

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 18<sup>th</sup> day of February 2009 at 7:00 PM, the meeting was called to order by the Supervisor and there were:

- PRESENT AT ROLL CALL:**
- |                         |                        |
|-------------------------|------------------------|
| Nancy Ackerman          | Councilwoman           |
| David Kaczor            | Councilman             |
| Mark Dietrick           | Councilman             |
| Edward Graber           | Councilman             |
| Janis Colarusso         | Town Clerk             |
| Leonard Berkowitz       | Town Attorney          |
| Andrew Geist            | Building Inspector     |
| Andrew Benz             | Chief of Police        |
| Frederick Piasecki, Jr. | Highway Superintendent |
- ABSENT:**
- |                     |               |
|---------------------|---------------|
| Mary Travers Murphy | Supervisor    |
| 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 meetings of the Town Board held on January 7, 2009, Organization Meeting & 1<sup>st</sup> of the year, January 21,2009, 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 for or against the Proposed Changes to the Town Code by a Local Law for the Year 2009. This local law provides for the adoption of the additions and changes to Chapter 144 – Zoning - Signs

Affidavits and Publication of the Legal Notice of the Public Hearing were presented, read aloud and filed with the Town Board by the Town Clerk.

Supervisor Travers Murphy asked if there was anyone in the audience who would like to speak for or against the Local Law for the Year 2009- Zoning - Signs .

**Comments from the floor:** No one spoke

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

**RESOLVED**, that the Public Hearing in the matter of the Proposed Changes for a Local Law for the Year 2009: Signs, is hereby closed at PM (local time).

**The resolution was unanimously adopted.**

**Town Board Adopts Local Law 3-2009 – Zoning - Signs**

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

**LEGISLATIVE FINDINGS IN SUPPORT OF LOCAL LAW FOR THE YEAR 2009 TO AMEND CHAPTER 144 OF THE CODE OF THE TOWN OF ORCHARD PARK (“ZONING”)**

**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;

**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 144-42.1, and incorporating the statutory definitions of §144-5B, regulations which govern sign structures within the Town (the “sign structure regulations”);

**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 of the Zoning Ordinance violated Lamar’s right to free speech under the First Amendment to the United States Constitution (hereinafter the “Action”);

**WHEREAS**, in a Report and Recommendation filed February 25, 2008 in the Action (hereinafter “the Magistrate’s report”), United States Magistrate Judge McCarthy recommended that the Town’s summary judgment motion be granted and that the Action be dismissed in its entirety, and the Action was dismissed with prejudice on April 21, 2008;

**FINDINGS CONCERNING §144-34A**

**WHEREAS**, in the Magistrate’s report, Magistrate Judge McCarthy noted that the current provision of §144-34A that requires signs to be “designed and constructed by a professional or commercial sign maker” could be found to be impermissibly vague absent additional definitions;

**WHEREAS**, the Town Board finds and determines that the current provision of §144-34A that requires signs to be “designed and constructed by a professional or commercial sign maker” is a reference to permanent signs;

**WHEREAS**, the Town Board finds and determines that the design and construction of permanent signs is adequately addressed by the New York State Building Code and the state licensing requirements for professional engineers;

**WHEREAS**, the Town Board finds and determines that the design and construction of permanent signs is adequately addressed by the New York State Building Code and the state licensing requirements for professional engineers;

**WHEREAS**, the Town Board finds and determines that it would be appropriate to amend the first sentence of §144-34A by clarifying that the reference therein to “sign” is a reference to a permanent sign, and by deleting the second sentence of §144-34A in its entirety, given the provisions of the New York Building Code and the state licensing requirements for professional engineers;

**FINDINGS CONCERNING §§ 144-5B, 144-35J, 144-40C(c), 144-40C (h), 144-40D, 144-40E and 144-40F**

**WHEREAS**, the Town Board finds and determines that it would be appropriate to replace the definitions of construction sign, directional sign, free expression sign, identification sign, and service organization sign in §144-5B with new definitions that reflect that these sign-types are directly related to a specific function and that the definitions are narrowly drawn for a legitimate governmental purpose;

**WHEREAS**, the Town Board finds and determines that allowing certain signage without permits based upon the function served by the sign (e.g., construction signs and real estate signs), is preferred to requiring permits for all such signs or alternatively, banning all such signs, and the Town Board finds and determines that the dimensional criteria, including but not limited to size (area) and height, established for certain signs and sign-types are not based upon any arbitrary determination but are based upon the function served by the sign and sign-type involved, and serve a legitimate governmental interest of balancing aesthetics and safety with the need for signage that serves a necessary purpose; and

**WHEREAS**, the Town Board recognizes 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; and

**WHEREAS**, the Town Board recognizes 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, and the Town Board desires to continue to allow residential and other property owners to freely express their point of view on their own property consistent with current jurisprudence set forth in *Ladue v. Gilleo*, 512 U.S. 43 (1994) [*see also, e.g., State v. Miller*, 162 N.J. Super. 333, 392 A.2d 122 (1978), *aff’d*, 83 N.J. 402, 416 A.2d 821 (1980)]; and

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

**WHEREAS**, the Town Board recognizes that durational limitations on election signs, sometimes referred to as political signs, are frequently problematic when the limitations affect the posting of election signs *prior* to the election concerning the candidate or ballot issue to which they pertain, but 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); *McCormack v. Township of Clinton*, 872 F. Supp. 1320 (D.N.J. 1994)]; and

**WHEREAS**, the Town Board finds and determines that free expression signs are sufficient to allow for political speech unrelated to particular candidates or ballot issues; and

**WHEREAS**, the Town Board intends to continue to allow property owners to display a sign for free expression at all times, and to continue to expressly provide that property owners may maintain signs displaying their support or opposition to political candidates and issues before the election to which they pertain; and

**WHEREAS**, the Town Board finds and determines that the provisions for temporary real estate signs, temporary free expression signs, temporary election signs, and other sign-types are not intended to diminish or lessen the Township's interests in aesthetics or traffic safety, but the same recognize the useful functions and practical needs served by such signage in the Town's commerce and/or in the political freedom that must, and appropriately, be accorded its citizens to freely express their points of view and political desires; and

**WHEREAS**, the Town Board recognizes that under current jurisprudence the Town's 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); Cordes, Sign Regulation After Ladue: Examining the Evolving Limits of First Amendment Protection, 74 Neb. L. Rev. 36 (1995)], and the Town Board may from time to time modify the sign regulations herein so as to provide additional limitations to further serve the Township's interests in aesthetics and/or traffic safety; and

**WHEREAS**, in the Magistrate's report Magistrate Judge McCarthy expressed his opinion that restrictions placed on real estate signs, as opposed to free expression and election signs, was not a content-based preference for commercial over non-commercial speech, citing *National Advertising Co. v. Town of Babylon*, 900 F.2d 551, 557 (2d Cir. 1990), which in turn relied upon the U.S. Supreme Court's decision in *Linmark Associates v. Township of Willingboro*, 431 U.S. 85, 97 S.Ct. 1614 (1977);

**WHEREAS**, in the same Magistrate's report, Magistrate McCarthy noted that durational, placement and size *distinctions* involving noncommercial speech (specifically, free expression, election, service organization, and temporary signs) could be found to be impermissibly content-based and could therefore be found to constitute unconstitutional content-based restrictions, absent such provisions or restrictions satisfying strict scrutiny by a showing that the same are narrowly drawn to serve a compelling state interest;

**WHEREAS**, the foregoing concerns were directed to §§144-35J, 144-40C(c), 144-40C (h), 144-40E, and 144-40F, although some of the concerns may have misapprehended the purpose or scope of the cited provision;

**WHEREAS**, the Town Board desires to replace the definition of service organization identification sign in §144-5B to clarify that the term refers to a permanent on-premise sign which functions to direct attention to a location where a not-for-profit organization, conducts its operations, or holds meetings, or assembles in connection with providing services in the community;

**WHEREAS**, the Town Board desires to clarify that the provisions of §144-35J that pertain to permanent service organization identification signs and not temporary signs; and

**WHEREAS**, the Town Board desires to resolve concerns expressed in the Magistrate's report by modifications to certain durational, placement and size distinctions, where feasible, for temporary signs, and to set forth the purposes for any remaining distinctions sufficient to meet any strict scrutiny standard that may apply;

**WHEREAS**, the Town Board desires to modify §§144-40C, 144-40E, and 144-40F to establish a uniform maximum size for temporary election signs, temporary free expression signs, and temporary special event signs;

**WHEREAS**, the Town Board desires to modify §§144-40C, 144-40D, 144-40E, and 144-40F to establish a minimum uniform setback for temporary election signs, temporary construction signs, temporary free expression signs, and temporary special event signs;

**WHEREAS**, the Town Board desires to modify §§144-40C, 144-40D, 144-40E, and 144-40F to establish a maximum uniform height for temporary election signs, temporary construction signs, temporary free expression signs, and temporary special event signs;

**WHEREAS**, the Town Board desires to modify §§144-35D, 144-40C, 144-40D, 144-40E, and 144-40F to establish a uniform limitation of seven business days for the removal of temporary signs (other than temporary free expression signs) following the conclusion of the specific event or activity to which they pertain, including temporary real estate signs, temporary election signs, temporary construction signs, and temporary special event signs;

**WHEREAS**, for temporary signs other than temporary election signs and temporary free expression signs (guided by constitutional considerations set forth by the courts that limit or otherwise impact durational limits), the Town Board desires to modify §§144-35D, 144-40C and 144-40D for temporary real estate signs, temporary special event signs and temporary construction signs to establish a durational time frame that is necessarily and reasonably related to the specific event or activity;

**FINDINGS CONCERNING §144-5B**

**WHEREAS**, the Town Board finds and determines that it would be appropriate to amend the definition of “sign” to clarify that the Town’s regulation of signage is not intended to extend to artwork, holiday or seasonal decorations, cemetery markers, machinery or equipment signs, memorial signs or tablets, and to add definitions for artwork, holiday or seasonal decorations, cemetery markers, machinery or equipment signs, memorial signs or tablets;

**FINDINGS CONCERNING §§144-5B, 144-35D AND 144-40D**

**WHEREAS**, the Town Board desires to add a definition for “real estate sign” in §144-5B, and to replace §144-35D that pertains to temporary real estate signs now known as “for sale,” “for rent” and “sold” signs with a new provision that includes a maximum height limit, a minimum setback provision, and a durational limitation;

**WHEREAS**, the Town Board desires to replace the provisions of §144-40D that pertain to temporary construction signs with a new provision that includes a maximum height limit, a minimum setback provision, and a durational limitation, and that sets forth a maximum size provisions identical to those for temporary real estate signs;

**FINDINGS CONCERNING §§144-5B AND 144-33D**

**WHEREAS**, the Town Board desires to add §144-33D.1 through §144-33D.5 to clarify that certain signs are not within the scope of regulation of §§144-33 through 144-43;

**WHEREAS**, the Town Board desires to exempt from regulation by the Zoning Ordinance those signs that are required by any statute or regulation of the State of New York or the United States (*i.e.*, statutory signs) and to add a definition in §144-5B to add a definition for statutory signs;

**WHEREAS**, in the Magistrate’s report Magistrate Judge McCarthy expressed his opinion that an inference of impermissibly favoring government speech over other speech could be raised by the Town’s practice of exempting *all* properties owned or operated by Erie County;

**WHEREAS**, the Town desires to remove any such inference of impermissible favoritism by exempting statutory signs and by adding §144-33D.6 to limit any exemption for government-owned properties to those properties exempt by operation of New York State law;

**FINDINGS CONCERNING §144-34B**

**WHEREAS**, in the Magistrate’s report Magistrate Judge McCarthy expressed his opinion that the phrase “and such other information as the Zoning Officer may require” in §144-34B raised the possibility that the Zoning Officer may have unbridled discretion in deciding whether or not to grant a sign permit;

**WHEREAS**, Magistrate Judge McCarthy noted that unbridled discretion would not be an issue where the information had to relate to the kind, size, material, construction and location of proposed signs, citing *Advantage Media, L.L.C. v. City of Eden Prairie*, 456 F.3d 793, 804 (8th Cir. 2006);

WHEREAS, the Town Board finds and determines that the “other information” referenced in §144-34B has always been considered as such other information that related to the configuration, material, and construction of proposed signs;

WHEREAS, the Town Board finds and determines that it is appropriate to modify §144-34B so as to codify that actual practice, thereby removing any inference that the Zoning Officer may be vested with unbridled discretion in connection with the review of sign permits;

**FINDINGS CONCERNING §144-35H**

WHEREAS, in the Magistrate’s report Magistrate Judge McCarthy expressed concern as to the constitutionality of §144-35H;

WHEREAS, §144-35H currently prohibits the construction or erection of marquees “except upon the approval of the Town Board upon recommendation of the Planning Board;”

WHEREAS, the Magistrate Judge’s concern was directed to the Zoning Ordinance’s alleged failure to set forth criteria for the Planning Board to consider in determining whether or not to approve a marquee sign;

WHEREAS, the Town Board finds and determines that appropriate criteria should be added to the provisions of §144-35H to guide the Planning Board, and that the criteria should be limited to location and dimensional criteria so as to allow for marquees at the entrances to theaters or auditoriums provided that the scale of the marquee complements the building to which the marquee is attached and that the overall size of the marquee sign does not exceed 10% of the face of the building wall;

**FINDINGS CONCERNING §144-35I**

WHEREAS, in the Magistrate’s report Magistrate Judge McCarthy expressed concern as to the constitutionality of §144-35I;

WHEREAS, §144-35I addresses specialty signs, *i.e.*, time and temperature or special clock signs;

WHEREAS, the Town Board finds and determines that the definition of specialty sign in §144-5B, as well as the provisions of §144-35I, are obsolete and unnecessary and should therefore be deleted;

**FINDINGS CONCERNING §144-38H**

WHEREAS, in the Magistrate’s report the Magistrate Judge expressed concern as to the constitutionality of §144-38H and the potential for unbridled discretion to vest within the Planning Board for the approval of certain on-site directional signage;

WHEREAS, §144-38H currently provides that “entrance, exit, identification and other traffic control signs and projecting signs are to be approved by the Planning Board as to location and size”;

WHEREAS, the Magistrate Judge’s concern was directed to the alleged failure of §144-38H to set forth criteria for the Planning Board to consider in determining whether or not to approve entrance, exit, identification and other traffic control signs;

WHEREAS, the Town Board finds and determines that appropriate criteria pertaining to number, size, height, setback, and traffic engineering may be added to the provisions of §144-38H to give guidance to the Planning Board and that the provisions of §144-38H should be also be clarified to make it clear that they pertain solely to entrance, exit, and internal directional guide signs on private property;

**FINDINGS CONCERNING §144-39**

WHEREAS, in the Magistrate's report Magistrate Judge McCarthy expressed concern as to the constitutionality of the current §144-39 and the potential for unbridled discretion to vest within the Planning Board for the approval of special exception use signs;

WHEREAS, §144-39 provides that "any applications for a sign identifying a special exception use as defined in this chapter shall be referred to the Planning Board for approval";

WHEREAS, the Town Board finds and determines that the provisions of §144-39 are obsolete and unnecessary and should therefore be deleted;

#### FINDINGS CONCERNING ADMINISTRATIVE COSTS RELATED TO APPLICATIONS FOR SIGN PERMITS

WHEREAS, in the Magistrate's report Magistrate Judge McCarthy expressed concern that there may be an issue of fact as to whether the current \$20 sign fee was needed to defray the costs of operating a sign permit system;

WHEREAS, the Town Board recognizes that ordinarily government cannot profit by imposing permit fees on the exercise of a First Amendment right [*see Murdock v. Pennsylvania*, 319 U.S. 105, 113-114 (1943), and *Hull v. Petrillo*, 439 F.2d 1184, 1186 (2d Cir. 1971)], and that only fees that cover the administrative costs of the permit are permissible [*see Eastern Connecticut Citizens Action Group v. Powers*, 723 F.2d 1050, 1056 (2d Cir. 1983), and *Gannett Satellite Information Network, Inc. v. Metropolitan Transportation Authority*, 745 F.2d 767, 774 (2d Cir. 1984)];

WHEREAS, the Town Board finds and determines that a \$20 permit fee for the review of applications and the issuance of permits for permanent signs is sufficient to cover a portion of the administrative costs, but does not provide any profit to the Town;

WHEREAS, the Town Board readopts a \$20 permit fee for the review and issuance of permits for permanent signs;

#### FINDINGS CONCERNING §144-5B

WHEREAS, the Town Board finds and determines that it is appropriate to replace the definition of off-premises identification sign in §144-5B to further define its limited use and scope;

WHEREAS, while continuing to allow a small off-premises identification sign not greater than twenty (20) square feet under certain limited conditions where the off-premises identification sign is within one-half (1/2) mile of the premises, the Town Board finds and determines that it is appropriate to maintain its prohibition on billboards in §144-36A(8);

WHEREAS, the prohibition of nonaccessory billboards does not constitute a violation of the right to free speech guaranteed by the First Amendment [*see, Suffolk Outdoor Advertising Co., Inc. v. Hulse*, 43 N.Y. 2d 483, 489 (1977), *cert. denied*, 439 U.S. 808, 99 S.Ct. 66 (1978)];

WHEREAS, the regulation of outdoor advertising for aesthetic purposes alone constitutes a valid exercise of the police power, and it cannot be reasonably argued that a prohibition of nonaccessory billboards and signs is not reasonably related to improving the aesthetics of the community [*see, Suffolk Outdoor Advertising Co., Inc. v. Hulse*, 43 N.Y. 2d 483, 489 (1977), *cert. denied*, 439 U.S. 808, 99 S.Ct. 66 (1978)];

WHEREAS, advertising signs and billboards may be egregious examples of ugliness, distraction, and deterioration [*see, Matter of Cromwell v. Ferrier*, 19 N.Y. 2d 263, 272 (1967); *Suffolk Outdoor Advertising Co., Inc. v. Hulse*, 43 N.Y. 2d 483, 490 (1977), *cert. denied*, 439 U.S. 808, 99 S.Ct. 66 (1978)];

WHEREAS, the Town Board finds and determines that the distinction between on-site signs and off-site signs (billboards) is already well recognized as not being a content-based distinction, and that off-site signs, commonly known as "billboards," are a sign-type that is distinguished from on-site signs by function and location, and the prohibition of billboards or limitations on the physical characteristics of permanent off-site signs are not

impermissible content-based distinctions [see *Messer v. City of Douglasville*, 975 F.2d 1505, 1509 (11th Cir. 1992) (an off-premise billboard prohibition was viewpoint neutral; prohibition not based upon the viewpoint of the speaker, but upon the location of the sign); *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 814 (9th Cir. 2003) (on-site/off-site distinction is not an impermissible content-based regulation); *Wheeler v. Commissioner of Highways*, 822 F.2d 586, 591 (6th Cir. 1987), cert. denied, 484 U.S. 1007, reh'g. denied, 485 U.S. 944 (1988); *National Advertising Co. v. City of Chicago*, 788 F. Supp. 994, 997-98 (N.D.Ill. 1991) (the distinction is not aimed toward the suppression of an idea or a viewpoint); *Immaculate Conception Corp. v. Iowa Dept. of Transp.*, 656 N.W.2d 513, 516-517 (Iowa 2003) (statute does not differentiate based on viewpoint; statute regulates signage by location, a distinction having nothing to do with content)];

**WHEREAS**, a municipality's interest in avoiding visual clutter sufficient to justify a prohibition on billboards was the conclusion reached by seven of the nine justices in *Metromedia v. City of San Diego*, 453 US 490, 101 S.Ct. 2882 (1981) [see *Metromedia*, 453 U.S. at 507-508, 510-12 (opinion of White, J., joined by Stewart, Marshall, and Powell, JJ.) ("Thus, offsite commercial billboards may be prohibited while onsite commercial billboards are permitted"); *id.*, at 552 (Stevens, J., dissenting in part); *id.*, at 559-561 (Burger, C.J., dissenting); *Id.*, at 570 (Rehnquist, J., dissenting)]; and whereas this conclusion was reaffirmed in *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806-807, 104 S.Ct. 2118, 2130 (1984) (summarizing *Metromedia*: "[f]here the Court considered the city's interest in avoiding visual clutter, and seven Justices explicitly concluded that this interest [avoiding visual clutter] was sufficient to justify a prohibition on billboards"); see also *City of Cincinnati v. Discovery Network*, 507 U.S. 410, 425 n.20 (1993)];

**WHEREAS**, the Supreme Court has recognized the *unique* problems that billboards pose to local land use planners [see *Metromedia*, 453 U.S. at 510 (White, J., plurality opinion)];

**WHEREAS**, the Supreme Court has made it clear that trial courts may defer to the accumulated common-sense judgments of local lawmakers that billboards are real and substantial hazards to traffic safety, that there is nothing to suggest that these judgments are unreasonable; and that it "is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an esthetic harm" [see *Metromedia*, 453 U.S. at 509-10; see also *Infinity Outdoor, Inc. v. City of New York*, 165 F.Supp.2d 403, 414 n. 7 (E.D.N.Y.2001) ("This case differs from *Lorillard Tobacco* because the regulation at issue in this case governs all advertisements in order to achieve a goal unrelated to the content of the advertisements, while the regulation at issue in *Lorillard Tobacco* targeted a particular type of advertisement in order to achieve a goal related to the content of that type of advertisement")];

**WHEREAS**, the Town Board finds and determines that the Town should remain billboard-free so as to limit visual clutter and maintain the scenic beauty of the Town and reduce unnecessary driver distractions;

#### FINDINGS CONCERNING §§144-5B AND 144-36A

**WHEREAS**, the Town Board finds and determines that flashing signs should remain a prohibited sign type and that digital signs and intermittent signs should be prohibited sign-types within the Town so as to limit visual clutter and maintain the scenic beauty of the Town and reduce unnecessary driver distractions;

**WHEREAS**, the Town Board finds and determines that it is appropriate to add §144-36A (9) and (10) to add specific prohibitions on digital signs and intermittent signs, and to add definitions for digital signs, LED signs, flashing signs, and intermittent signs to §144-5B;

#### GENERAL FINDINGS

**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 amendment 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 communications; and



**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 sign structures would not have significant effect upon the environment;

**WHEREAS**, there were minor technical corrections made to the Public Notice published February 4;

**WHEREAS**, no recommendation was received from the Erie County Department of Planning, pursuant to Section 239-m of the General Code;

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby adopt the Findings as presented, and be it further

**RESOLVED**, that the Town Board is Lead Agency and does declare a Negative SEQR Declaration based on the EAF Parts 1 and 2, and be it further

**RESOLVED**, that the Town Board hereby adopt the following amendments to the Zoning Ordinance by Local Law #3 for the year 2009 as set forth below:

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

**Add:**

**ARTWORK** - A two- or three-dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed.

**Delete the definition of "CONSTRUCTION SIGN" and replace it with the following:**

**CONSTRUCTION SIGN** — A temporary on-premises sign that functions to identify 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:**

**DIGITAL SIGN** - An Light Emitting Diode sign, also known as an LED sign, or any other electronic sign, including but not limited to an electronic sign used as a variable message sign.

**Add:**

**DIRECTIONAL SIGN** — A sign which functions to provide direction or instruction for traffic control but which does not in any way provide commercial advertising.

**Add:**

**FLASHING SIGN** - A sign which permits light to be turned on or off intermittently more frequently than once per minute or any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign and changes more frequently than once per minute.

**Delete the definition of "FREE EXPRESSION SIGN" and replace it with the following:**

**FREE EXPRESSION SIGN** — A temporary sign that functions to communicate information or views on matters of public policy concerns or containing any other non-commercial message, that is otherwise lawful.

**Add:**

**HOLIDAY OR SEASONAL DECORATIONS** - Decorations that pertain to legal or other recognized holidays or to a season of the year.

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

**IDENTIFICATION SIGN** — A sign which functions to direct attention to a business or profession conducted on the premises.

**Add:**

**INTERMITTENT SIGN** - A sign which permits light to be turned on or off intermittently more frequently than once every twelve hours or which is operated in a way whereby light is turned on or off intermittently more frequently than once every twelve hours, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and which varies in intensity or color more frequently than once every twelve hours.

**Add:**

**MACHINERY OR EQUIPMENT SIGN** - Signs incorporated into machinery or equipment by a manufacturer or distributor, that function only to identify or advertise the product or service dispensed by the machine or equipment, including, by way of example only, signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps.

**Add:**

**MEMORIAL SIGN OR TABLET** - A sign that functions to bear the name of a building and/or the date of erection or construction of a building, which forms a part of the building and is not greater than three (3) square feet, such as a cornerstone or building plaque.

**Add:**

**REAL ESTATE SIGN** - A sign which functions to advertise the sale, rental or lease of the premises or part of the premises on which the sign is displayed temporarily.

**Delete the definition of “OFF-PREMISES IDENTIFICATION SIGN” and replace it with the following:**

**OFF-PREMISES IDENTIFICATION SIGN** — A sign not greater than 20 square feet in size which assists the general public in locating a business or organization operating on premises within one-half mile of the premises where the sign is located, but which does not advertise the commodity, service entertainment or attraction sold, offered, or existing on the premises where the business or organization is operating.

**Delete the definition of “SERVICE ORGANIZATION IDENTIFICATION SIGN” and replace it with the following:**

**SERVICE ORGANIZATION IDENTIFICATION SIGN** — A permanent on-premise sign which functions to direct attention to a location where a not-for-profit organization conducts its operations or holds meetings or assembles in connection with providing services in the community.

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

**SIGN** — Any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, affixing or placing of a structure on any land or on any other structure, or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any structure or surface. The following shall not be considered signs subject to the regulations of §§144-33 through 144-43: artwork; holiday or seasonal decorations; cemetery markers; machinery or equipment signs; memorial signs or tablets.

**Delete the definition of "SPECIALTY SIGN":**

**Add:**

**STATUTORY SIGN - A sign required by any statute or regulation of the State of New York or the United States.**

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

**Add the following as §144-33D:**

D. The regulations set forth in §§144-33 through 144-43 of this chapter do not pertain to the following:

1. A sign located entirely inside the premises of a building or enclosed space.
2. A statutory sign.
3. A traffic control device sign.
4. Any sign located in, or made a part of, or directed or oriented toward the inside of, a stadium or athletic field.
5. Any sign not visible from a public street, sidewalk or right-of-way; except that the foregoing does not exempt a sign for a commercial use that is visible from an abutting residential use.
6. Government-owned real property that is exempt from municipal zoning regulations by operation of state law.

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

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

A. Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any permanent sign with a surface area exceeding four square feet in the Town of Orchard Park without first having obtained a sign permit from the Zoning Officer.

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

- B. An applicant for a sign permit shall submit an application to the Zoning Officer, which shall include:
1. The name, address and telephone number of the applicant and the owner of the building, structure or property upon which the sign is to be erected.
  2. The written consent of the owner of the building, structure or property upon which the sign is to be erected in the event the applicant is not the owner thereof;
  3. A rendering exhibiting:
    - (a) The proposed lettering and the pictorial matter of the sign;
    - (b) The dimensions of the sign and proposed lettering;
    - (c) The construction details of the sign structure and mounting devices; and
    - (d) A location plan of the position of the sign on the building or property and providing information as to the configuration, material and construction of the proposed sign. An application for a sign permit for a sign on an awning shall show the location, size and construction of the awning and the lettering or pictorial matter to appear thereon.

**4. Amendments to §144-35, General Sign Requirements.****Delete §144-35D and replace it with the following:**

D. Temporary real estate signs. One temporary real estate sign not exceeding four (4) square feet in size shall be allowed on residential property where the parcel does not exceed ten (10) acres. One temporary real estate sign not exceeding twenty (20) square feet in size shall be allowed on residential property where the parcel exceeds ten (10) acres and on nonresidential property. Temporary real estate signs shall not exceed four (4) feet in height if freestanding. Temporary real estate signs shall be set back a minimum of five (5) feet from any lot line. Temporary real estate signs shall be removed within seven (7) business days after the sale, rental or lease of the premises.

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

H. Marquees. No marquees shall be constructed or erected except upon approval of the Town Board upon recommendation of the Planning Board. The criteria for the Town Board's approval and Planning Board's recommendation shall be limited to location and dimensional criteria so as to allow for marquees at the entrances to theaters or auditoriums provided that the scale of the marquee complements the building to which the marquee is attached and that the overall size of the marquee sign does not exceed 10% of the face of the building wall.

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

I. Reserved.

**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 permanent 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. Amendments to §144-5B and §144-36, Prohibited Signs.****Add §144-36A(9) and (10):**

- (9) Digital signs.
- (10) Intermittent signs.

**6. Amendments to §144-38, Signs in Business, Industrial or D-R Development and Research Districts.****Delete §144-38H and replace it with the following:**

H. Entrance, exit, and on-premises directional guide signs. Entrance, exit, and internal directional guide signs are to be approved, as part of the site plan review process set forth in §144-44 of this chapter, by the Planning Board as to location and size based upon the recommendation of a professional traffic engineer. The engineer's recommendation shall identify the number, size, height and setbacks necessary for traffic and pedestrian safety taking into account the configuration of the parcel and its relationship to other parcels and the adjoining roads. Entrance, exit and on-premises directional guide signs shall be minimized in number, size and height, and shall only be approved if necessary for traffic or pedestrian safety.

**7. Amendments to §144-39, Special exception use signs.****Delete §144-39 and replace it with the following:**

§144-39. Reserved.

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

**Delete §144-40C(1) and replace it with the following:**

**C. Temporary special event signs.**

- (1) The Zoning Officer shall approve an application, and issue a permit, for temporary special event signs if the applicant demonstrates through written application the number, size and location(s) of the signs sought to be erected, and that they meet 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 special event signs will not exceed the maximum height and size requirements for temporary 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) business days before the event and shall be removed within seven (7) business days after the event.

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

D. Temporary construction signs. One temporary construction sign not exceeding four (4) square feet in size shall be allowed on residential property where the parcel does not exceed ten (10) acres. One temporary construction sign not exceeding twenty (20) square feet in size shall be allowed on residential property where the parcel exceeds ten (10) acres and on nonresidential property. Temporary construction signs shall not exceed four (4) feet in height if freestanding. Temporary construction signs shall be set back a minimum of five (5) feet from any lot line. Temporary construction signs shall be removed within seven (7) business days after completion of the work for which the building permit was issued or after the expiration of the building permit, whichever first occurs. No permit is required for a temporary construction sign allowed under this paragraph.

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

E. Temporary free expression signs. For each parcel, one temporary free expression sign with a surface area of four (4) square feet or less may be displayed. If displayed as a freestanding sign, such sign shall not exceed four (4) feet in height. A temporary 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. A temporary free expression sign shall be set back a minimum of five (5) feet from any lot line. No permit is required for a temporary free expression sign allowed under this paragraph.

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

F. Temporary election signs. For each parcel, one temporary election sign with a surface area of four (4) feet or less may be displayed for each candidate and each issue. The temporary election signs allowed under this section are in addition to a temporary free expression sign and any other sign allowed under this chapter. If displayed as a freestanding sign, such sign shall not exceed four (4) feet in height. A temporary election sign shall be set back a minimum of five (5) feet from any lot line. A temporary election sign shall be removed within seven (7) business days following the election to which it pertains. No permit is required for a temporary election sign allowed under this paragraph.

**And be it further**

**RESOLVED**, that this Local Law for the Year 2009 shall be effective immediately upon acceptance by the Town of Orchard Park Town Board and filing with the New York Secretary of State.

**The question of the adoption was duly put to a roll call vote which resulted as follows:**

Supervisor Travers Murphy	Absent
Councilwoman Ackerman	Aye
Councilman Kaczor	Aye
Councilman Dietrick	Aye
Councilman Graber	Aye

**The resolution was unanimously adopted.**

**Old Business #1 Superior Heat Company, 3461 N. Benzing Rd, authorize Building Permit.**

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

**WHEREAS**, the Superior Heat Company, 3461 N. Benzing Road, zoned I-1, has requested a Building Permit to construct a 2,316 sq.ft. addition on the east side of the existing building for a warehouse space

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize a Building Permit to construct a 2,316+/- sq.ft. addition to the east side of the existing building for warehouse space, per the plan received on 1/21/09, as recommended by the Planning Board 2/11/09, with the following conditions and stipulations:

- This is an Unlisted SEQR action based on the submitted Short EAF and a Negative Declaration is made
- The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lenses.
- No outside storage or display is permitted.
- Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 114-25 of the Town Code.
- Town engineering Approval was granted on 2/11/09.
- A three year landscape completion bond in the amount of \$6,640.00 shall be provided for the landscape plan received 10/01/08.

**The resolution was unanimously adopted.**

**Old Business #2 Brandon Block, 3285 Abbott Rd, request to rebuild house.**

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

**WHEREAS**, Brandon Block, owner of the house at 3285 Abbott Road which was destroyed in a fire, has made a request to rebuild the residence

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve the request to rebuild a residence located 3285 Abbott Road damaged by fire in the B-2 Zone, as recommended by the Planning Board 2/11/09, based on the following conditions and stipulations:

- This is a Type II SEQR Action and therefore no determination of significance is required.

**The resolution was unanimously adopted.**

**Old Business #3 Diane DeMarco, 3964 California Rd. request for a Building Permit**

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

**WHEREAS**, Diane DeMarco, 3964 California Road Zoned I-1 has requested a Building Permit for a shelter approximately 100' wide x 50' +/- long with a concrete pad base

**NOW, THEREFORE, be it**

**RESOLVED** that the Town Board does hereby authorize a Building Permit for a shelter approximately 100' wide x 50' +/- long with a concrete pad base as recommended by the Planning Board 2/11/09, with the following stipulations:

- This is an Unlisted SEQR action base on the submitted Short EAF and a Negative Declaration is made.
- A 3 Year Landscape Completion bond in the amount of \$2,400.00 shall be provided for the landscape plan received 8/11/08, prior to the receipt of a Building Permit, in accordance with the Conservation Board minutes.
- A Use Variance was granted by the Zoning Board of Appeals on 11/18/08 to allow an assembly type occupancy at this site while maintaining a residence within.
- There will be two-tentatively scheduled events for 2009; The Orchard Park Lions Club and the Orchard Park Police Bike Stag event. Any subsequent event must see the Building Inspector for an operating permit and they will be directed to appear before the Town Planning Board.
- If the Building Inspector is denied access to the property at any time, all approvals are null and void.

**The resolution was unanimously adopted.**

**Old Business #4 Traffic Order**

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

**WHEREAS**, per the request from the Public 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 three (3) Stop Signs be erected, effective immediately, within the Town of Orchard Park, outside the incorporated Village of Orchard Park, at the following locations: one (1) at the end of Fairway Drive, and one (1) at each end of Midway Drive (2 signs), and be it further

**ORDERED**, that the Superintendent of Highways be and is hereby directed to post the proper and necessary signs at said location.

**The resolution was unanimously adopted.**

**Old Business #5 (Tabled)** The Public Safety Committee recommends that the Town Board authorize a traffic study by a certified agency with recommendations for a solution for the traffic problems related to the Quaker Crossing Development, due to the many requests from residents over the past few years.

**New Business #1 Orchard Park Recreation Department Seasonal Appointments**

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

**RESOLVED**, that the Town Board does hereby authorize the following 2009 Winter Staff Appointments to the Orchard Park Recreation Department, dependent upon the applicant providing the required certifications, as recommended by the Recreation Director.

Name	Address	Position	Title	Rate
Angela Tuchols	Town of Snyder	PT6-D	LG	\$15.00
Justin Wisnouskas	Town of West Seneca	PT1-E	Att.	\$ 8.50

**The resolution was unanimously adopted.**

**New Business #2 (Tabled)** Town Board to appoint Andrew Sako, 3 Lynchburg Court, Town of Orchard Park as Alternate to the Conservation Board.

**New Business #3 Appoint Peter Swartout to the Insurance Advisory Committee**

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

**RESOLVED**, the Town Board does hereby appoint Peter Swartout, 30 Green Lake Dr., Orchard Park, to the Insurance Advisory Committee.

**The resolution was unanimously adopted.**

**New Business #4 Request by the Garden Club hold a Plant Sale at the Railroad Depot**

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

**RESOLVED**, that the Town Board does hereby approve the request of the Orchard Park Garden Club to hold their 2009 Plant Sale, and have a tent set up, at the Railroad Depot on May 15<sup>th</sup> & 16<sup>th</sup>, and be it further

**RESOLVED**, that the Orchard Park Garden Club will have a Certificate of Liability Insurance sent to the Town prior to the event.

**The resolution was unanimously adopted.**



**New Business #5 Authorization to attend Three Day Training on Incident Command**

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

**RESOLVED**, that the Town Board does hereby approve the request of Andy Geist, Building Inspector, for himself, Richard Mrugalski and Ernie Matthews to attend a three day training program on incident command at the Cheektowaga Fire Training Facility, March 10<sup>th</sup>, 11<sup>th</sup> & 12<sup>th</sup>, at no cost to the Town.

**The resolution was unanimously adopted.**

**New Business #6 Paul Bodden's resignation from the Trials Task Force**

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

**RESOLVED**, that the Town Board does hereby accept the resignation of Paul Bodden from the Trails Task Force Committee as the liaison for the Planning Board, with regret.

**The resolution was unanimously adopted.**

**New Business #7 Approve Change Order #2 w/Javen for Orchard Park Energy Upgrade Project**

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

**WHEREAS**, the Engineering Department is requesting approval of a Change Order to the contract with Javen Construction Co., Inc for the Library Energy Upgrades Project in the amount of \$8,119.00, which would increase the total contract amount to \$328,013.00, an increase of 2.7%, and

**WHEREAS**, the first component of the change order is a request to expand upon the original scope of work. The contract plans excluded carpeting of the offices, meeting room and lunch room due to budget constraints. Now that the carpet is installed in more than half of the Library, the patrons and friends of the Library feel it is worth the money to complete the carpet job in it's entirety at this time. The additional carpet will be paid for by the Orchard Park Friends Group and will not affect the Town's financial commitment for this project. The Orchard Park Friends Group, as well as the Library Director, Ms. Peters, have approved and forwarded payment for this additional work, (\$7,055.00) and,

**WHEREAS**, the second portion of the proposed change order relating to the window vapor barrier is due to the demolition of existing window trim and finding unacceptable material conditions. The existing building sheathing was originally covered with tar paper which has cracked and become brittle over the past 39 years. When the old trim boards were removed over half of the existing tar paper has fallen apart and completely off of he building. The wood sheathing and blocking around the window is still solid and does not need to be replaced but must be protected so it does not rot in the near future. The contractor has proposed to cover the exposed wood areas with a moisture and vapor barrier and to complete demolition of the old sealant system and caulking of the new system for a total cost of \$1,064.00. Additional funding will be required at the next capital project meeting to cover costs for this project,

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby approve Change Order #2 to the contract with Javen Construction Co., Inc. for the Library Energy Upgrades Project in the increased amount of \$8,119.00 for the additional carpet and window work, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #8 Nativity of Our Lord's Parish request to hold a 5K Race/Walk on Sept. 7, 2009**

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

**RESOLVED**, that the Town Board does hereby approve the request of Nativity of Our Lord Parish to hold a 5K Race/Walk on September 7, 2009, which will begin at 10:00 AM in the School parking lot, with the activities to conclude by 2:00 PM. The route has been submitted and all necessary insurance requirement will be provided.

**The resolution was unanimously adopted.**

**New Business #9 Refer to the Planning Board and/or Conservation Board**

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

**RESOLVED**, that the Town Board does hereby refer the request for a Change in Use from Residential to Residential/Business (dual use) at 3479 Orchard Park Rd, Zoned R-3, as requested by the Village Taylor Shop, to the Planning Board and the Conservation Board

**The resolution was unanimously adopted.**

**BUSINESS FROM THE FLOOR**

**Lou Boehm** – Mr. Boehm stated that there has been much opposition to additional commercial development in Quaker Crossing, especially WalMart, and feels that area of Town needs better representation. (statement submitted)

**ELECTED OFFICIALS & DEPARTMENT HEADS**

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

**WHEREAS**, the Town of Orchard Park had an agreement with the Town of West Seneca regarding Sewer District 14 in which West Seneca charged the Town of Orchard Park for usage, and

**WHEREAS**, the Town of West Seneca had not sent appropriate bills to the Town of Orchard Park regarding this agreement, and the Town Board has agreed to pay the Town of West Seneca the amount (\$29,220.21) that is in arrears, and

**WHEREAS**, there is a release from the Town of West Seneca, releasing the Town of Orchard Park from any further obligation for that sum

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the payment of \$29,220.21 to the Town of West Seneca, as recommended by the Town Attorney.

**The resolution was unanimously adopted.**

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

**WHEREAS**, the previous agreement, which should have been of perpetual duration, with the Town of West Seneca for Sanitary Sewer Service has expired, and,

**WHEREAS**, the Town of Orchard Park has modified that agreement and the Town of West Seneca has agreed to execute that agreement

**NOW, THEREFORE, be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign the Sanitary Sewer agreement with the Town of West Seneca for the treatment of sewage between Sewer District No. 14, Town of West Seneca and Sewer District No. 18, Town of Orchard Park, as recommended by the Town Attorney..

**The resolution was unanimously adopted.**

Highway Superintendent, Fred Piasecki, stated that with the mild weather we have had, the Highway Department has been able to get out and pick up brush.

18) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMAN DIETRICK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMAN KACZORR, 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>	\$78,514.73
<b>Part Town Fund</b>	\$1,336.55
<b>Risk Retention</b>	\$0.00
<b>Cemetery Fund</b>	\$0.00
<b>Highway Fund</b>	\$54,755.63
<b>Special Districts</b>	\$431,315.82
<b>Trust &amp; Agency</b>	\$1,725,508.80
<b>Capital Fund</b>	\$135,660.32

**The resolution was unanimously adopted.**

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

**RESOLVED**, that the Town Board does hereby receive and file the following Communications listed on the agenda:

- Erie County Legislature: Correspondence concerning updated proposal to establish of an Erie County Planning Board.

- Buffalo & Erie County Workforce Development Consortium, Inc: Letter sent stating they have received funding to continue the Summer Youth Employment Program, and invite the Town of Orchard Park to participate in the program.

**AND BE IT FURTHER RESOLVED**, that the Town Board does hereby receive and file the following Reports listed on the agenda:

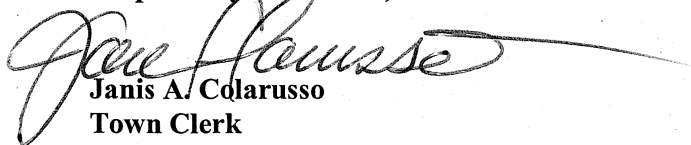
- Building Inspector's: Monthly Report & Building Permits for January 2009.

**The resolution was unanimously adopted.**

Councilwoman Ackerman closed the meeting "with a heavy heart for all the people who lost their lives on flight 7304" which crashed in Clarence and a Moment of Silence was held for the victims of the crash.

There being no further business, on motion by Councilwoman Ackerman, seconded by Councilman Graber to wit, the meeting was adjourned at 7:28 PM (local time).

**Respectfully Submitted,**



Janis A. Colarusso  
Town Clerk