby authorize the following Budget Transfer(s) for the *Recreation Director*:

\$ 14,000.00	From: A.7020.149	Recreation Personnel
	To: A.7020.433	Special Events

The resolution was unanimously adopted.

Councilman Kaczor announced the *Holiday in the Park* to be held on Saturday, December 6, 2008, from 4:00 PM to 7:00 PM at the Orchard Park Library and Train Depot. The *Breakfast with Santa* will be held on December 13, 2008, from 9:00 AM to 12:00 PM at the Orchard Park Fire Hall, sponsored by the Recreation Department and Verizon.

12) 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 #23 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$ 808,114.03
Part Town Fund	\$ 35,758.38
Risk Retention	0
Cemetery Fund	0
Highway Fund	\$ 243,603.15
Special Districts	\$ 527,317.37
Trust & Agency	\$ 15,786.96
Capital Fund	\$ 44,527.26

The resolution was unanimously adopted.

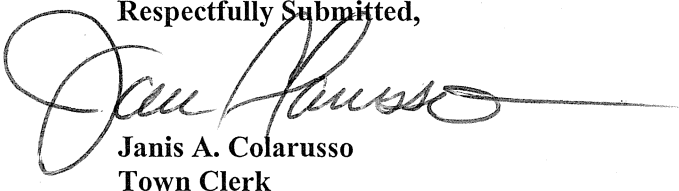
13) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN KACZOR, WHO MOVED ITS ADOPTION, SECONDED BY SUPERVISOR TRAVERS MURPHY, TO WIT:

RESOLVED, that the Town Board does hereby receive and file the following Communications listed on the agenda: **Town of Marilla, Town of Clarence and the Town of Brant**: Sent resolution(s) supporting the Cooperative Extension and the Erie County Soil & Water Conservation District who provide important services to the communities of Erie County, which services are key to maintaining the economic and environmental health of the rural communities, and **Verizon Wireless**: Sent a letter stating rates will be increasing for certain services in 2009.

The resolution was unanimously adopted.

There being no further business, on motion by Supervisor Travers Murphy, seconded by Councilman Graber, to wit, the meeting was adjourned at 8:28 PM (local time).

Respectfully Submitted,



Janis A. Colarusso
Town Clerk