

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 20<sup>th</sup> day of February 2019 at 7:12 PM, the meeting was called to order by Supervisor Keem and there were:

<b>PRESENT AT ROLL CALL:</b>	Patrick J. Keem	Supervisor
	Eugene Majchrzak	Councilmember
	Michael Sherry	Councilmember
	Remy Orffeo	Town Clerk
	Andrew Geist	Building Inspector
	E. Joseph Wehrfritz	Asst. Chief of Police
	Frederick Piasecki, Jr.	Highway Superintendent
<b>ABSENT:</b>	John C. Bailey	Town Attorney
	Wayne Bieler	Town Engineer
	Mark Pacholec	Chief of Police

**Supervisor Keem 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 SUPERVISOR KEEM, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:**

**RESOLVED**, that the Town Board does hereby approve the Regular Meeting Minutes for: February 6, 2019 and Executive Session for: February 6, 2019, 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**

**Local Law 2019-2 Amending** Chapter 144 "Zoning", Section 144-55(E) "Solar as an accessory use or structure"

At 7:13 PM (local time) Supervisor Keem called for the Public Hearing to hear all interested parties regarding the proposed Local Law 2-2019

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 Keem asked if anyone is interested in speaking or making a comment.

Heather Hartel - thanked the Planning Board and Town Board for the revised Solar Panel legislation, this will remove barriers for residents and businesses to put up solar panels. She was also encouraged that the Town is looking at community solar for the 70 to 80 percent of the people who are unable to put up solar panels. There is also a program through Solarized Buffalo Niagara for people who do wish to put solar panels on their residence or business.

Dave Schuster - thanked the Town Board for revisiting the Solar Panel issue and adjusting the law to allow more citizens to take advantage of solar power for their homes.

2) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR KEEM, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:

**RESOLVED**, that the Public Hearing for the proposed Local Law 2019-2 Amending Chapter 144 "Zoning", Section 144-55(E) "Solar as an accessory use or structure" is hereby closed at 7:19 PM.

**The motion was unanimously adopted.**

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

**WHEREAS**, following due and timely notice a public hearing relating to the matter of a Local Law for 2019 was held on February 20, 2019 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 2019 which provides as follows:

**SECTION 1:**

**§ 144-55**

**E. Solar as an Accessory Use or Structure**

- 1. Roof-Mounted Solar Energy Systems.
  - a) Roof-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.
  - b) Height. Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.
  - c) Aesthetics. Roof-Mounted Solar Energy System installations shall incorporate, when feasible, the following design requirements:
    - 1) Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system. The Zoning Board of Appeals is granted authority to permit variances to this requirement with the advice and consent of the Building Inspector.
  - d) Roof-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from the site plan review under the local zoning code or other land use regulations.
  - e) Permit. A Building Permit for Solar Panels is required from the Building Department with a fee to be established from time to time by Resolution of the Town Board.

**SECTION II:**

This local law shall take effect upon filing in the Office of the Secretary of State or from the date of its service as against a person served personally with a copy thereof.

**The resolution was unanimously adopted.**

**PUBLIC COMMENT ON OLD BUSINESS**

No one came forward.

**Old Business #1 Approve Change Order with DV Brown for Brush Mt. Community Center**

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

**WHEREAS**, the contractors for Brush Mountain Community Activity Center have communally given dates that alternates must be awarded by to avoid additional costs being incurred or potentially delaying the project. The date suggested for the award of Alternate #4 Gymnasium Area Fit-Out is February 20th, 2019. DV Brown has included in their bid package a cost of \$265,000 for the addition of Alternate #4, and

**WHEREAS**, this change order will increase DV Brown's total contract to \$1,577,000.00 representing a 16.8% increase. If approved for all contractors, the cost of Alternate #4 will increase the total project amount by \$741,324.73. representing an increase of 4.41% to the building contracts, and

**WHEREAS**, there is presently funding allocated under Capital Projects ABOO4 & ABOO5 for the Community Activity Center, however, additional funding is needed.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve change order #2 to our contract with DV Brown & Assoc. Inc., 567 Vickers Street, Tonawanda, New York 14150, and award Alternate #4 Gym Area Fit-Out in an amount not to exceed \$265,000, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**Old Business #2 Approve Change Order with IPL Corp. for Brush Mt. Community Center**

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

**WHEREAS**, the contractors for Brush Mountain Community Activity Center have communally given dates that alternates must be awarded by to avoid additional costs being incurred or potentially delaying the project. The date suggested for the award of Alternate #4 Gymnasium Area Fit-Out is February 20th, 2019. IPL Electrical Construction has included in their bid package a cost of \$118,000 for the addition of Alternate #4. A portion of the total sum (\$13,675.27) was previously awarded with IPL's change order #2 and brings the current award total to \$104,324.73, and

**WHEREAS**, this change order will increase IPL's total contract to \$1,849,872.71 representing a 5.64% increase. If approved for all contractors, the cost of Alternate #4 will increase the total project amount by \$741,324.73 representing an increase of 4.41% to the building contracts, and

**WHEREAS**, there is presently funding allocated under Capital Projects ABOO4 & ABOO5 for the Community Activity Center, however, additional funding is needed.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve change order #1 to our contract with Industrial Power & Lighting Corporation 60 Depot St., Buffalo, NY 14206, and award Alternate #4 Gym Area Fit-Out in an amount not to exceed \$104,324.73, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**Old Business #3 Approve Change Order with Javen Construction for Brush Mt. Community Center**

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

**WHEREAS**, the contractors for Brush Mountain Community Activity Center have communally given dates that alternates must be awarded by to avoid additional costs being incurred or potentially delaying the project. The date suggested for the award of Alternate #4 Gymnasium Area Fit-Out is February 20th, 2019. Javen Construction has included in their bid package a cost of \$372,000.00 for the addition of Alternate #4, and

**WHEREAS**, this change order will increase Javen's total contract to \$12,564,328.00 representing a 2.96% increase. If approved for all contractors, the cost of Alternate #4 will increase the total project amount by \$741,324.73. representing an increase of 4.41% to the building contracts, and

**WHEREAS**, there is presently funding allocated under Capital Projects ABOO4 & ABOO5 for the Community Activity Center, however, additional funding is needed.

**NOW, THEREFORE, be it**

**RESOVLED**, that the Town Board does hereby approve change order #2 to our contract with Javen Construction Co. Inc., 2575 Baird Road, Penfield, NY 14526 and award Alternate #4 Gym Area Fit-Out in an amount not to exceed \$372,000.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**Old Business #4 Approve Change Order with Numarco Inc. for Brush Mt. Community Center**

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

**WHEREAS**, the contractors for Brush Mountain Community Activity Center have communally given dates that alternates must be awarded by to avoid additional costs being incurred or potentially delaying the project. The date suggested for the award of Alternate #4 Gymnasium Area Fit-Out is February 20th, 2019. Numarco has included in their bid package a cost of \$0.00 for the addition of Alternate #4. Although there is work associated with the alternate, Numarco will not have to perform certain work under the base bid allowing for no additional costs to be incurred, and

**WHEREAS**, this change order will not increase Numarco's total contract. If approved for all contractors, the cost of Alternate #4 will increase the total project amount by \$741,324.73. representing an increase of 4.41% to the building contracts, and

**WHEREAS**, there is presently funding allocated under Capital Projects ABOO4 & ABOO5 for the Community Activity Center, however, additional funding is needed.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve change order #2 to our contract with Numarco, Inc., 1021 Maple Road, Elma, New York 14059 and award Alternate #4 Gym Area Fit-Out in an amount not to exceed \$0.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**Old Business #5 Approve Final Payment to Zoldaz Const. for Thorn Ave. Concrete Crushing**

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

**WHEREAS**, the Thorn Avenue Concrete Crushing Project is complete. This project was to facilitate the future construction of baseball diamonds near the corner of Thorn Avenue and Duerr Road by crushing and removal of miscellaneous concrete debris generated from this area, which was formally the Green Lake Dam Rehabilitation and Dredging Project staging area, and

**WHEREAS**, the work was completed by lump sum bid, was inspected by the Town of Orchard Park Engineering Department, and was satisfactorily completed in accordance with Town standards and specifications. The Town Board awarded this project as an informal bid on August 1, 2017, which a two-year maintenance bond and other associated legal documents were not warranted nor required, and

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve the Final Payment/release of retention to Zoladz Construction, Inc., 13600 Railroad Street, Alden, New York 14004 for the Thorn Avenue Concrete Crushing Project in the amount of \$1,375.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**PUBLIC COMMENT ON NEW BUSINESS**

No one came forward.

**New Business #1 Award Contract to Zoladz Const. for Thorn Ave. Ball Diamond Fill Project**

9) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR KEEM, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:

**WHEREAS**, to facilitate the future construction of baseball diamonds near the corner of Thorn Avenue and Duerr Road, which was formally the Green Lake Dam Rehabilitation and Dredging Project staging area, this site requires topsoil, and

**WHEREAS**, the Engineering Department solicited a quote from Zoladz Construction, 13600 Railroad Street, Alden, New York 14004 to provide two operators, a dozer, and an excavator at a total combined hourly rate of \$175.00 to place excess topsoil generated from the Brush Mountain Community Activity Center Project in either stockpile or spread condition at this Thorn Avenue site. This rate is fair and responsible. There is presently \$505,679.00 allotted under the Capital Projects No. AP003 Yates Park LL Ball Diamonds.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby award this contract for the Thorn Avenue Ball Diamonds Fill Project Staging Area to Zoladz Construction, 13600 Railroad Street, Alden, New York 14004 as an informal quote, which a two-year maintenance bond and other associated legal documents are not warranted nor required, in the amount not to exceed \$10,000.00, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #2 Appointment to Public Safety Committee & Senior Services Task Force**

**10) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER MAJCHRZAK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER SHERRY, TO WIT:**

**WHEREAS**, there is a vacancy on the Public Safety Committee and the Senior Services Task Force, and

**WHEREAS**, Elizabeth Landwehr has expressed an interest in serving on these committees

**NOW, THEREFORE, be it**

**RESOVLED**, that the Town Board does hereby appoint Elizabeth Landwehr to the Public Safety Committee for a term ending on December 31, 2019 and be it further

**RESOLVED**, that the Town Board does hereby appoint Elizabeth Landwehr to the Senior Services Task Force for a term ending on December 31, 2019.

**The resolution was unanimously adopted.**

**New Business #3 Authorize payment for adjustment of holiday & vacation pay**

**11) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR KEEM, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK TO WIT:**

**WHEREAS**, the former Town Police Chief Andrew D. Benz was paid for 112 hours of holiday time and 10 days of vacation time during the fiscal year ended December 31, 2012 based on hourly and daily rates of \$46.73 and \$450.73, respectively, and

**WHEREAS**, hourly and daily rates of \$46.73 and \$450.73, respectively, were calculated based on an annual salary of **\$97,191.00**, and

**WHEREAS**, by memo dated January 3, 2013 from Janice Colarusso, Supervisor, to Donna Shine, Senior Payroll Manager, the Town Board approved a retroactive salary raise to Andrew D. Benz to make his 2012 annual salary \$117,191.00, and

**WHEREAS**, holiday time and vacation time paid to Andrew D. Benz during the fiscal year ended December 31, 2012 were not adjusted for the raise in salary, and

**WHEREAS**, hourly and daily rates based on an annual salary of \$117,191.00 are \$56.34 and \$450.73, respectively, resulting in an under payment in the amount of \$1,845.52,

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board hereby authorizes the payment of \$1,845.52 to Andrew D. Benz for the adjustment of payments of holiday and vacation time made during the year ended December 31, 2012.

**The resolution was unanimously adopted.**

**New Business #4 Appointment to Compost Site**

**12) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR KEEM, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:**

**RESOLVED**, that the Town Board does hereby appoint David Helwig as a Seasonal Worker at the Town Compost Site, effective 2/15/2019 at a rate of \$20.00 an hour.

**The resolution was unanimously adopted.**

**New Business #5 Appointment to Compost Site**

**13) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER MAJCHRZAK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER SHERRY, TO WIT:**

**RESOLVED**, that the Town Board does hereby appoint Ronald Henning as a Seasonal Worker at the Town Compost Site, effective 2/20/2019 at a rate of \$20.00 an hour.

**The resolution was unanimously adopted.**

**New Business #6 Grant Site Plan Approval & Building Permit for Peregrine’s Landing**

**14) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER SHERRY, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:**

**WHEREAS**, Peregrine’s Landing, located at 101 Sterling Drive, petitioned for a Building Permit and Site Plan approval for an addition to the current building, and

**WHEREAS**, this request was referred to the Planning Board on December 5, 2018.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby grant Site Plan Approval and authorize the issuance of a Building Permit to construct a 9,000 sq.ft. addition with associate parking, per the plans received on 1/25/19, based on the following conditions and stipulations:

1. This is an Unlisted SEQR Action, based on the Short EAF Parts 1 and 2, and a Negative Declaration is made.
2. The Site Lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
3. No outside storage or display is permitted.
4. The Landscape Plan, received 1/25/19, meets all Green Space Regulations with 59T Green Space. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amount to 50% of the \$23,979.94 landscaping estimate value shall be deposited with the Town Clerk. (\$11,989.97).
5. Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
6. Town Engineering Approval was granted on 2/12/19.

**The resolution was unanimously adopted.**

**New Business #7 Create Position of “Bookkeeper to the Supervisor”**

**15) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER MAJCHRZAK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER SHERRY, TO WIT:**

**WHEREAS**, the Town Board has determined that the position of Bookkeeper to the Supervisor is necessary, and

**WHEREAS**, the position of Bookkeeper to the Supervisor would report to the Town Supervisor, and

**WHEREAS**, the position of Bookkeeper to the Supervisor would be responsible for all payroll functions and other duties as assigned by the Supervisor,

**THEREFORE, NOW be it**

**RESOLVED** that the Orchard Park Town Board creates the position of Bookkeeper to the Supervisor and directs the current payroll clerk to complete any paperwork needed to establish this position.

**The resolution was unanimously adopted.**

**New Business #8 Appoint “Bookkeeper to the Supervisor”**

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

**WHEREAS**, Connie Fitzpatrick has submitted her intention to retire from her position as payroll clerk, and

**WHEREAS**, the Town of Orchard Park has determined that a replacement for her is necessary, and

**WHEREAS**, Town Supervisor Patrick Keem and the Town’s Human Resource Consultant have interviewed applicants for this position.

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby appoint Jessica Rojek as Bookkeeper to the Supervisor, at Labor Grade 4, with an annual salary of \$43,000.00 with a start date of March 4, 2019, and there will be a six month probationary period.

**The resolution was unanimously adopted.**

**New Business #9 Refer to Planning Board and Conservation Board**

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

**RESOLVED**, that the Town Board does hereby refer the following to the Planning Board and Conservation Board:

- Vacant Land located on the north side of Michael Road, west of Transit road, Zoned R-2, owner Ross Cellino, is requesting a “Special Exception Use Permit” to construct a 12,078 +/- sq.ft. Maintenance/Grounds Building for Harvest Hill Golf Course. (SBL #154.09-1-8)

**The resolution was unanimously adopted.**

**BUSINESS FROM THE FLOOR**

Dave Schuster - stated that a professional study should be done regarding the proposed “Rails to Trails” to evaluate all the issues surrounding this kind of project. He encouraged the Town Board to oppose this project.

Dan Hay – wished to thank the Town Board for making the meeting room in the basement available for community informational education events concerning the ramifications of the New York State Health Bill – Medicare for all, scheduled for April 15, 2019 at 7:00pm. He would also like the Town Board to hold quarterly Town Hall meetings for informal Q & A sessions.



Sherry Pomeroy – is opposed to the Rails to Trails, and read a statement to be put in the official correspondence. She also requested a written public update regarding the timeline on the different committees’ research of this project.

Mike Cedar, Ron Wessel, Patti Cedar and Travis Mastrianni spoke against ECRT Rails to Trails, and stated their reasons why.

Supervisor Keem thanked everyone that came to the State of the Village and Town of Orchard Park address. He feels it is the duty of the Town Board to report to the public what has taken place and the goals for this year. The Town Board does listen to the residents, which was the theme of the speech this year.

Highway Superintendent stated that plowing and salting are the main jobs. Regarding the pot holes, they can put a patch in and as soon as it warms up, the patch pops up, and then the plows take them out. They are trying to take care of them, and refer the other roads to the appropriate department.

**ELECTED OFFICIALS & DEPARTMENT MANAGERS**

18) THE FOLLOWING RESOLUTION WAS OFFERED BY SUPERVISOR KEEM, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MAJCHRZAK, TO WIT:

**RESOLVED**, that the Town Board does hereby authorize the approval of all entries on Warrant # 4 following auditing by members of the Town Board and in the funds indicated:

<b>General Fund</b>	\$100,571.65
<b>Public Safety Fund</b>	\$107,491.40
<b>Part Town Fund</b>	\$34,692.55
<b>Risk Retention</b>	-0-
<b>Cemetery Fund</b>	-0-
<b>Highway Fund</b>	\$104,173.73
<b>Special Districts</b>	\$760108.70
<b>Trust &amp; Agency</b>	\$5,533.46
<b>Capital Fund</b>	\$91,224.17

**The resolution was unanimously adopted.**

There being no further business, on a motion by Supervisor Keem, seconded by Councilmember Majchrzak, the meeting adjourned at 7:59 pm (local time).

**Respectfully Submitted,**

**Remy C. Orffeo  
Town Clerk**