

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 5th day of January 2011 at 7:00 PM, the meeting was called to order by the Supervisor and there were:

| | | |
|------------------------------|-------------------------|------------------------|
| PRESENT AT ROLL CALL: | Janis Colarusso | Supervisor |
| | Nancy Ackerman | Councilmember |
| | David Kaczor | Councilmember |
| | Edward Graber | Councilmember |
| | Eugene Majchrzak | Councilmember |
| | Carol Hutton | Town Clerk |
| | Leonard Berkowitz | Town Attorney |
| | Andrew Geist | Building Inspector |
| | Andrew Benz | Chief of Police |
| | Frederick Piasecki, Jr. | Highway Superintendent |
| | Wayne Bieler | Town Engineer |

Supervisor Colarusso 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 COUNCILMEMBER ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER GRABER, TO WIT:

RESOLVED, that the Regular Town Board Meeting held on December 15, 2010 and the Executive/Special Session Meetings held on December 15 & 29, 2010 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.

New Business #1 Approve 2011 Winter/Spring Part-time Recreation Department Appointments

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

RESOLVED, that the Town Board does hereby approve the appointments of the following applicants as requested by Recreation Director Leak, dependent upon the applicants providing the required certifications:

| Name | Address | Rate | Position |
|------------------|----------------|-------------|-----------------|
| Kelly Forness | Amherst | \$15.00 | PT6-D (Att.) |
| Samantha Jemiolo | Orchard Park | \$ 8.50 | PT1-E (Att.) |
| Laura Berkley | Orchard Park | \$ 9.50 | PT2-D (Att.) |

The resolution was unanimously adopted.

New Business #2 Approve request of Building Inspector and his employee to attend Conference

3) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:

RESOLVED, that the Town Board does hereby authorize Building Inspector Geist and staff member, David Jensen, to attend the 2010 Niagara Frontier Building Officials Conference to be held January 24, 25, and 26, 2010 at the Millennium Hotel on Walden Avenue, Cheektowaga, NY. This is a 2010 budgeted item, therefore, the costs are covered.

The resolution was unanimously adopted.

New Business #3 Approve Pay Increase for the Orchard Park Senior Van Drivers

4) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER GRABER, WHO MOVED ITS ADOPTION, SECONDED BY SUPERVISOR COLARUSSO, TO WIT:

RESOLVED, that the Town Board does hereby authorize the increase of pay to the Orchard Park Senior Van Drivers for the Orchard Park Going Places Van from \$8.50/hr to \$8.75/hr. effective 1/01/2011.

The resolution was unanimously adopted.

New Business #4 Approve Final Change Order to Contract for Municipal Ctr. Renovations Project

5) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER MAJCHRZAK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER KACZOR, TO WIT:

WHEREAS, the Engineering Department is requesting approval of a Change Order to the contract with Watts Architecture and Engineering for asbestos and lead paint testing for the Orchard Park Municipal Center Renovations Project and the Orchard Park Municipal Center Roof Replacement Project in the amount of \$544.25. This would increase the total contract amount to \$1,619.25, representing an increase of 50.63%, and

WHEREAS, this change order is requested to perform changes in the work and additional work not covered under their contract. The additional work involves asbestos testing of roofing materials before proceeding with the Orchard Park Municipal Center Roof Replacement Project, and

WHEREAS, Watts Architecture and Engineering was contracted in June, 2010 to perform asbestos testing on the Board/Court Room window caulks and sealants prior to being replaced as a part of the Orchard Park Municipal Center Renovations Project, and

WHEREAS, the contract with Watts to perform Asbestos Bulk Sampling and Report for the Orchard Park Municipal Center Renovations Project was not to exceed \$1,075.00. The portion of the project totaled \$375.50, and

WHEREAS, the contract was extended to perform asbestos testing on roofing materials for the Orchard Park Municipal Center Roof Replacement Project. This portion of the contract totaled \$1,243.75. The total of both phases is \$1,619.25 which is \$544.25 over the original contract.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby approve the Final Change Order to our contract with Watts Architecture and Engineering, P.C. for the Orchard Park Municipal Center Asbestos Testing Contract in the amount of an increase of \$544.25, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #5 Appoint Part-time Engineer

6) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR COLARUSSO, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER GRABER, TO WIT:

WHEREAS, Michael T. Wilson has given written intent to retire on January 27, 2011 and a civil service exam for Assistant Civil Engineer was given on December 11, 2010 and to date a list is not available, and

WHEREAS, it was discussed at the October 27, 2010 work session, Michael T. Wilson has agreed to work for the Department for the next year part-time at his current rate of \$30.49 per hour. Michael has been with the Department for 36 years and is currently the Department's Assistant Civil Engineer. He has a thorough knowledge of the Town's buildings, highways, sanitary sewer, public water supply and street lighting systems as well as the Department's day to day operations. Michael has accepted the challenge and responsibilities of this position with enthusiasm and has performed his assignments with diligence and effectiveness throughout his career with the Town.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby appoint Mr. Michael T. Wilson, 7264 Cole Road, Colden, NY 14033, to the position of part-time Engineer (maximum 39 hours per pay period) in the Engineering Department at his current wage rate of \$30.49 per hour for one year, effective February 1, 2011, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #6 Authorize Payment of Hydrant Fee for Jewett Holmwood Road Project

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

WHEREAS, as requested by the Erie County Water Authority (ECWA), the Town of Orchard Park is required to pass a resolution to pay the hydrant fee amount upon acceptance of the Waterline project on Jewett Holmwood Road, and

WHEREAS, the total construction of the project will result in one (1) new hydrant being added to the existing seven hydrants on Jewett Holmwood Road.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the payment of hydrant fee amount upon acceptance of the Waterline Replacement project on Jewett Holmwood Road and associated hydrant per the lease management agreement between the Town of Orchard Park and the ECWA, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #7 Authorize Supervisor to Participate in Grant Application 2011-12 NYS Archives

8) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER GRABER, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:

WHEREAS, the Town of Orchard Park will participate in a 2011-2012 Shared Services grant from the New York State Archives through the Local Government Records Management Improvement Fund, a project to be lead by the Digital Towpath Cooperative.

NOW, THEREFORE, be it

RESOLVED, the Town Supervisor is hereby authorized to submit a letter of intent to participate in this project and to complete a Shared Service Agreement form confirming our long term commitment to use the electronic records management system that will result from the grant project.

The resolution was unanimously adopted.

New Business #8 RESOLUTION REGARDING P.B. FILE #07-09, PROPOSED WAL-MART SUPERCENTER, (VACANT LAND SOUTH SIDE OF MILESTRIP ROAD)

9) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER KACZZOR, TO WIT:

Councilmember Ackerman explained to the audience the process of the submission of the DEIS SEQR determination and read the comments of the Planning Coordinator and the other Town Boards which were involved.

The revised Draft Environmental Impact Study (DEIS) for the above project was submitted to this office on Thursday, December 9, 2010. SEQR requirements dictate that the Town Board, as the Lead Agency for this project, accept the document as complete or deem the document inadequate (incomplete) within 30-days of its receipt (Section 617.9(a)(2)(ii)). The Town Board should make a determination by January 8, 2011.

On March 17, 2010, the Town Board, by resolution, deemed the February 19, 2010, DEIS submitted by Wal-Mart as incomplete, citing 22 inadequacies. The Town Board, Planning Department, Engineering Department, Building Department and the Town Consultant for this project (TVGA) have thoroughly reviewed the revisited DEIS of December 9, 2010.

It is of serious concern to the reviewers of the DEIS that the Applicant continues to submit a document with missing information (both in hard copy and electronic format), complete deletions of previously submitted material, substantial alterations or changes to previously agreed to documents and, in at least one instance when specific information was requested, the "Applicant" states they "can" provide the information, but fails to do so.

The Site Plans for the project have changed substantially. The size of project's building appears to have changed in excess of 6% +/- . It is difficult to determine the actual size since, throughout the DEIS, multiple square footages are used ranging from 126,103-sq. ft. to 12,610,334,088-sq.ft. Essentially, this is a new project submission, with substantial alterations from the first submission dated November 24, 2008, and the Lead Agency should consider a Town Board resolution requiring the Applicant to provide an additional \$50,000 for review of a subsequent DEIS.

The reviewers agree that items #1 through #9, #10 (A, B, C, D), #17 and #18 in the March 17, 2010 resolution have been addressed by the Applicant. We do, however, find that significant inadequacies still remain and recommend the Town Board determine that the resubmitted DEIS of December 9, 2010, is inadequate and incomplete.

The particulars of the inadequacy and supporting documentation are attached in a proposed resolution.

This is the Town of Orchard Park Town Board State Environmental Quality Review Act (SEQR) Resolution regarding the Draft Environmental Impact Study (DEIS) for the proposed Wal-Mart Supercenter received from the Applicant on December 9, 2010.

WHEREAS, Wal-Mart Stores East LP (“Wal-Mart”) has proposed to construct a Wal-Mart Supercenter (the “Supercenter”) in the Town of Orchard Park, New York:

WHEREAS, this Board, on February 28, 2008, was established as SEQRA lead agency related to review of the Supercenter, and

WHEREAS, this Board, on February 28, 2008, issued a positive declaration under SEQRA for the proposed construction of the Supercenter, and

WHEREAS, this Board, on April 23, 2008, adopted a final scoping outline for the Draft Environmental Impact Statement (the “DEIS”), and

WHEREAS, on November 24, 2008, consultants to Wal-Mart submitted a proposed DEIS to the Board, and

WHEREAS, on February 2, 2009, consultants to Wal-Mart submitted a revised DEIS to the Board;

WHEREAS, on February 19, 2010, consultants to Wal-Mart submitted a revised DEIS to the Board; and

WHEREAS, after due consideration, review and recommendation of the December 9, 2010, DEIS by the Town Board, Town Planning Department, Town Engineering Department, Town Building Department, and the Town’s hired consultant, TVGA, the DEIS is inadequate and incomplete for the following reasons:

1. The Applicant continues to maintain that the project will only include the construction of a North-South right-of-way (ROW). The DEIS fails to address any environmental impacts or mitigation of not constructing an East-West ROW connecting to South Benzing Road. These impacts include, but are not limited to, the following:
 - a) Section 503.1.2 of the Fire Code of New York State states, “Additional fire apparatus access roads shall be required by the Code Enforcement Official based on the potential for impairment of a single lane road by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access.” Any significant development of this site without a second means of access would create negative impacts on safety. Per the Town of Orchard Park Building Inspector’s memo of 1/04/11, a second means of access shall be required.
 - b) There have been significant changes in the Orchard Park Fire District since the information provided in Volume I, Section III (page 85) “Impact to Emergency Service Response” was gathered. This section needs to be updated to reflect these changes and the impact of greatly delayed response time (EMS/Taylor Road, etc...) and patient

transportation time to the closest appropriate medical care facility without a South Benzing Road connection.

2.

- a) Prior SEQRA's, Scoping Sessions and the Town's Master Plan have addressed the need for connectivity between Milestrip Road and South Benzing Road.
- b) The full connection between Milestrip Road and South Benzing Road was a part of the original Quaker Crossing SEQR/EIS, Bettigole Andrews and Clarkes, Inc., Site Access Location Study and Traffic Impact Study for the Milestrip Road Retail Center. This connection is a required conclusion of a scoping meeting between the NYSDOT, Town of Orchard Park and the developer of the Milestrip Road Retail Center in the Site Access Location Study (November 7, 1995) and part of the Town's Master Plan of connectivity.
- c) Address the preventable future impacts of the Wal-Mart project/site, such as relocation of driveways, installation and removal of a cul-de-sac, installation of a new signal along the new North-South ROW, any impact on the transmission towers and revision of the drainage system flow with increased volume, parking, etc.

3. The complete Section titled "Carly Jane Place/Amelia Drive Investigation" and all associated supporting information previously found in the Traffic Impact Study of Appendix C and DRAFT DEIS has been omitted. This must be revised, based in part on the revised TIS required in #3 above, and re-inserted into the DEIS. Mitigation Options 2, 3 and 4 must be addressed in this revision.

4. The current submission, dated December 9, 2010, did not include a copy of the VISSIM files or the VISSIM program as previously requested. To authenticate and verify the accuracy of the VISSIM model output the files and program must be submitted.

5. While the DEIS discusses Required Approvals, it fails to address the non-compliance of parking spaces, signage and fencing.

- a) The multiple square footage figures used throughout the DEIS prevent an analysis of the number of required parking spaces. The issue is further complicated by the relationship between employee parking spaces (70) and the number of employees (350). The DEIS needs to address the parking issues under Required Approvals and demonstrate how 70-parking spaces (even over three shifts) can meet the needs of 350, mostly full-time, employees.
- b) The proposed sign is non-compliant and needs to be addressed in request approvals.
- c) The non-compliant fences need to be addressed in Required Approvals.

7. A potentially significant impact identified in the Final Scoping document is the impact on the character of the neighborhood of lighting the site 24-hours a day. The current lighting plan is incomplete, given there are no point-by-point measurements along with minimum, average and maximum levels, thus the DEIS comments cannot be validated.

8. A potentially significant impact identified in the Final Scoping document (Visual Aesthetic Mitigation Measures) is the physical upkeep and maintenance of the site. An analysis of parking lot and general vicinity debris/trash control and cleaning needs to be provided.

9. The document fails to address as an alternative site a property bordered by Route 20A and McKinley Parkway stating, "Beyond the existing Site, the Applicant has no other properties under control within this municipality or the market area identified for this new facility." The site, which previously housed a Wal-Mart, is approximately 2-miles +/- away from the proposed new site, within a reasonable assumption of a "market area" and less than ¾ of a mile outside the Town of Orchard Park.

10. The Applicant has substantially changed the building elevations (Figures, Document 20) from previously submitted and agreed upon building elevations. The document needs to be revisited to reflect previously agreed upon elevations.

11. Address completely issues in Engineering memo dated January 4, 2011.

12. Address completely issues in Building Inspector letter of January 4, 2011.

13. Address completely issues in TVGA letter date January 5, 2011.

14. Any and all changes need to be made throughout the DEIS in its entirety.

And be it further resolved that a copy of this resolution will be forward by the Orchard Park Town Clerk to the legal representative of the "Applicant" (Wal-Mart).

Councilmember Ackerman interjected explanations in trying to clarify the resolution for the residents. She stated that the Town Board wants the process to go forward and resolve the issues without obstruction and to do so within the law.

Supervisor Colarusso wanted to apologize for any inconvenience to the residents regarding the cancellation of the meeting regarding the Wal-Mart DEIS. It was not a public meeting but rather an informational meeting for the Town Board to decide if they would accept or decline the DEIS. The radio messages and published material sent out was misleading to the citizens.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Tom Lucie – Mr. Lucie is the Civil Engineer for Wal-Mart project. He stated that he appreciated the comments of the Town Board, but it is clear that there is a major disconnect between the lead agency and the applicant. Mr. Lucie stated that he would like to have an opportunity to meet with the Town Board at a work session and go over the each of the comments to reach a solution for a final DEIS for the public. Councilmember Ackerman told Mr. Lucie she would coordinate meetings to work together to achieve a complete satisfactory document for the Town.

Louis Boehm – Mr. Boehm stated that the Quaker Crossing is improperly zoned. He asked that the Town Board retro-zone the Wal-Mart parcel back to the Industrial designation and revisit their vacated McKinley location. (Written submission)

Jane Shumaker – Ms. Shumaker thanked the Town Engineer and the Engineering Department for the excellent service provided to her. Ms. Shumaker thanked Councilmember Ackerman for her explanation of the DEIS process and progress to the audience regarding Wal-Mart. She stated that she feels the Town Board is listening to the residents, but asked them to stand their ground. Ms. Shumaker stated that traffic is her main concern with this project.

Kathryn Gorkiewicz – Ms. Gorkiewicz thanked all the Town Boards involved with the review of the DEIS for Wal-Mart. She feels the traffic issues with this project, as with any other project, should be mitigated for the Town.

Deborah Yeomans – Ms. Yeomans thanked the Town Board for their diligence for their hard work on the DEIS review of Wal-Mart. This being the fourth submission of the DEIS, it shows a lack of true effort and concern on the part of Wal-Mart. Ms. Yeomans stated that it is the responsibility of the Town Board to prevent the negative impact of traffic, crime, increased burden on the Police force, detrimental effect on property devaluation and deterioration of infrastructure.

Sally Deneshia – Ms. Denesha is against the proposed Wal-Mart.

Sal Cerrone – Mr. Cerrone thanked the Town Board and all the Town Departments and Boards for their work on the DEIS. He stated that according to the rules of the New York State Department of Transportation, fifty three foot trailers are prohibited on any side streets in the area of the proposed Wal-Mart. It would be up to the Town to enforce this provision. Mr. Cerrone had questions regarding the overnite and event parking in the Wal-Mart parking lots. He also questions the taxes they would pay, traffic problems and the abandoned Wal-Mart in Hamburg.

Paul Terhaar – Mr. Terhaar commended the Town Board for their response to the DEIS. He felt that Wal-Mart uses misleading advertisements and deceitful marketing tactics. Mr. Terhaar urged the Town Board to continue their stance with Wal-Mart.

Maryann Grenda – Ms. Grenda works at Quaker Crossing and feels the traffic Wal-Mart would add would be detrimental to police, fire and emergency agencies, which are beyond the traffic and environmental concerns. She thanked and appreciated the work of the Town Board on the DEIS review.

Marjorie Sanders – Ms. Sanders appreciated the comments regarding the DEIS. Ms. Sanders stated that she supports Wal-Mart.

Howie Holmes – Mr. Holmes commented on the traffic during the holidays at Quaker Crossing. He felt it wasn't proper to change the Town Board meetings from two per month to one.

Nancy Brady – Ms. Brady is against the proposed Wal-Mart.

Paul Gregorie – Mr. Gregorie commented on the jobs and payment of Wal-Mart employees. Mr. Gregorie asked Councilmember Ackerman why she was so accommodating to Wal-Mart. Councilmember Ackerman stated that she was able to volunteer her time to help the community of Orchard Park and not the petitioner.

Carol McKenica – Ms. McKenica thanked the Town Board for their review of the DEIS. She stated that she is against Wal-Mart and stated that the traffic was awful at Quaker Crossing during the holidays.

Kelly Pronti – Ms. Pronti is an attorney with Harder Seacrest, the attorney for Wal-Mart. She stated that she appreciated the comments from the Town Board for their comments and time. She wanted to clarify that the point of the SEQR process is to refine the project each time. The project will change from its inception until the project is actually built. Ms. Pronti doesn't want anybody to think that in any way they are misleading the Town in any fashion in what is being submitted. They are looking forward to working with Councilmember Ackerman for the best project.

ELECTED OFFICIALS & DEPARTMENT HEADS

Supervisor Colarusso stated that she asked the Town Board to authorize the one Town Board meeting per month.

Councilmember Ackerman asked Police Chief Benz if the policeman directing traffic at Quaker Crossing during the holidays was an Orchard Park Police Officer. Police Chief Benz stated that Mr. Buchheit hired off duty Police Officers for three days to direct traffic and the Orchard Park Police Department provided a vehicle with flashing lights for their protection. Councilmember Ackerman stated that this is her twentieth and last year on the Town Board and resolved to the very best for the Town of Orchard Park.

Councilmember Kaczor thanked everyone for their comments tonight. He stated that Councilmember Ackerman's response to the Wal-Mart DEIS was excellent. The lengthy review of the DEIS is a joint effort by all Town Boards and Departments.

Councilmember Graber wanted to wish everyone a Happy New Year and stated he was looking forward to serving his last year on the Town Board. He stated that the Wal-Mart brings out a lot of passion in people. He commended Supervisor Colarusso and Councilmember Ackerman for their work on Labor negotiations. He stated that they are extremely hard working and he is proud to work with them.

Councilmember Majchrzak wished everyone a Happy New Year. He commented on the downsizing of the Town Board this year. He stated the way the Town Board conducts business will change.

Highway Superintendent Piasecki reported that the Town received the check from Erie County for snowplowing \$47, 344.56.

The resolution was unanimously adopted.

10) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR COLARUSSO, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER KACOR, TO WIT:

RESOLVED, that the Town Board does hereby authorize the approval of all entries on Warrant #1 following auditing by members of the Town Board and in the funds indicated:

| | |
|---------------------------|--------------|
| General Fund | \$117,353.48 |
| Part Town Fund | \$2,026.41 |
| Risk Retention | \$0.00 |
| Cemetery Fund | \$0.00 |
| Highway Fund | \$137,600.20 |
| Special Districts | \$104,641.66 |
| Trust & Agency | \$4,140.31 |
| Capital Fund | \$25,891.62 |

The resolution was unanimously adopted.

11) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER ACKERMAN, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER GRABER, TO WIT:

RESOLVED, that the Town Board does hereby receive and file the following reports:

- CSEA Employee Benefit Fund Annual Report for the fiscal year ending March 31, 2010.
- Chief of Police's Monthly Report for the month of November 2010.

The resolution was unanimously adopted.

There being no further business, on motion by Supervisor Colarusso, seconded by Councilmember Kaczor, the meeting was adjourned at 8:21 PM (local time).

Respectfully Submitted,



**Carol R. Hutton
Town Clerk**