

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 2nd day of November 2005 at 7:00 P.M., (local time). The meeting was called to order by the Supervisor and there were:

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| 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 |

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

RESOLVED, that the minutes of the Town Board Meetings held on October 5th, 19th, 2005 and the special meeting of the Town Board on the 26th, 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 (local time), the Supervisor called for the Public Hearing to hear all interested parties regarding the 2006 Ad Valorem and the Benefit Basis Special Districts Preliminary Budget of the Town of Orchard Park for the Year beginning January 1, 2006.

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.

Supervisor Cudney stated that this proposed budget presented is the preliminary Supervisor's budget for spending and revenue estimates for Orchard Park government in 2006. This budget may be adopted or amended based on the public and Town Board input. The Town Board has until November 20th, 2005 to adopt a budget.

At this time Supervisor Cudney introduced Mr. Wayne Drescher of Drescher & Malecki, the Town of Orchard Park's Accounting Firm, who assisted in the preparations of the budget. Mr. Drescher summarized and explained the budget to the audience.

Comments from the floor: No one spoke.

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

RESOLVED, that the Public Hearing in the matter of the 2006 Ad Valorem and the Benefit Basis Special Districts Preliminary Budget of the Town of Orchard Park for the Year beginning January 1, 2006, is hereby closed at 7:12 PM (local time).

The resolution was unanimously adopted.

Old Business #1 Benderson Dev., 3165 Southwestern Blvd., Stipulation Change for a Bldg. Permit

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

WHEREAS, at the September 21, 2005 Town Board Meeting, the Town Board authorized Benderson Development a building permit to construct a 7,560 square foot restaurant/retail building with stipulations, and

WHEREAS, John Bernard of the Planning Board suggested in a memo, dated October 17, 2005, adding language to clarify the stipulation that reads: "The pavement area in front of the building (Southwestern Boulevard side) and the south side (Lowe's side) would be labeled no deliveries., while the rear area of the building (east side) would be clearly identified". John Bernard recommends that sentence be amended to add "for deliveries" at the end of the last sentence of the stipulation.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize a change in the language for clarification in the stipulation for the Benderson Development, 3165 Southwestern Blvd., Zoned B-2, for a building permit to construct a 7,560 square foot restaurant/retail building to be amended to add "for deliveries" at the end of the last sentence of the stipulation recommended by the Planning Board.

The resolution was unanimously adopted.

New Business #1 Authorize Supervisor to Sign Documents for a Special Grant for Scenic By-Ways

4) 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 Supervisor to sign legal documents on behalf of the Town of Orchard Park for the purpose of receiving \$15,000 for a Special New York State Grant PKS-04-N1-059 for the Scenic By-Ways Project.

The resolution was unanimously adopted.

New Business #2 Approve Change Order #1 to the Contract for Birdsong Park Nature Trails

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

WHEREAS, the Engineering Department is requesting approval of a Change Order to the contract with Birch Grove Landscaping for the Birdsong Park Nature Trails Project in the amount of \$2,820.00 and this would increase the total amount to \$353,945.00 , representing an increase of 0.80%, and

WHEREAS, this Change Order consists of the cost for Birch Grove Landscaping to perform additional work under their contract for the Birdsong Nature Trails Project to include unclassified excavation under cut areas of unsuitable subgrade for the stone trail placements. The unclassified excavated material will be taken to the Rock Dove Lane staging area where proper erosion and sediment controls will be established around the temporary stockpile and this material then becomes the property of the contractor to dispose of.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize Change Order #1 to the original contract with Birch Grove Landscaping, 117 Bear Road, Cowlesville NY 14037, for the Birdsong Park Nature Trails Project in the amount of an increase of \$2,820, as recommended by the Town Engineer.

The resolution was unanimously adopted.

New Business #3 Authorize the Release of Escrow under PIP #2004-01, Eagle Heights Subdivision

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

WHEREAS, on February 15, 2005 the Town Board accepted dedication of the public improvements constructed in the PIP #2004-01 Eagle Heights Subdivision Part 8, Phase 1, with the stipulation that funds paid by the contractor be held in escrow until the installation of seeding and grading within the right-of-way and the boulder retaining walls and associated infrastructure adjacent to the entrance of Redbrick Road were completed, and

WHEREAS, the contractor has since completed the installation of the boulder retaining walls and associated infrastructure adjacent to the entrance of Redbrick Road, and the required seeding and grading on Redbrick Road, and Highbrook Court cul-de-sac. 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 the \$1,000 held in escrow under PIP #2004-01, for the Eagle Heights Subdivision, Part 8, Phase 1, for the completion of seeding and grading (\$1,000) to Cimato Bros. Construction Inc., 9220 Transit Road, East Amherst NY, and be it further

RESOLVED, that the Town Board does hereby authorize the Town Clerk to release \$60,000 plus interest held in escrow under PIP #2004-01, for the Eagle Heights Subdivision, Part 8, Phase 1 for the boulder retaining walls to Marrano/Marc Equity Corporation, 2730 Transit Road, West Seneca, NY, and be it further

RESOLVED, that the Town Board is hereby authorizing \$61,000 plus interest to be returned as requested by the Town Engineer.

The resolution was unanimously adopted.

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New Business #4 Appointment of David Jensen to the Building Inspector's Department

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

WHEREAS, David Jensen, who lives in the Town of Orchard Park at 7 South Davis Street, was hired as a provisional employee for the position of Fire Inspector/Code Enforcement Officer in July of 2004 for the Building Inspector's Department. As of today the Building Inspector has stated he has been performing an excellent job and has successfully passed the Erie County Civil Service Exam for the position and scoring within the top three from Orchard Park

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize Mr. Jensen's employment status to be changed to Permanent Civil Service Title Assistant Code Enforcement Officer, White Collar Union Wage Scale, Range 0007, Step D, \$17.92 per hour.

Supervisor Cudney and the Town Board officially welcomed Mr. Jensen.

The resolution was unanimously adopted.

New Business #5 Friends of OP Library Requesting To Erect Temporary Sign Four Time a Year

8) 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 authorize the Friends of the Orchard Park Public Library to erect a temporary sign for four book sales this year. The sign is a banner type 4' by 10' and will be up for approximately a week at the corner of Highland Avenue and South Buffalo Street for each book sale, with the stipulation that the Building Inspector be notified before the sign is posted.

The resolution was unanimously adopted.

New Business #6 Authorize the Chief of Police to Advertise for Bids for Equipment Installation

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

RESOLVED, that the Town Board does hereby authorize the Chief of Police to request bids for Equipment Installation as per bid specifications by Erie County Central Police Services through a Grant from New York State Governor's Traffic Safety Committee. The Bid opening will be Thursday, November 17, 2005 at 11:00 AM in the Supervisor's Conference Room.

The resolution was unanimously adopted.

New Business #7 Todd Watkins requesting to be an Out-of-Water District Customer

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 refer the request of Todd J. Watkins, 8003 Boston Colden Road, for an Out-of-District Water Customer, for the Town of Orchard Park to the Town Engineer and the Town Attorney for review.

Supervisor Cudney stated for clarification that Mr. Watkins currently resides in the Town of Boston, but is building a house on Transit Road in Elma, across the street from the Orchard Park Water District.

The resolution was unanimously adopted.

ELECTED OFFICIALS & DEPARTMENT HEADS**Budget Transfer**

11) 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 the following budget transfer:

\$500.00 **From:** A.7610.0419 Other Expenses
 To: A.7610.0445 Maintenance & Repairs

The resolution was unanimously adopted.

Supervisor Cudney announced that the Orchard Park Garden Club would be presenting their Holiday Flower Show on Saturday the 5th and Sunday the 6th this Saturday, in the Municipal Center.

Councilwoman Ackerman stated that there would be a Veteran's Day Celebration on November 11th, 2005 at 11:00 AM in Veterans Park. Councilwoman Ackerman encouraged everyone to attend to remember those who sacrificed their lives for our freedom and honor those who are serving in the Armed Forces.

Councilman Kaczor reported on the success of the expanded *Halloween in the Park*, sponsored by the Recreation Department and many volunteers and donations from the local business community.

Town Clerk Janis Colarusso congratulated David Jensen on his appointment.

12) 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 request of the Aurora Waldorf School to post two portable 3'x 4' signs in the Town of Orchard Park to promote their 15th Annual Children's Winter Fair on Saturday, November 19, 2005 from 10:00 AM until 4:00 PM. One sign will be posted at the intersection of Chestnut Ridge Road and Armor Duells Road, and the second sign will be placed near Rix Country Store. Both signs will be removed Saturday evening, as recommended by the Building Inspector.

The resolution was unanimously adopted.

Police Chief McCune reported on the quietest Halloween he can ever recall. He thanked the parents and the children for an enjoyable evening.

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

WHEREAS, the Engineering Department has received a request from the Town of Orchard Park Chief of Police to change the “No Parking” signs to “No Stopping” on Baker Road, from Route 20A to the North driveway of the Church of the Latter Day Saints (4005 Baker Road) and

WHEREAS, the Police Chief, Highway Superintendent and the Town Engineer reviewed the street layout for the Baker Road Reconstruction Project and found this appropriate.

NOW, THEREFORE, be it

ORDERED, that the Town Board does hereby authorize the posting of “No Stopping Anytime” Sign, No. P1-7C, in lieu of “No Parking Anytime” Signs, No. P1-2C, along Baker Road between Route 20A and the North drive way of the Church of Latter Day Saints, S4005 Baker Road at Contract Plan Location Nos. 13, 14 15, 17, 18, 23, 24, 26 and 27.

The resolution was unanimously adopted.

DEPARTMENT HEADS FROM THE FLOOR

Recreation Director Ed Leak: He thanked Councilman Kaczor for his kind words and he expounded on the Halloween event. He stated that Latina’s donated 500 doughnuts, Wendy’s donated beverages, Wegman’s donated cider and beverages, the Community Youth Organization and the Orchard Park Business Association collectively had over 40 volunteers along with his staff. He also thanked the Highway Department and the Parks and Grounds for all their help.

14) 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 the approval of all entries on Warrant #21 following auditing by members of the Town Board and in the funds indicated:

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| General Fund | \$113,833.73 |
| Part Town Fund | 5,538.89 |
| Risk Retention | 0.00 |
| Cemetery Fund | 0.00 |
| Highway Fund | 84,101.18 |
| Special Districts | 14,327.93 |
| Trust & Agency | 6,226.67 |
| Capital Fund | 520,781.22 |

The resolution was unanimously adopted.

Communications:

15) 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 to receive and file the following communications as entered on the agenda: 1) State Senator Volker: the state budget is including a multi-year Capital Transportation Plan that will make critical investments and improvements to the local and statewide transportation infrastructure. By investing wisely, reliable transportation will attract new businesses and jobs to the community. He states that without passage of the Transportation Bond Act that will be on the November 8th ballot, the entire statewide transportation plan will need to be reworked, putting critical local projects in jeopardy, and, 2) The Legislature of the County of Erie: has designated November 1st to November 30th as the annual thirty-day time period within which a land owner may request predominantly viable agricultural land for inclusion to a certified agricultural district accordance with § 303-b of NYS Agricultural & Market Law. Land owners may obtain a copy of a form to be filled out accordingly at the office of the Town Clerk, Janis Colarusso.

The resolution was unanimously adopted.

BUSINESS FROM THE FLOOR

Linda Flowers, 66 Woodview Court: She asked for an update regarding the flooding in her neighborhood on Woodview. She asked if the Town could dig out some of the silt from the stream under the bridge at Highland Avenue and Forest Avenue to relieve some of the backflow. The Village, Highway Superintendent Piasecki and Councilman Mills are scheduled to meet to try and resolve some of the problems. The US Army Corps of Engineers requires a permit to do work in the stream. If a permit is required, it will take some time to a permit.

Nicholas Taneff, 279 Summit Avenue: He congratulated David Jensen on his new position.

David Jensen, 7 South Davis Street – he thanked the Town Board for giving him the opportunity to start as a part-time employee with the Building Department and progress to a full-time employee. He stated that he will do the best job he can for the Town of Orchard Park.

Robert Frantsits, 4275 California Road: He was asking about drainage near his home. Town Engineer Bieler explained the drainage history of Cobham Drive, which doesn't affect his property. Supervisor Cudney stated that this problem seems to be a private property issue and not one the Town would be responsible for. Councilman Jemiolo told Mr. Frantsits if his plumber could contact the Town Board, they could help with a possible solution. The Highway Superintendent said an Erie County representative is scheduled to meet with him to discuss what can be done for Mr. Frantsits and his neighbors regarding the water issue, since this is a County road and right-of-way.

Peggy Kraft, 18 Timberlake Drive: She asked the Town Board for help in creating an ordinance regarding the housing of pigs as pets in a residential area. Ms. Kraft's neighbor owns a pig, which has caused her significant property damage, injured her dog and hurt another neighbor. Ms. Kraft stated that it a dangerous situation and hopes that the Town Board can establish a lawful solution. Supervisor Cudney suggested that Ms. Kraft could file in Small Claims Court for damages and restraint of the pig. Chief McCune stated that this situation has been ongoing for some time and the Dog/Animal Control Officer, the Building Inspector and the Police Department have been actively involved.

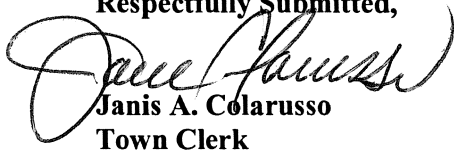
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Chief McCune stated that he would check the ordinance regarding the portion of the Penal Law, entitled "Creating a Nuisance".

The Town Attorney also stated that in the Penal Code there is a section stating that the homeowner can be held responsible for negligence of their pet. Town Clerk Colarusso offered to call surrounding towns for information as to what their ordinances contain in this matter.

There being no more business from the floor, on motion by Supervisor Cudney, seconded by Councilman Jemiolo to wit; the meeting was adjourned with the request for our community's thoughts and prayers for Dennis Kruszka, a Village employee who is gravely ill and also in memory of Anthony Rosati, our former Dog Control Officer at 8:03 PM (local time).

Respectfully Submitted,


Janis A. Colarusso
Town Clerk