

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 February 2006 at 7:00 P.M., (local time). The meeting was called to order by the Supervisor and there were:

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

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

At this time Supervisor Travers Murphy tabled the approval of the January 18, 2006 minutes.

PUBLIC HEARING

The Supervisor called for the Public Hearing at 7:00 PM, the advertised time, to hear all interested parties for or against the adoption of a Proposed Local Law for the Year 2006:

Amendments to the Town Code of the Town of Orchard Park

WHEREAS, the Town Board of the Town of Orchard Park (hereinafter the “Town Board”) has the authority and responsibility, pursuant to Article 16 of the Town Law of the State of New York and for each of the purposes specified therein, through the enactment of, and any and all additions, deletions, amendments or supplements to, the Code of the Town of Orchard Park (hereinafter the “Town Code”), including but not limited to Chapter 144 of the Town Code (“Zoning”) (hereinafter the “Zoning Ordinance”), to regulate and restrict the location, size and use of buildings and other structures and the use of land in the Town of Orchard Park (hereinafter the “Town”), outside the corporation limits of the Village of Orchard Park, and to establish comprehensive controls for the development of land in the Town, in order to promote and protect the health, safety, comfort, convenience and the general welfare of the people, and

WHEREAS, pursuant to §144-4 of the Zoning Ordinance, such regulations shall be made in accordance with the general plan and designed to lessen congestion in the streets; to secure safety from fires, flood, panic and other dangers; to promote the health and general welfare; to provide adequate light and air; to prevent overcrowding of lands; to facilitate the provision of transportation, water, sewerage, schools, parks and other public requirements, and shall be made with a reasonable consideration, among other things, to the characteristics of the district and its peculiarities for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town;

WHEREAS, the Zoning Ordinance currently includes, at §§144-33 through 144-42, and incorporating the statutory definitions of §144-5B, regulations which govern sign structures within the Town (the “sign structure regulations”);

WHEREAS, on February 21, 2001, the Town Board adopted a resolution which amended the Zoning Ordinance by repealing §144-36A (3), which contained restrictions on the placement and erection of “political signs,” thereby removing those restrictions;

WHEREAS, in August 2001, billboard developer Lamar Advertising of Penn, LLC (hereinafter “Lamar”) commenced an action in the United States District Court for the Western District of New York alleging that the sign structure regulations violated Lamar’s right to free speech under the First Amendment to the United States Constitution;

WHEREAS, on February 20, 2002, the Town Board adopted a resolution which amended the sign structure regulations, in part by revising §144-33 in order to accurately state the intent of the Town Board to regulate sign structures in order to advance its interests in aesthetics and traffic safety, while permitting adequate business identification, advertising and communications, as well as non-commercial communications, and in part by repealing §144-35B, which had stated:

“Permitted Sign Copy. A sign may contain only the name and/or nature of the business conducted and/or the primary goods sold or the services rendered on the premises. Signs not advertising a business conducted, service rendered or primary goods sold on the premises of the sign are prohibited”;

WHEREAS, the Second Circuit Court of Appeals, by its decision of February 2, 2004 in the action entitled *Lamar Advertising of Penn, LLC v. Town of Orchard Park, New York* [356 F.3d 365 (2d Cir. 2004)] (hereinafter “Second Circuit decision”), effectively approved the Town’s February 20, 2002 amendments to the Zoning Ordinance, and specifically, the amendment of §144-33 and the repeal of §144-35B, by its holding that these amendments rendered moot Lamar’s claims that the Zoning Ordinance was unconstitutional because (a) it did not include an express statement of legislative intent, and (b) §144-35B effectively favored “commercial speech” over “non-commercial speech”;

WHEREAS, following its review of the Second Circuit decision of the Second Circuit Court of Appeals and the then-current jurisprudence related to municipal sign regulation, the Town Board determined that it was in the best interests of the Town and its residents to further amend the Zoning Ordinance to further clarify, and insure the achievement of, the intent of the Town Board, on behalf of the Town, to regulate sign structures in a constitutional manner, and to further clarify the technical and procedural rules related to sign structures in the Town;

WHEREAS, on April 7, 2004, the Town Board accordingly adopted Local Law 4-2004 (“Local Law 4-2004”), which reaffirmed the Town Board’s legislative intent as set forth in §144-33, and made additional amendments to the Zoning Ordinance to further clarify, and further insure the achievement of, the intent of the Town Board to regulate sign structures in a constitutional manner, and to further clarify the technical and procedural rules related to sign structures in the Town;

WHEREAS, Local Law 4-2004 represented the Town Board’s intent to continue to modernize and expand the sign structure regulations of the Zoning Ordinance in order to conform to, and be consistent with, the developing jurisprudence related to municipal sign regulation;

WHEREAS, the Town Board is aware of the decision of the United States District Court for the Eastern District of New York in the case of *Nichols Media Group, LLC v. Town of Babylon*, 365 F.Supp.2d 295 (E.D.N.Y. 2005), decided April 14, 2005;

WHEREAS, the Town Board is aware that in *Nichols Media v. Babylon*, the plaintiff was a billboard developer which brought actions against the Towns of Babylon and Islip, New York, alleging essentially the same legal claims against those municipalities as Lamar has alleged in its action against the Town;

WHEREAS, the Town Board is aware that following a trial in the *Nichols Media v. Babylon* action, the Court ruled in favor of the Towns of Babylon and Islip, and against the billboard developer, on essentially all of the billboard developer's legal claims, and the billboard developer did not appeal the Court's decision;

WHEREAS, the Court in *Nichols Media v. Babylon* held that, with respect to signs erected by the Towns of Babylon and Islip, New York:

“Those signs, however, must be subject to the same requirements as signs sought to be erected by non-governmental entities. Additionally, communication of these important public service messages may require that certain signs exceed size and location parameters set forth in the Towns' regulatory schemes. Thus, from time to time, the Towns may seek exemption from any further specific requirement by pursuing the same channels of review available to all citizens. Further, the Towns may be able to draft narrowly tailored exemptions to their Ordinances that could pass constitutional muster. Such narrow exceptions might constitutionally exempt limited types of governmental signs from certain requirements. The court will not speculate here as to which particular exemption would be valid. Instead, the court holds only that a broad exemption of all Government signs from the Ordinances cannot stand”;

WHEREAS, the Court in *Nichols Media v. Babylon*: upheld the constitutionality of the Babylon sign ordinance in all respects except for the “governmental sign exception”; severed the “governmental sign exception” from the remainder of the Babylon sign ordinance, but held that the Babylon sign ordinance would remain intact and continue to prohibit the erection of the billboards sought by the billboard developer; and allowed the Town of Babylon's decision to deny the billboard developer's permit applications for billboards to stand;

WHEREAS, notwithstanding the Court's decision in *Nichols Media v. Babylon*, Lamar has stated its intention to continue to prosecute those same legal claims against the Town, and has continued to allege that the Town has engaged in a “pattern and practice” of infringement of First Amendment rights;

WHEREAS, in response to the Court's decision in *Nichols Media v. Babylon* and the developing jurisprudence related to municipal sign regulation, and as part of its efforts to continue to modernize and expand the sign structure regulations in order to conform to, and be consistent with, the developing jurisprudence related to municipal sign regulation, the Town Board desires to enact additional amendments to the Zoning Ordinance to further clarify, and insure the achievement of, the intent of the Town Board to regulate sign structures in a constitutional manner, and to further clarify the technical and procedural rules related to sign structures in the Town;

WHEREAS, the Town Board has determined that the sign structure regulations of the Zoning Ordinance should be even more detailed than they are now so as to further describe those regulations and the legislative purpose of those regulations and hereby reaffirms that the sign structure regulations are concerned with the secondary effects of speech and are not designed to censor speech or regulate the viewpoint of any speaker;

WHEREAS, the Town Board reaffirms its intent that the provisions of §1-5 of the Town Code (“Severability”) are applicable to the Zoning Ordinance;

WHEREAS, the Town Board reaffirms that §1-5 of the Town Code was adopted with the intent of upholding and sustaining as much as the Town's regulations, including its sign structure regulations, as possible in the event that any portion thereof (including any clause, sentence, paragraph, section or article) be held invalid or unconstitutional by any court of competent jurisdiction;

WHEREAS, the Town Board desires that there be an ample record of its intention that the presence of a severability clause in connection with the sign structure regulations be applied to the maximum extent possible, even if less speech would result from a determination that any exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever;

WHEREAS, the Town Board desires that there be an ample record of its intention that each prohibition of sign-type continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the sign structure regulations, other provisions of the Zoning Ordinance, or other laws, for any reason(s) whatsoever;

WHEREAS, the Town Board desires that there be an ample record of its intention that those aspects of the sign structure regulations which regulate the location, number, height and size of sign structures continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the sign structure regulations, other provisions of the Zoning Ordinance, or other laws, for any reason(s) whatsoever;

WHEREAS, the Town Board desires that there be an ample record of its intention that the prohibition on billboards continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the sign structure regulations, other provisions of the Zoning Ordinance, or other laws, for any reason(s) whatsoever;

WHEREAS, the Town Board is aware that Lamar, in its action against the Town, has advanced arguments that the sign structure regulations are subject to "prior restraint" scrutiny under the First Amendment, and that this similar legal strategy has been advanced in numerous other lawsuits brought against municipalities by billboard developers;

WHEREAS, the Town Board finds, determines and reaffirms that the sign structure regulations are concerned with the secondary effects of speech, including but not limited to aesthetics and traffic safety, and are not intended to regulate viewpoints or censor speech, and for those and other reasons, that the sign structure regulations are not subject to, or would not fail, a "prior restraint" analysis;

WHEREAS, the Town Board acknowledges that Lamar has, in its action against the Town, asserted a challenge based upon the pretext that the sign structure regulations on their face unconstitutionally restrain speech, and although the Town Board believes that such challenge is frivolous, the Town desires to amend and modify the sign structure regulations to insure that a "prior restraint" claim cannot be advanced in good faith against the sign structure regulations;

WHEREAS, the Town Board desires to reaffirm the following findings made in support of Local Law 4-2004:

1. Section 144-33, added February 20, 2002 (and as supplemented by the amendments described herein), accurately states the intent of the Town Board of the Town of Orchard Park to regulate sign structures in order to advance its interests in aesthetics and traffic safety, while permitting adequate business identification, advertising and communication as well as non-commercial communication;

2. Regulating the location, number, height and size of sign structures in the Town of Orchard Park is the best way to advance the interests of the Town of Orchard Park, as set forth in §144-33;
3. Sign structures should be regulated by location and zoning district in order to minimize their negative impact on aesthetic values and traffic safety;
4. The greater the number of signs in the Town of Orchard Park, the greater the interference with the scenic and natural beauty of the Town of Orchard Park, and the greater the probability of distraction and obstruction, and therefore, the more severe the negative impact upon aesthetic values and traffic safety;
5. The greater the surface area or height of any sign, the more it will negatively impact upon aesthetic values and traffic safety, because the greater the surface area or height of any sign, the greater the interference with the scenic and natural beauty of the Town of Orchard Park, and the greater the probability it will cause distraction and obstruction;
6. Notwithstanding the foregoing, businesses operating in the Town of Orchard Park have a strong interest in identifying their places of business and advertising the products or services available there, and the public similarly has a strong interest in this type of information. However, the interest of any business operating in the Town of Orchard Park in using or leasing its available space for the purpose of advertising a business, commodity, service, entertainment or attraction sold, offered or located elsewhere is not as great as its interest in identifying its own place of business and advertising the products or services available there, and not as great as the Town of Orchard Park's interests in aesthetics and traffic safety;
7. The Zoning Ordinance's prohibition of billboards, defined in §144-5 of the Zoning Ordinance, advances the Town of Orchard Park's interests in aesthetics and traffic safety because it is intended to result in fewer sign structures in general, and fewer large sign structures in particular, in the Town of Orchard Park, while allowing businesses operating in the Town of Orchard Park to adequately identify, advertise and communicate concerning their businesses, and while allowing all persons to publish non-commercial messages on any sign structure authorized under the Zoning Ordinance; and
8. The Town of Orchard Park incurs sufficient administrative cost in connection with its handling and review of applications for permits to erect sign structures to support the modest permit fee requirements of the Zoning Ordinance which relate to sign structures. Specifically, the Building Inspector's Office, which handles applications for permits to erect sign structures, reports that on average, an inspector spends a minimum of two hours in connection with an application for a simple, conforming sign, and spends additional time as needed, depending upon the complexity of the proposed sign structure.

WHEREAS, Article XIV, §4 of the New York State Constitution provides that it shall be the policy of the State to conserve and protect its natural resources and scenic beauty;

WHEREAS, the Town Board finds, determines, and reaffirms that the prohibition of the construction of billboards and certain other sign types, as well as the establishment and continuation of height, size, location and other standards for sign structures, is consistent with the aforesaid policy of the State;

WHEREAS, the Town Board recognizes that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on the part of the observer, unlike other forms of advertising that are ordinarily seen as a matter of choice on the part of the observer [*see Packer v. Utah*, 285 U.S. 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799 (1935)];

WHEREAS, the Town Board acknowledges that the United States Supreme Court and many federal courts have accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area. [see *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *National Advertising Co. v. City & Town of Denver*, 912 F.2d 405, 409 (10th Cir. 1990) and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999)];

WHEREAS, the Town Board finds and determines that its above-referenced findings made in support of Local Law 4-2004, that the greater the number of signs, and the greater the surface area or height of any sign, the greater the probability that such signs will cause distraction and obstruction and thereby impact upon traffic safety, is consistent with determinations made by the courts that anything beside the road which tends to distract the driver of a motor vehicle directly affects traffic safety, and that signs which divert the attention of the driver and occupants of motor vehicles from the highway to objects away from it, may reasonably be found to increase the danger of accidents. [see *In re Opinion of the Justices*, 103 N.H. 268 (1961); *Newman Signs, Inc. vs. Hjelle*, 268 N.W. 2d 741 (N.D. 1978)];

WHEREAS, the Town Board is aware that in *Nichols Media v. Babylon*, the Court rejected for lack of credibility and reliability (due to clear bias in favor of the billboard industry) a study prepared by Dr. Suzanne Lee (hereinafter the “Lee study”), offered at trial as evidence by the billboard developer on the issue of traffic safety, which in relevant part claimed that billboards do not inhibit driver performance, and noted that there had been no peer review of the Lee study and “that there is no other scientific study with the same or similar conclusions regarding driver distraction”;

WHEREAS, the Town Board finds that if permitted, billboards would detract from the natural and manmade beauty of the Town;

WHEREAS, the Town Board agrees with the determination of the American Society of Landscape Architects that billboards tend to deface nearby scenery, whether natural or built, rural or urban;

WHEREAS, the Town Board is aware that Scenic America, Inc. (“Scenic America”), a national organization focused on safeguarding America’s natural beauty and community character, recommends improvements in the scenic character of a community’s landscape and appearance by prohibiting the construction of billboards, and by setting height, size and other standards for all signs [see Scenic America’s “Seven Principles for Scenic Conservation”, Principle #5];

WHEREAS, the Town Board is aware that Scenic America reports that a 1980 Federal Highway Administration study found a positive correlation between billboards and accident rates, and that both federal and state courts have long cited traffic safety as a legitimate basis for billboard regulations;

WHEREAS, the Town Board is aware that at least four states — Alaska, Hawaii, Maine and Vermont — have prohibited the construction of billboards in their states and are now billboard-free in an effort to promote aesthetics and scenic beauty;

WHEREAS, the Town Board is aware that under current jurisprudence [see, e.g., *Linmark Associates v. Town of Willingboro*, 431 U.S. 85 (1977)], on-site real estate signs, such as “for sale” signs, should be allowed given the important role and unique function that real estate signs, such as “for sale” signs, perform on the premises where they are located;

WHEREAS, the Town Board is aware that under current jurisprudence [see, e.g., *Ladue v. Gilleo*, 512 U.S. 43 (1994)], signs that allow property owners, especially residential homeowners, to freely express a particular point of view on their own property should be reasonably accommodated and may be uniquely valuable;

WHEREAS, the Town Board is aware that under current jurisprudence, election signs are generally accorded a higher level of protection under the First Amendment than other classification or type of speech;

WHEREAS, the Town Board is aware that durational limits requiring the removal of election signs following such election are generally permissible [*see, e.g.*, Election Signs and Time Limits, *Evolving Voices in Land Use Law*, 3 Wash. U.J.L. & Pol'y 379 (2000)];

WHEREAS, the Town Board desires to clarify that the sign structure regulations do not prevent persons from displaying signs freely expressing a particular point of view on their property (hereinafter “free expression signs”), and that they do not prevent persons from maintaining signs on their property displaying their support for or opposition to political candidates and ballot issues before the election to which they pertain (hereinafter “election signs”);

WHEREAS, the Town Board desires to clarify that provisions allowing real estate signs, free expression signs, election signs and certain other sign types are not intended to diminish or lessen the Town’s interests in aesthetics and traffic safety, but are contained in the sign structure regulations in recognition of the useful functions and practical needs served by such signage in the Town’s commerce and/or in the political freedom that must be accorded its citizens to freely express their points of view and political desires;

WHEREAS, the Town Board recognizes that under current jurisprudence, its sign regulations may be under-inclusive in their reach to serve the Town’s interests in aesthetics and traffic safety while at the same time balancing the interests protected by the First Amendment [*see, e.g.*, *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984)];

WHEREAS, the Town Board recognizes that under current jurisprudence, a sign bearing a non-commercial message is considered to be an on-site or on-premises sign [*see Southlake Property Associates, Ltd. v. City of Morrow, Georgia*, 112 F.3d 1114, 1118-1119 (11th Cir. 1997), *cert. denied* 525 U.S. 820 (1998)], and the Town Board hereby adopts that conclusion;

WHEREAS, the Town Board, in its deliberations in connection with the amendments to the sign structure regulations addressed herein, considered the question of whether the County of Erie, as lessor of Ralph Wilson Stadium, is or has ever been subject to the Zoning Ordinance;

WHEREAS, as part of its deliberations, the Town Board considered:

1. Chapter 252, Laws of New York 1968 (“Erie County — Stadium — Construction and Financing”);
2. Chapter 669, Laws of New York 1974 (“Erie, County of — Stadium — Construction and Financing”);
3. Chapter 387, Laws of New York 1998 (“Erie County — Stadium Renovation — Vending”), the Governor’s Memorandum of Approval (hereinafter “Governor’s Memorandum”) and the Memorandum in Support, New York State Senate (hereinafter “Senate Memorandum”);
4. The Agreement of Lease, made October 15, 1971 between the County of Erie and Buffalo Bills Division of Highwood Service, Inc. (hereinafter “Buffalo Bills”) (“1971 Lease”); and
5. The Master Lease between the County of Erie and Erie County Stadium Corporation (a wholly-owned subsidiary of the New York State Urban Development Corporation) and the Stadium Lease between the ECSC and the Buffalo Bills, both effective on or about July 31, 1998 (“1998 Leases”);

WHEREAS, the Town Board notes the following:

1. In Chapter 252, Section 1 of the Laws of 1968, the New York State Legislature authorized and empowered the County of Erie as follows in connection with the construction and operation of a stadium (now Ralph Wilson Stadium):

“Notwithstanding the provisions of any other law, general, special or local, the county of Erie, acting by the county executive, with the approval of the Erie county legislature, is hereby authorized and empowered from time to time to enter into contracts, leases, or rental agreements with, or grant licenses, permits, concessions, or other authorizations, to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the county and such person or persons, whereby, for any purpose or purposes hereinafter referred to, such person or persons are granted the right, to use, occupy, or carry on activities in, the whole or any part of a stadium, including the site thereof, parking areas and other facilities appurtenant thereto or utilized therefor, hereby authorized to be constructed by the county of Erie on such site as may be finally determined by the Erie county legislature and acquired by the county of Erie”;

2. Section 2 of the aforesaid law in relevant part provided:

“The person or persons entering into any contract, lease, rental agreement, license, permit, concession, or other authorization referred to in Section 1 hereof with the county of Erie hereunder, may be granted the right to use, occupy or carry on activities in the whole or any part of such stadium, site, parking areas, and other facilities (1) for any purpose or purposes as shall furnish to, or foster, or promote among, or provide for the benefit of, the people of the county of Erie . . .”;

3. In addition, Section 2 of the aforesaid law stated:

“It is hereby declared that all of the purposes referred to in this section are in the public interest and for the benefit of the people of the county . . . and are hereby declared to be public purposes for which county monies may be appropriated and expended”;

4. By Chapter 699 of the Laws of 1974, the New York State Legislature amended Chapter 252 of the Laws of 1968, by adding a section 4, which in relevant part stated:

“a. The financing, construction, operation, leasing and use of a stadium and all purposes as authorized by this act are governmental and public purposes of the county of Erie.”

“b. The purpose of this section is to confirm the intention of the legislature in section two of this act that all the purposes mentioned are and shall be deemed to be the public and governmental purposes of the county of Erie.”

5. In Chapter 387 of the Laws of 1998, which in relevant part addressed renovations to the stadium now known as Ralph Wilson Stadium, the New York State Legislature stated in Section 1:

“It is hereby declared to be the policy of this state to promote the economic welfare and prosperity of inhabitants of counties, and to actively promote, attract, encourage and develop commerce through cooperative governmental action for the purpose of continuing the economic revival of such counties. The promotion, attraction and development of commerce in the county of Erie is a matter of state concern. It is found that participation by the county of Erie and State

of New York in the refurbishment, renovation, improvement, operation, maintenance, repair and financing of a sports and entertainment complex is hereby declared to be for a public and governmental purpose and in the public interest for the benefit of the people of such county and state and the improvement of their health, education, welfare, recreation, well-being and prosperity and for the advancement and improvement of recreation, trade and commerce.”

6. In the aforesaid law, the New York State Legislature also re-confirmed its broad delegation of authority and power to the County of Erie in connection with the construction and operation of the stadium now known as Ralph Wilson Stadium. Section 3(a) of the aforesaid law stated:

“Notwithstanding the provisions of any general, special or local law or charter: (a) the county is hereby authorized and empowered to take any action and enter into any agreement, including, but not limited to, the ancillary development agreements, with any party or parties, including private persons or entities, that any of the participating development entities find necessary or appropriate for the project.”

7. In addition, Section 3(b) of the aforesaid law indicated that the New York State Urban Development Corporation (“UDC”), a public benefit corporation, and its subsidiary, the Erie County Stadium Corporation (“ECSC”), would be involved in the continuing operation of the stadium project:

“The county shall have the power to appropriate county funds and to permit the use of county property of all kinds to support the activities of and assist in funding the obligations of the [UDC] and/or the [ECSC], with respect to obligations relating to the continued operation of the project, in such amounts and upon such terms and conditions as may be agreed between the county and the [UDC] and/or the [ECSC]”; and

8. The Governor’s Memorandum highlighted Chapter 387’s broad grant of authority from the State to Erie County, and both the Governor’s Memorandum and the Senate Memorandum highlighted the participation of state public benefit corporations UDC and ECSC in the stadium renovation project;

WHEREAS, the Town Board is aware that where, as here, the New York State Legislature has enacted a law vesting broad authority and power in a county to accomplish a specified purpose, through the use of authorizing language such as “Notwithstanding the provisions of any other law, general, special, or local . . .”, the host municipality’s zoning ordinance does not apply to the county’s actions taken to accomplish that specified purpose. [*see Oswald v. Westchester County Park Commission*, 234 N.Y.S.2d 465, *aff’d.*, 18 A.D.2d 1139 (2d Dept. 1963)];

WHEREAS, the Town Board hereby finds and determines, upon consideration of the above-described legislation and related documentation, that the County of Erie, as lessor of Ralph Wilson Stadium, is not and has never been subject to the Zoning Ordinance, in light of the following factors:

1. The nature and scope of the stadium project as described in the above-referenced legislation and related documentation;
2. The New York State Legislature’s broad grant of authority and power to the County of Erie related to the stadium project;
3. The County of Erie’s use of the land and facilities to accomplish the New York State Legislature’s policy of insuring the continued viability of the sports and entertainment complex now known as Ralph Wilson Stadium;

4. Imposition of the Zoning Ordinance upon the County of Erie, as lessor of Ralph Wilson Stadium, would be contrary to the New York State Legislature's broad grant of authority and power, and substantially impair the County of Erie's ability to accomplish the New York State Legislature's stated policies and purposes; and
5. The significant participation of the State in the stadium project, by virtue of the involvement of the UDC and the ESCS, both of which are State public benefit corporations. [*see In re County of Monroe*, 72 N.Y.2d 338 (1988)];

WHEREAS, the Town Board desires that there be an ample record that its intent has been, and will continue to be, to regulate sign structures in a manner, and through legislation, consistent with current jurisprudence related to municipal sign regulation, and that it has no intention of enacting in the future any amendments to the Zoning Ordinance which are intended to be or could be deemed inconsistent with current jurisprudence;

WHEREAS, the Town Board finds that the amendments to the sign structure regulations still allow adequate alternative means of communication;

WHEREAS, pursuant to Part 617 of the Implementing Regulations pertaining to Article 8 of the State Environmental Quality Review Act of the Environmental Conservation Law, it has been determined by the Town Board that adoption of said proposed amendments to the Zoning Ordinance relating to signs would not have a significant affect upon the environment;

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby proposes to adopt the following amendments to the Zoning Ordinance, as set forth below:

1. Amendments to Article II, Definitions, §144-5B:

Add:

COMMERCIAL MESSAGE – Any sign wording, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, service, sale or sales event or other commercial activity.

Delete the definition of “CONSTRUCTION SIGN” and replace it with the following:

CONSTRUCTION SIGN – A temporary on-premises sign identifying the ongoing construction activity during the time that a building permit is active and prior to completion of the work for which the permit was issued, containing sign copy that is limited to the ongoing construction activity and identifying the contractor and/or any subcontractor engaged to perform construction activity on the site, and/or the architect, engineer or any other participants in the construction activity on the site, and announcing the purpose of the building or structure for which the building permit has been issued.

Add:

ELECTION SIGN – A temporary sign erected or displayed for the purpose of expressing support for or opposition to a candidate or stating a position regarding an issue upon which voters of the Town shall vote.

FREE EXPRESSION SIGN – A sign communicating information or views on matters of public policy concerns or containing any other non-commercial message, that is otherwise lawful.

NON-COMMERCIAL MESSAGE – A message which is not a commercial message.

Delete:

POLITICAL SIGN

Delete the following clause from the definition of “SIGN”:

but not including signs placed or erected by the town or the state for the purpose of showing street names or traffic directions or regulations or for other public, non-commercial purposes.

Add:

SPECIAL EVENT – An event, gathering, assembly or meeting that is open to the public at large.

Delete the definition of “TEMPORARY SIGN” and replace it with the following:

TEMPORARY SIGN - A sign intended for a use not permanent in nature.

Add:

TRAFFIC CONTROL DEVICE SIGN – Any sign located within the right-of-way that functions as a traffic control device and that is described and identified in either the Manual Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard and/or in the New York State Department of Transportation Manual for Uniform Traffic Control Devices. TRAFFIC CONTROL DEVICE SIGNS include those signs that are classified and defined by their function as regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide sign (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information).

2. Amendments to §144-33, Regulation of Signs; Legislative Intent.

Delete §144-33A and replace it with the following:

A. The purpose of the regulations set forth in §§144-33 through 144-43 of this chapter (and, as applicable, the definitions set forth in §144-5B of this chapter) is to regulate existing and proposed signs in order to:

Add the following as §144-33A(10):

(10) Allow for traffic control devices consistent with national and state standards and whose purpose is to promote highway safety and efficiency by providing for the orderly movement of road users on streets and highways, and that notify road users of regulations and provide warning and guidance needed for the safe, uniform and efficient operation of all elements of the traffic stream.

Add the following as §144-33C:

C. Notwithstanding any other provision contained herein to the contrary, no sign or sign structure shall be subject to any limitation based upon the content (viewpoint) of the message contained on such sign or displayed on such sign structure.

3. Amendments to §144-34, Procedures and Permits for Signs:

Delete §144-34C and replace it with the following:

C. The Zoning Officer shall issue a sign permit if the Zoning Officer concludes from a review of the application that such proposed sign complies with all the requirements of this chapter and all other applicable laws and regulations of the Town of Orchard Park. The Zoning Officer shall advise the applicant of the grant or denial of the permit application within 30 days of the submission of the application. If the application for a sign permit is denied by the Zoning Officer, the Zoning Officer shall give written notice of the denial to the applicant, together with a brief written statement of the reasons for the denial. Non-conforming signs shall be designated as such on the sign permit. Any person aggrieved by the determination of the Zoning Officer in connection with any application for a sign permit may take an appeal from that determination in the manner provided in Article IX of this chapter.

Delete §144-34D and replace it with the following:

D. Traffic control device signs are exempt from the requirements of this chapter.

4. Amendments to §144-35, General Sign Requirements:

Amend §144-35D as follows:

Add the word “or” between the words “ acres” and “ located.”

Delete §144-35I and replace it with the following:

I. Specialty signs. Pursuant to the procedures and criteria set forth in §144-34 of this chapter, special time and temperature signs with or without electrical lettering, special clock signs and other special signs of similar nature may be erected upon approval of the Zoning Officer upon written application providing the information required by §144-34B of this chapter and demonstrating compliance with the Building Code. A specialty sign may not exceed the maximum height and size requirements for signs in the zoning district in which it will be located;

Delete §144-35J and replace it with the following:

J. Service organization identification signs. Pursuant to the procedures and criteria set forth in §144-34 of this chapter, a permit for a service organization identification sign may be issued upon written application to the Zoning Officer providing the information required by §144-34B of this chapter. A service organization identification shall not exceed the maximum height and size requirements for signs in the zoning district in which it will be located;

5. Amendment to §144-37, Signs in Residential or Agricultural Districts.

Delete §144-37D and replace it with the following:

D. Signs otherwise authorized under §§144-34D, 144-35D, 144-35J, 144-40C, 144-40D, 144-40E and 144-40F.

6. Amendments to §144-38, Signs in Business, Industrial or D-R Development and Research Districts:

Delete §144-38I and replace it with the following:

I. Off-premises identification signs. Where it is not practical to obtain necessary visibility from an identification sign on the premises, the Zoning Officer shall grant the applicant a permit to erect an off-premises identification sign, provided that the applicant has demonstrated the following:

Add the following as §144-38I(4)(d):

(d) The proposed off-premises identification sign shall not have surface area of greater than twenty square feet and shall not have an overall height greater than nine feet.

Delete §144-38J and replace it with the following:

J. Signs otherwise authorized under §§144-34D, 144-35D, 144-35E, 144-35F, 144-35I, 144-35J, 144-40B, 144-40C, 144-40D, 144-40E and 144-40F.

7. Amendments to §144-38.1, Signs in Industrial Parks.

Delete §144-38.1C and replace it with the following:

C. Signs otherwise authorized under §§144-34D, 144-35D, 144-35J, 144-40C, 144-40D, 144-40E and 144-40F.

8. Amendments to §144-40, Temporary and Special Purpose Signs:

Delete §144-40B and replace it with the following:

B. Banners. Pursuant to the procedures and criteria set forth in §144-34 of this chapter, no banner shall be displayed over any sidewalk, town street or highway except upon the issuance of a permit by the Zoning Officer, following written application and the furnishing of a public liability bond as described in this paragraph. The applicant shall provide the Zoning Officer with the information required by §144-34B of this chapter and demonstrate the ability to furnish a public liability bond or policy in the sum of at least fifty thousand dollars (\$50,000).

Delete §144-40C and replace it with the following:

C. Temporary signs. (1) The Zoning Officer shall approve an application for temporary signs if the applicant demonstrates through written application the number, size and location(s) of the signs sought to be erected, and that it meets the following content-neutral criteria:

- (a) The signs are temporary signs for a limited time and frequency;
- (b) The signs are for a special event as defined in this chapter;
- (c) The temporary signs will not exceed the maximum height and size requirements for signs in the zoning district in which the proposed signs will be located;
- (d) The temporary signs will not conceal or obstruct adjacent land uses or signs;
- (e) The temporary signs will not conflict with the principal permitted use of the site or adjoining sites;

- (f) The temporary signs will not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
 - (g) The temporary signs will be installed and maintained in a safe manner; and
 - (h) The display of temporary signs for a special event shall not begin any earlier than thirty (30) calendar days before the event and shall be removed within two (2) business days after the event.
- (2) Consistent with §144-33 of this chapter, approval or disapproval shall not be based on the content of the message contained (*i.e.*, the viewpoint expressed) on such signs; provided, however, that no temporary sign may direct attention to a business, commodity, service, entertainment or attraction sold, offered, or existing elsewhere and upon the same premises where such sign is displayed, or only incidentally sold, offered, or existing upon such premises. The Zoning Officer shall advise the applicant of the grant or denial of the application for temporary sign within thirty (30) days of the submission of the application, and the procedures set forth in §144-34 shall apply to appeals under this section.

Add as §144-40E:

E. Free expression signs. For each parcel, one free expression sign with a surface area of four square feet or less may be displayed. If displayed as a freestanding sign, such sign shall not exceed four feet in height. A free expression sign is in addition to any other sign allowed under this chapter and is allowed in any zoning district. Only one such sign may be permitted on each parcel. The sign must be located within six feet of a building located on the lot or parcel, or if there is more than one building on the lot or parcel, the sign must be located at least fifteen feet from any street. No permit is required for a free expression sign.

Add as §144-40F:

F. Election signs. For each parcel, one election sign for each candidate and each issue may be displayed. The election signs allowed under this section are in addition to any other sign allowed under this chapter. An election sign must have a surface area of four square feet or less. If displayed as a freestanding sign, such sign shall not exceed four feet in height. An election sign shall be removed within seven calendar days following the election to which it pertains. No permit is required for an election sign allowed under this paragraph.

9. Addition of §144-43, Severability:

Add as §144-43:

§144-43. Severability.

- A. Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this chapter is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter.
- B. Severability where less speech results. Without diminishing or limiting in any way the declaration of severability set forth above in §144-43A, or elsewhere in this chapter or in this Code, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or

word of this chapter, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.

- C. Severability of provisions pertaining to prohibited signs. Without diminishing or limiting in any way the declaration of severability set forth above in §144-43A, or elsewhere in this chapter or in this Code, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article or any other laws declared unconstitutional by valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter that pertains to prohibited signs, including specifically those signs and sign types prohibited and not allowed under §144-36 of this chapter. Furthermore, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of §144-36 is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of §144-36.
- D. Severability of prohibition on billboards. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter and/or any other provisions of the Zoning Ordinance or this Code are declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the prohibition on billboards as contained herein.

10. Amendment to Town of Orchard Park Schedule of Zoning Fees.

Delete the clause “plus \$1 per face square foot of sign” from, and amend subsection (1) of section A. Building Permit Fees, to state as follows:

Signs (where permitted)

All signs	\$20
Relocating signs on same premises	\$20
Alteration of signs	\$20

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 Supervisor Travers Murphy opened the Public Hearing to hear all interested persons for or against the Proposed Amendment to the Town Code of Ordinances.

Proponents

- Richard Leonard – 33 Burbank Drive
- Ed Martindale – 190 Lawrence Place
- George Sambratto – 20 Schultz Road
- Henry Dinder – 5532 Big Tree Road

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

RESOLVED, that the Public Hearing in the matter of the Proposed Local Law for the Year 2006; Amendments to the Town Code Ordinance, is hereby closed at 7:15 PM (local time).

The resolution was unanimously adopted.

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

WHEREAS, following due and timely notice a Public Hearing was held this evening in the matter of a Proposed Local Law for the Year 2006; **Amendments to the Town Code of the Town of Orchard Park**, at which time all interested parties were given an opportunity to be heard

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the adoption of Local Law 1 for the Year 2006, as presented at the Public Hearing.

Supervisor Travers Murphy called for a roll call vote:

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

The resolution was duly adopted.

Old Business #1 Eastco Multimedia Solutions, Inc., 3646 California Road, Zoned I-1

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

RESOLVED, that the Town Board does hereby authorize Eastco Multimedia Solutions, Inc., 3646 California Road, Zoned I-1, a Building Permit for a 14,200 square foot addition to an existing building. The Planning Board, 1/11/06, recommends approval of Phase I of this request and of the site plan with the following stipulations:

- This is an Unlisted SEQR Action based on the submitted Long EAF Parts One and Two and a Negative Declaration is recommended.
- Addition of three (3) 175 watt metal halide wall packs with cutoff shields.
- No outside storage or display is permitted.
- Dumpsters will be screened, along with any additional dumpsters, in accordance with §144-25 of the Town Code.
- Engineering approval was granted on 1/27/06.
- A Landscape Completion Bond of \$19,000.00 or a certified check in the amount of \$9,500.00 in accordance with the Conservation Board Minutes shall be provided for the approved Landscape Plan, which includes 64% green space.
- The Planning Board approved Phase 1 of the site plan with the understanding that the applicant would return before the Planning Board for a review of Phase 2.

The resolution was unanimously adopted.

New Business #1 Release of Escrow for PIP 2004-05 Barrington Heights Subdivision

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

WHEREAS, on February, 16, 2005 the Town Board accepted dedication of the public improvements constructed in the Barrington Heights Subdivision, Part 1 – Phase 3, PIP #2004-05 with the stipulation that funds paid by the developer be held in escrow until a damaged decorative street light was replaced, and

WHEREAS, the developer has since replaced the damaged decorative street light on Graystone Lane and the work was inspected by the Engineering Department and found to be in compliance with Town specifications

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the Town Clerk to release to Barrington Heights Partnership at 2635 Millersport Highway, Getzville, New York 14068-1448 the \$1,500 held in escrow for street lighting in the Barrington Heights Subdivision, Part 1 – Phase 3, PIP #2004-05, as recommended by the Town Engineer.

Councilman Dietrick stated he was not in favor of this action due to the present situation.

The resolution was unanimously adopted.

New Business #2 Orchard Park Garden Club Requesting to Erect a Tent on Town Property

5) 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 Orchard Park Garden Club to erect a Tent on Town of Orchard Park property located next to the Railroad Depot for their 2005 Plant Sale, May 19 and 20, 2006. A certificate of Liability Insurance will be sent to the Town of Orchard Park for the event.

The resolution was unanimously adopted.

New Business #3 Orchard Park Chamber Requesting to Erect a Banner on South Buffalo Street

At this time Supervisor Travers Murphy removed this item from the agenda, as it now will be handled through the Building Inspector's office.

New Business #4 Recreation Department Appointment to the 2005-2006 Winter/Spring Staff

6) 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 following appointment to the staff of the Town of Orchard Park Recreation Department, dependent upon the applicant providing the required certifications, as recommended by the Recreation Director:

NAME	ADDRESS	POSITION
Bernadett Smith	6267 Hillcroft Drive, Boston NY	PT3A – Aid

The resolution was unanimously adopted.

New Business #5 & 6 Refer to the Planning Board and/or Conservation Board, Item #7 is Deleted

7) 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 authorize to refer the following requests to the Planning Board and Conservation Board: 3050 Orchard Park Road, Zoned B-2 SE, request a Change-In-Use from an automobile dealership and service facility to medical office space, **AND**, Jim Ball Pontiac-Buick-GMC, Inc., 3475 Southwestern Boulevard, Zoned B-2 SE, request to amend the Certificate of Occupancy issued 10/23/01, in order to utilize two stalls for repair work that was previously utilized for detail at the Southtown Suzuki.

Item #7 Deleted From the Agenda:

Hillside Children’s Center, 5116 Chestnut Ridge Road, request to establish a community residence or Individual Residential Alternative (IRA) for six individuals with developmental disabilities.

The resolution was unanimously adopted.

ELECTED OFFICIALS AND DEPARTMENT HEADS

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

RESOLVED, that the Town Board does hereby authorize the following budget transfer, as recommended by the Highway Superintendent for the Highway Department:

\$ 333.15	From: A.7110.0421 To: A.7110.0423	Parks-Electric Parks-H20 Ball Diamonds
\$ 2,222.40	From: A.7110.0421 To: A.5132.0422	Parks-Electric Highway Garage –Natural Gas

The resolution was unanimously adopted.

9) 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 authorize a change of the Conservation Easement for Gregory Haskell, 7636 Ellicott Road, in the Town of Orchard Park, from a 10 year to a Perpetual Easement for Gregory Haskell, as recommended by the Conservation Board.

The resolution was unanimously adopted.

Councilwoman Ackerman announced the new Library Officers and stated that the Orchard Park branch is the third busiest in Erie County.

Councilman Jemiolo stated that he would like the Town Board to review the Town Health Insurance for Elected Officials and non-union employees.

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

RESOLVED, that the Town Board does hereby require Gary Hill, petitioner for the Buffalo Niagara Court Center, Inc., to conduct a Part 3 EAF to answer concerns the residents brought forth at the Public Hearing on January 18, 2006 to rezone the property located at Weiss Road from R-3 to B-2.

The resolution was unanimously adopted.

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

RESOLVED, that the Town Board does hereby authorize to send a letter to the Planning Board to request that they halt proceedings on Pleasant Acres West until such time as the Town Board is satisfied that no garbage dump material was moved from Barrington Heights to Pleasant Acres.

The resolution was unanimously adopted.

Councilman Kaczor gave a Recreation report and stated that there is a position available due to a vacancy on the Recreation Commission. Anyone interested in serving on this board, should send a resume to the Town Board.

Councilman Dietrick stated that he supported Building Inspector Geist against allegations from Suzann Cushman in regard to the Barrington Heights Subdivision.

Highway Superintendent Piasecki stated that Erie County sent a check for one of two payments of \$35,727.74 for the Town's snow plowing of County roads.

Department Heads from the Floor

No one spoke.

State and County Representatives

No one spoke.

12) 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 approval of all entries on Warrant #3 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$ 58,236.91
Part Town Fund	903.21
Risk Retention	0.00
Cemetery Fund	0.00
Highway Fund	13,925.47
Special Districts	20,968.41
Trust & Agency	3,435.72
Capital Fund	148,428.87

The resolution was unanimously adopted.

13) 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 receive & file the following Communications and Reports as listed on the agenda: New York State Department of Transportation: Sent letter stating they will be resurfacing Big Tree Road (20A) in 2006 as part of the preventive Maintenance program beginning at California Road and continuing to Carrow Street, AND, Animal Control Officer's Annual Report for 2005.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Raymond Waite, 48 Auckland Avenue: Mr. Waite asked the Town Board if there were any changes in the Jim Ball project and the construction schedule. Building Inspector Geist stated that no building permits have been filed. Mr. Waite also wanted to know about the shift of dealership in the cars and trucks. Supervisor Travers Murphy stated that she had just received correspondence of the change. Mr. Waite stressed that the north end of the Town is being bombarded with building and there needs to be protection for residential properties and buffer laws. Councilman Jemiolo stated that anyone has the right to petition to rezone property according to New York State Law. The Town Board has to review the petitions brought before them. The Town Board is trying to work with the residents in regard to buffering.

Marion Snyderman, 38 Woodview Court: Ms. Snyderman asked for an update on the progress regarding flooding in her neighborhood and Town Engineer Bieler addressed her questions.

Chris Weyer, 65 Tanglewood Drive: Ms. Weyer stated that on January 24, 1998 there was a fire at 26 Tanglewood Drive. The property has been left idle for the past seven years and she would like to know what the Town can do to deal more efficiently and swiftly with absentee owners. Building Inspector Geist stated that this property has been in court proceedings and there may be a new buyer. Supervisor Travers Murphy stated that she is aware of this property and will monitor the situation.

Randy Banasiak, 95 Graystone Lane: Mr. Banasiak thanked the Town Board for having Dr. Gardella present his review of the environmental findings to the residents of Barrington Heights Subdivision before the Town Board Meeting.

Mary Jo Tomasik, 30 Sylvan Circle: Ms. Tomasik is not in favor of the rezoning for the Buffalo Niagara Court Center, Inc. project on Weiss Road.

James Craw, 2 Creekside Drive: Mr. Craw is not in favor of the rezoning on Weiss Road.

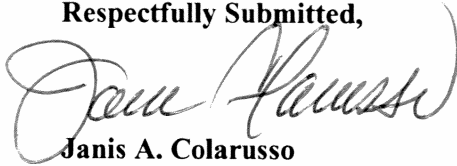
David Schuster, 5385 S. Freeman Road: Mr. Schuster was upset about and spoke of the way the termination of Sarah des Jardins was handled.

Michael Stebick, 124 S. Lincoln Avenue: Mr. Stebick felt that the former Planning Coordinator, Sarah des Jardins, should have resigned her position after she moved out of Town.

Hal Fabinsky, 37 Bender Drive: Mr. Fabinsky defended the Town Board decision to change Planning Coordinator's as it was a necessary.

There being no further business from the floor, on motion by Councilman Jemiolo, seconded by Supervisor Travers Murphy, to wit: the meeting was adjourned at 8:25 PM (local time).

Respectfully Submitted,



**Janis A. Colarusso
Town Clerk**

