

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 3<sup>rd</sup> day of August 2005 at 7:00 P.M., (local time). The meeting was called to order by the Supervisor and there were:

PRESENT AT ROLL CALL:	Toni M. Cudney	Supervisor
	Nancy W. Ackerman	Councilwoman
	Stanley A. Jemiolo, Jr.	Councilman
	David R. Kaczor	Councilman
	John J. Mills	Councilman
	Janis A. Colarusso	Town Clerk
	Leonard Berkowitz	Town Attorney
	Andrew Geist	Building Inspector
	Samuel McCune	Chief of Police
	Frederick Piasecki, Jr.	Highway Superintendent
	Wayne Bieler	Town Engineer

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

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

**RESOLVED**, that the minutes of the Town Board Meetings held on July 20<sup>th</sup>, 2005, as presented by the Town Clerk, are hereby approved, and be it further

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

**The resolution was unanimously adopted.**

#### **PUBLIC HEARING**

At 7:00 PM, the advertised time, the Supervisor called for the Public Hearing to hear all interested persons for or against a Proposed Local Law for the Year 2005, which reads as follows: Amendment to the Town Code of the Town of Orchard Park, which Local Law provides as follows: Right of Way Permit Fees (for all new construction) will be paid upon issuance of the Building Permit - \$35.00, and Right of Way Permit Fees - \$35.00

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 Building Inspector gave an explanation for the proposed changes in the Right of Way procedure. He stated that it would be a more streamlined process for the contractors, and the Town, to add

the work, for the Right of Way Permit, to the Building Permit. A proposed increase of \$10.00 in the fee was added, since the fee has been \$25.00 for many years and this would help to cover Town costs without being excessive.

At this time Supervisor Cudney opened the Public Hearing to hear all interested persons for or against the Proposed Local Law for the Year 2005: **No one spoke.**

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

**RESOLVED**, that the Public Hearing in the matter of the Amendment to the Town Code of the Town of Orchard Park for Right of Way Permit Fees, is hereby closed at 7:03 PM (local time).

**The resolution was unanimously adopted.**

**Adopt Local Law for the Year 2005 – Right-of-Way Permits**

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

**WHEREAS**, following due and timely notice a Public Hearing relating to the matter of a Proposed Local Law for the Year 2005, which reads as follows: Amendment to the Town Code of the Town of Orchard Park, which Local Law provides as follows: Right of Way Permit Fees For All New Construction will be paid upon issuance of the Building Permit - \$35.00, and Right of Way Permit Fees - \$35.00, was conducted at the Orchard Park Municipal Center on August 3, 2005, at which time all interested parties were given an opportunity to be heard.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board is hereby authorized to adopt Local Law #2 for the Year 2005 which provides as follows: Right of Way Permit Fees (for all new construction) will be paid upon issuance of the Building Permit- \$35.00, and Right of Way Permit Fees - \$35.00.

**The question of the adoption of the foregoing resolution was duly put to a roll call vote:**

Supervisor Cudney	Aye
Councilwoman Ackerman	Aye
Councilman Jemiolo	Aye
Councilman Kaczor	Aye
Councilman Mills	Aye

**The resolution was unanimously adopted.**

**Old Business #1 Approve Release of Retention to Kandey Co. for Comp. Water System Imp. Pt. 2**

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

**WHEREAS**, construction work on the Comprehensive Water System Improvements Project, Part 2 has been completed and on December 10, 2004, a final inspection was conducted and all of the work has been satisfactorily completed in accordance with the contract documents and specifications, and

**WHEREAS**, the two-year maintenance bond in the amount of \$1,462,919.50 has been submitted along with the Affidavit of Release of Liens, Affidavit of Subcontractor Payment and necessary legal documents, and

**WHEREAS**, the final project payment, which includes bid items, previously approved change orders and the final adjustments to the quantities for each bid item where there will be a net increase of \$37,009.43 representing an increase of 2.60%

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the final payment and release of retention to the Kandey Company, Inc., 19 Ransier Drive, West Seneca, New York 14224 for the Comprehensive Water System Improvements Project – Part 2 in the amount of \$3,230.62, as recommended by the Town Engineer.

Councilman Jemiolo commended Town Engineer Bieler and the Engineering Department on this project.

**The resolution was unanimously adopted.**

**New Business #1 Authorize the Advertisement of Bids for Birdsong Nature Trails**

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

**WHEREAS**, our consultant engineer for the Birdsong Nature Trails, Marquis Engineering, P.C., is in the final stages of completing construction plans and specifications for the improvements to Birdsong Park Nature Trails. The Town has received a New York State Grant in the amount of \$60,000 from the Office of Parks, Recreation and Historic Preservation to partially finance the project, therefore, the project is subject to all federal rules and regulations relative to the hiring of minorities and minority business enterprises, and

**WHEREAS**, the Highway Department does not have the manpower available to complete the work at this time, therefore, per the January Capital Projects meeting and since the project is estimated at \$350,000, the work must be contracted through the formal bidding process

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize advertisements in the Southtowns Citizen, and the Buffalo News for sealed bids to be opened for Birdsong Park Nature Trails at 10:00 AM on September 1, 2005 in the Supervisor's Conference Room at the Orchard Park Municipal Center, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #2 Authorize the Highway Superintendent to Post "Horse" signs on S. Abbott Road**

**6) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN MILLS, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, TO WIT:**

**WHEREAS**, upon recommendation of the Traffic Safety Committee and pursuant to the authority granted by Section 1660 of the Vehicle and Traffic Law of the State of New York,

**NOW, THEREFORE, it is hereby**

**ORDERED**, that the Highway Superintendent is directed to post "Horse" signs northbound and southbound, as requested by Kevin and Elizabeth Schott of Schott Stables, 6305 S. Abbott Road, Orchard Park, NY 14127 and to notify the ECDOT of this action.

**The resolution was unanimously adopted.**

**New Business #3 Authorize to send a certified resolution to the ECWA for equipment upgrade**

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

**RESOLVED**, that the Town Board does hereby authorize an upgrade of Town owned equipment, which is presently the Erie County Radio Antennae/Orchard Park Police Antennae on the Erie County Water Tower on Lake Avenue, as required by the Erie County Water Authority.

Police Chief McCune stated that this is a positive action for the Town, which would change a telephone line to a radio signal with a one time fee, saving the Town money in the future.

**The resolution was unanimously adopted.**

**New Business #4 Authorize Block Party for Barrington Heights Subdivision**

8) 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 the residents of Barrington Heights Subdivision to hold their 1<sup>st</sup> Annual Block Party, August 27, 2005 from 11:00 AM to 11:00 PM, with a rain date of August 28<sup>th</sup>, 2005 with portions of Graystone Lane to barricaded.

**The resolution was unanimously adopted.**

**New Business #5 Refer to the Public Safety Committee**

9) THE FOLLOWING REOLUTION WAS OFFERED BY COUNCILMAN MILLS, WHO MOVED ITS ADOPTION, SECONDED BY SUPERVISOR CUDNEY, TO WIT:

**RESOLVED**, that the Town Board does hereby refer the request of residents on Eaglebrook Drive, The Green and Brimfield Court, regarding the parking of employees of ABC Rental along both sides of Eaglebrook Drive to the Public Safety Committee.

**The resolution was unanimously adopted.**

**New Business # 6 Request of Premium Coffee for a (1) one-year extension**

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

**RESOLVED**, that the Town Board does hereby approve the request of Premium Coffee, located on Milestrip Road @ California Road, a (1) one-year extension for approved development of property.

**The resolution was unanimously adopted.**

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

**RESOLVED**, that the Town Board does hereby refer to the Planning Board and/or Conservation Board the following: Southwestern Alliance Church, 3888 Southwestern Boulevard request for Change in Use of the parsonage on the property to an office.

**The resolution was unanimously adopted.**

**ELECTED OFFICIALS & DEPARTMENT HEADS**

12) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR CUDNEY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN MILLS, TO WIT:

**RESOLVED**, that the Town Board does hereby authorize the following budget transfer, as requested by Highway Superintendent Piasecki:

<b>\$2,200.47</b>	From: A7110.402	Supplies
	To: A7110.215	Parks Equipment

**The resolution was unanimously adopted.**

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

**WHEREAS**, the Town has received additional funds for a records management grant to assist in appropriate recordkeeping and archiving, and

**WHEREAS**, the Town's 2005 adopted budget does not contain appropriations relating to such grant, and

**WHEREAS**, the funding for these adjusted appropriations will be supported by state aid from such approved grant, of which the remainder is being received in 2005

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the amending of the Town's 2005 budget to increase estimated revenues and authorize additional appropriations as follows:

Increase appropriation account:

<b>\$6,968.00</b>	A3120.0462	Police – Records Management
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Increase estimated revenues:

**\$6,968.00**

A0000.3060

State Aid – Records Management

**The resolution was unanimously adopted.**

**14) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR CUDNEY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN MILLS, TO WIT:**

**WHEREAS**, the Town as a sub-recipient will be receiving a TRACS grant to provide equipment and services to the Police Department, and

**WHEREAS**, the Town's 2005 adopted budget does not contain appropriations relating to such a grant, and

**WHEREAS**, the funding for these adjusted appropriations will be supported by state aid from such approved grant

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the amending of the Town's 2005 budget to increase estimated revenues and authorize additional appropriations as follows:

Increase appropriation account:

**\$40,000.00**

A3120.0499

Police – TRACS Grant Expense

Increase estimated revenues:

**\$40,000.00**

A0000.3387

State Aid – TRACS Grant Revenue

Police Chief McCune stated that the Town is receiving this funding from the Governor's Traffic Safety Committee to implement a system for the issuing of traffic tickets in Erie County from patrol cars. The TRACS grant of \$100,000 was awarded in 2004 and the \$40,000 would complete the issuance and installation for the remaining patrol cars in Erie County. Police Chief McCune explained that due to Erie County's financial problems, it would be easier to run the grant through the Town's records. Since the TRACS system is ready to be implemented, the money can be obtained through the Town sooner, rather than several months from now through Erie County.

**The resolution was unanimously adopted.**

**15) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR CUDNEY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZOR, TO WIT:**

**RESOLVED**, that the Town Board does hereby approve the request of the Eagle Ridge Swim Club to park cars on the Birdsong Park on August 27<sup>th</sup>, 2005 from 11 AM to 4 PM to support an Eagle Ridge Swim meet.

The Eagle Ridge Swim Club will be required to meet with the Highway Superintendent to coordinate and designate the parking location at the park. In addition, should any lawn damage occur, Eagle Ridge Swim Club will be responsible for the reseeding and repair.

**The resolution was unanimously adopted.**

Supervisor Cudney announced that the Scoping Session scheduled by the Town Board for CRS Properties would be changed from Tuesday, August 9, 2005 at 2 PM in the afternoon to 7 PM Tuesday evening, to hear the residents concerns on the proposed Senior Housing Project, in the Municipal Building basement meeting room. The NYS Department of Conservation, NYS Department of Transportation, Erie County Department of Environment and Planning and the Orchard Park Public Safety Committee are invited to attend.

Councilwoman Ackerman stated that the scoping session gives the developer an opportunity to respond to the questions the public and concerned agencies may have, when he prepares the Environmental Impact Statement.

Supervisor Cudney received a communication from Bob Lennartz, the Chairman of the Scenic By-Ways Committee. He reported on the success of naming a portion of the 219 Highway, the "Erie County Veterans Memorial Highway" on July 21, 2005, when Governor Pataki signed this action into law. Supervisor Cudney offered her congratulations to Mr. Lennartz and wanted to notify the community of this accomplishment. Supervisor Cudney read the words of Mr. Lennartz "I can't put into words how happy I am this was accomplished. I thank God for his help and I thank every man and woman who served this great Country. We will never forget those who served".

Councilman Kaczor announced the "Come Out and Play" day, sponsored by the Recreation Department. It will be held on Saturday, August 6, 2005 from 9 AM to 12 PM for children 5 years old and under. Councilman Kaczor reported on the fun and success of the "Quaker Days" events and thanked everyone who was involved and participated.

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

**RESOLVED**, that the Town Board does hereby authorize the scheduling of a Public Hearing on September 7, 2005 at 7:00 PM in the matter of the Proposed Amendment to §97-10 "Dogs to be Leashed", and be it further

**RESOLVED**, that the Town Clerk publish due notice thereof.

**The resolution was unanimously adopted.**

Highway Superintendent Piasecki reported on the status of the South Lane project, Independence Heights, Milestrip Sports Complex parking lot and landscaping and the Compost Facility grant money.

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

**WHEREAS**, to proceed with the proposed Stanley Property as a stormwater facility and for parkland development, a boundary survey will be necessary along with the mapping of the wetland boundaries that are presently being delineated by Earth Dimensions, Inc., and

**WHEREAS**, the Engineering Department requested proposals and is recommending the professional land surveying and design firm of Nussbaumer & Clarke, Inc. to complete the Stanley Property boundary survey, wetland location, mapping work, and documentation. The Town Engineer has met with representatives of that firm to review contract language, refine the scope of services and negotiate an appropriate fee structure and believes that the proposed scope of services and agreement with Nussbaumer & Clarke, Inc. is satisfactory and will accomplish the goals of the project that were set forth by the Town, and

**WHEREAS**, the work has been organized into three major elements: Task 1 Survey Boundary and Mapping, Task 2 Wetland Location and Mapping and Task 3 Concrete Monument Installations per Town Standards. Task 1 and Task 2 are proposed for a lump sum fee of \$3,750 and \$2,800 respectively and Task 3 is at a unit price of \$200 per concrete monument. With an estimated 12 monuments needed, the cost would be \$2,400. Also, with the  $\pm$  12 corners involved with the property; and  $\pm$  12 concrete monuments needed to be installed, there may be a risk that adjacent property owners may have existing survey markers at the same location. The installation of a permanent concrete monument would have to be resolved with those property owners. There is presently \$343,359.72 under Capital Projects H-09 Land Acquisition for this project

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign an agreement with Nussbaumer & Clarke, Inc., 3556 Lake Shore Road, Buffalo New York 14219-1494, to provide professional land boundary survey, wetland location and mapping and monument installation per Town standards for the Stanley Property Project in an amount not to exceed \$8,950.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

#### **DEPARTMENT HEADS FROM THE FLOOR**

**No one gave a report this evening.**

**18) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR CUDNEY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN JEMIOLO, TO WIT:**

**RESOLVED**, that the Town Board does hereby authorize the approval of all entries on Warrant #15 following auditing by members of the Town Board and in the funds indicated:

General Fund	\$ 160,140.37
Part Town Fund	\$ 6,850.13
Risk Retention	\$ 0.00
Cemetery Fund	\$ 0.00
Highway Fund	\$ 47,123.77
Special Districts	\$ 19,938.64
Trust & Agency	\$ 3,117.09
Capital Fund	\$ 280,641.44

**The resolution was unanimously adopted.**

#### **Receive & File Communications**

**19) 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 receive and file the following communications: 1) Orchard Park Public Safety Committee: after reviewing the request of Mr. Fisher of Fisher Bus Services, does not recommend the housing of their bussing operation on Ellis Road, 2) Governor George Pataki's announcement of revisions to the Proposed Great Lakes Water Management Agreements, and 3) Erie



County Legislature's notice of Public Hearing on July 28, 2005 at 7:30 PM, at the Eden Town Hall in regard to the required eight year review for the Eden Agricultural Districts.

**The resolution was unanimously adopted.**

### **BUSINESS FROM THE FLOOR**

**Barbara Little, 37 Diller Drive** – stated that the residents around the proposed area of the CRS Senior Housing Project on Milestrip Road have not changed their position. The project is not the issue, but rather the location that they are opposed to. Mrs. Diller stated that the neighbors weren't properly notified. Supervisor Cudney explained the reason for the confusion. Councilman Kaczor stated that the Town Board demanded that the developer meet with the residents in the evening not at 2 PM, to hear their concerns for the record.

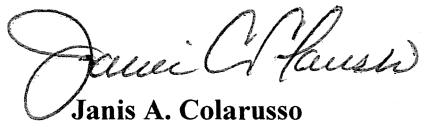
**Linda Gaiser, 111 Burbank Drive:** She stated that she lives behind the Benderson Plaza where the new Latina's Supermarket is going to be. Ms. Geiser explained that several years ago, she brought the problems associated with the now closed Jubilee Supermarket before the Town Board. Now with Latina's, she fears all the issues will return. Ms. Gaiser asked if the Town Board would support that a fence be installed by Benderson Developers. Supervisor Cudney stated that she has spoken with Benderson Developers and they agreed to install a fence.

**Nicholas Taneff, 279 Summit Avenue:** He reminded the Town Board that there is still no buffer law and problems such as Ms. Gieser's must be dealt with one at a time. Councilman Jemiolo stated that there will always be buffering issues, but he feels that the Town Board is doing the best they can with developers and residents. Councilman Jemiolo thought that maybe they could create a buffer law according to acreage. Mr. Taneff asked about the Master Plan for the Town. Councilwoman Ackerman stated that there is a date on the agenda for the Master Plan and there will be language in it regarding buffer laws. Mr. Taneff stated that he is frustrated with the buffer law situation and Supervisor Cudney agreed that it is needed now. Mr. Taneff asked Councilman Jemiolo what happens if a developer won't work with the Town. Councilman Jemiolo stated that he was not on the Town Board when the Diversified Controls buffering situation happened, but has not had anyone refuse the directive to buffer. Councilman Jemiolo stated that they have learned from Mr. Taneff's lobbying and hopefully this will make for better decisions in the future. He stated that that with a study initiated by Councilman Kaczor, of all of the land in the Town of Orchard Park, only 10% is zoned business and/or industrial. Councilman Jemiolo said the Town must use these areas wisely, with good projects and make sure they are located where they should be. He stated that the Town has to respond to growth pressures. Mr. Taneff thanked the Highway Superintendent and the Chief of Police for the much needed additional signs on Summit Avenue. He still contends there are serious problems with semi-trucks turning east off Abbott Road and entering onto Summit Avenue in the westbound lane hindering oncoming traffic and endangering pedestrians. He asked Councilwoman Ackerman about Mr. James (the owner of Diversified Controls) promise to build a bridge for truck traffic. Mr. Taneff stated that Councilwoman Ackerman in working with Mr. James reported, that after the promise was made, he did not have the money to build the bridge. Mr. Taneff said this is unacceptable and Mr. James is responsible should an accident happen at Summit Avenue and California Road. In a Town Board meeting on August 7, 2002, it is recorded that Mr. James agreed to build a bridge.

**Richard Maul, 3735 Baker Road:** He reported that with both bridges under construction there are problems that must be addressed. Vehicles are speeding and people are moving the barriers to go through the closed off area. This is very serious safety issue for the Sicar Construction workers. Mr. Maul asked the Town Board for some solutions as soon as possible. Supervisor Cudney asked Town Engineer Bieler for his input. He thought maybe Sicar Construction could install more permanent barricades that can't be moved, therefore, people won't continue to try and cut through. The Town Attorney suggested restricting the barricade to allow only one lane. Police Chief McCune stated that they can ticket people if they go through a barricade for failure to obey a traffic control device. The problem is that it is hard to have the manpower there at all times to enforce it.

There being no more business from the floor, on motion by Supervisor Cudney, seconded by Councilman Jemiolo to wit; the meeting was adjourned at 8:09 PM (local time).

Respectfully Submitted,

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

Janis A. Colarusso  
Town Clerk