

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 15<sup>th</sup> day of May 2024 at 7:33 PM, the meeting was called to order by Supervisor Eugene Majchrzak and there were:

**PRESENT AT ROLL CALL:**

Eugene Majchrzak	Supervisor
Joseph Liberti	Councilmember
Excused Julia Mombrea	Councilmember
Scott Honer	Councilmember
John Mariano	Councilmember
Remy Orffeo	Town Clerk
Timothy D. Gallagher	Town Attorney
Tom Minor	Building Inspector
Patrick Fitzgerald	Chief of Police
Andrew Slotman	Highway Superintendent
Wayne Bieler	Town Engineer

**Supervisor Majchrzak 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 MAJCHRZAK, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER LIBERTI, TO WIT:

**RESOLVED**, that the Town Board does hereby approve the Regular Meeting Minutes: April 17, 2024 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.**

## **Honoring the Legacy of Deputy Highway Superintendent Ernest S. Matthews**

**WHEREAS**, The Erie County Legislature seeks to honor individuals and institutions of Erie County who enhance the quality of life in the community through their efforts; and

**WHEREAS**, it is with great honor and gratitude that we recognize the outstanding service and dedication of **Deputy Highway Superintendent Ernest S. Matthews**, who has recently retired from the Orchard Park Highway Department after thirty-eight years of exemplary service; and

**WHEREAS**, **Ernest S. Matthews**, known fondly as **Ernie**, began his tenure with the Orchard Park Highway Department in January of 1986, marking the beginning of a remarkable journey of commitment and leadership; and

**WHEREAS**, **Ernie’s** skills and dedication led to his promotion to the role of foreman in June 1996, a testament to his invaluable contributions to the department; and

WHEREAS, Ernie’s promotion to Deputy Highway Superintendent in 2002 under Superintendent Ron Geitter led to twenty-two years of service, guiding the department through diverse challenges and transitions; and

WHEREAS, Ernie’s dedication and professionalism have earned him the respect and admiration of his colleagues within the highway department and the town board, where his insights and expertise have been invaluable; and

WHEREAS, Ernie’s commitment to service extends beyond his professional duties, as demonstrated by his volunteer efforts with various organizations and actively serving in the Hillcrest Volunteer Fire Company, embodying his commitment to community; and

WHEREAS, Ernie’s steadfast presence, regardless of weather conditions or the challenges he faced, inspired all who have worked alongside him.

NOW, THEREFORE, BE IT RESOLVED, the Erie County Legislature pauses in its deliberations to honor Ernest Matthews for over thirty-eight years of dedicated service with the Orchard Park Highway Department and wish him many happy years of retirement, confident his legacy will endure for generations to come.

**PUBLIC COMMENT ON OLD BUSINESS**

No one came forward

**Old Business #1 Approve the proposed Amendment to the Zoning Ordinance to rezone V/L CMO proposed 86 lots, 63.7 +/- acres of land known as Birdsong, Part 5, Zoned R-1, to R-1 Conservation Overlay Management District (CMO) designation as petitioned by David Capretto, Forbes Homes.**

2) This item was tabled.

**PUBLIC COMMENT ON NEW BUSINESS**

No one came forward

**New Business #1 Approve a Block Party**

3) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER LIBERTI, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MARIANO, TO WIT:

RESOLVED, that the Town Board is hereby authorized to approve a resident’s request to blockade a portion of Independence Drive for a block party on June 29, 2024.

**The resolution was unanimously adopted.**

**New Business #2 Approve the resolution opposing Part O of the Governor’s 2024 Article VII Revenue Bill regarding the siting of major electric transmission facilities, also known as the “RAPID” Act.**

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

**WHEREAS**, New York Governor Hochul has released the Executive Budget Proposal for Fiscal Year 2025, which includes Part O of the Transportation, Economic Development, and Environmental Conservation budget bill entitled the Renewable Action through Project Interconnect and Deployment ("RAPID") Act; and

**WHEREAS**, the RAPID Act seeks to move the Office of Renewable Energy Siting ("ORES") from the Department of State to the Department of Public Service, and seeks to consolidate and expedite permitting procedures for major renewable energy and electric transmission facilities under a new Article VIII of the Public Service Law; and

**WHEREAS**, if passed, the RAPID Act will undermine sound environmental review of major electric transmission facilities by requiring ORES to render a permit decision within a single year, otherwise the facility shall be automatically approved, regardless of project size or impact on private property or conservation lands; and

**WHEREAS**, if passed, the RAPID Act will constitute a significant deprivation of Private Property Rights by extended the power of Eminent Domain to the construction of major electric transmission facilities by large-scale solar and wind developers, said power being currently limited to regulated utilities granted a certificate of environmental compatibility and public need; and

**WHEREAS**, if passed, the RAPID Act will undermine the protection of natural resources by allowing conservation easements to be extinguished anywhere in the state, including the Adirondack Park and Catskill Parks, for the construction of major electric transmission facilities by large-scale solar and wind developers, said authority being currently limited to regulated utilities granted a certificate of environmental compatibility and public need; and

**WHEREAS**, if passed, the RAPID Act will further erode home rule and local decision-making enshrined in the New York State Constitution, Local Government Bill of Rights, Statute of Local Governments, and Municipal Home Rule law, usurping the rights of local governments to determine how communities and property within their jurisdictions develop, and contravening the purpose of comprehensive planning outlined in Section 272-A of Town Law; now therefore be it

**RESOLVED**, that Orchard Park strongly opposes the passage of Part O contained in the Governor's Article VII Revenue Bill relating to the expedited siting of major electric transmission facilities, the use of Eminent Domain, and the extinguishing of conservation easements, and be it further

**RESOLVED**, that Orchard Park calls on the Governor of New York, members of the State Senate, and members of the State Assembly to ensure that Part O, and particularly the offending provisions identified herein, be excluded from the New York State budget or any other legislation, and be it further

**RESOLVED**, that Orchard Park opposes state or federal action that would weaken or eliminate New York's long-standing tradition of home rule and local government authority; and be it further

**RESOLVED**, that the Clerk of Orchard Park is hereby directed to provide a copy of this resolution to Governor Kathy Hochul, Lieutenant Governor Antonio Delgado, members of the State Senate, members of the State Assembly, the New York State Association of Counties, the New York State Association of Towns, the Inter-County Association of Western New York, and all others deemed necessary and proper.

**The resolution was unanimously adopted.**

**New Business #3 Schedule a Public Hearing regarding a Local Law amending §144-5 Terms Defined.**

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

**RESOLVED**, that the Town Board does hereby schedule a Public Hearing regarding a Local Law amending §144-5 (B) Terms Defined for June 19, 2024 at 7:00pm (local time) at the Municipal Building located at S4295 South buffalo Street Orchard Park, NY 14127, and be it further

**RESOLVED**, that the Town Clerk is hereby directed to publish due notice thereof.

**The resolution was unanimously adopted.**

**New Business #4 Schedule a Public Hearing regarding a Local Law creating a new zoning classification D-R2.**

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

**RESOLVED**, that the Town Board does hereby schedule a Public Hearing regarding a Local Law creating a new zoning classification D-R2 for June 19, 2024 at 7:00pm (local time) at the Municipal Building located at S4295 South buffalo Street Orchard Park, NY 14127, and be it further

**RESOLVED**, that the Town Clerk is hereby directed to publish due notice thereof.

**The resolution was unanimously adopted.**

**New Business #5 Approve appointment for seasonal position of construction inspector in the Engineering Department for Coventry Lane PIP.**

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

**WHEREAS**, while the Engineering Department is capable of providing inspection services internally for the above referenced project, the current and anticipated workload will not allow us to take on additional projects with the current staffing; and

**WHEREAS**, Daniel Hammond is one of our retired employees of the Orchard Park Engineering Department with over 35 years experience and knows our construction standards quite well. He has worked well as a construction field inspector several times with the town since then; and

**WHEREAS**, there is presently \$1,090,533.64 in Trust Account TA0000 20095 for this work.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby approve Daniel Hammond, to a seasonal position of construction inspector in the Engineering Department for Coventry Lane PIP beginning May 16, 2024 at a wage rate of \$50.00 per hour, as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #6 Approve Excavation, Removal and Storage of Material Permit #2024-02.**

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

**WHEREAS**, the Engineering Department has received from Sterling 45 LLC., 6105 Transit Road; East Amherst, New York 14051, an application for an Excavation, Removal, and Storage of Materials Permit to

stockpile approximately 4,900 Cubic Yards (CY) of topsoil on vacant industrial lot across the street from 250 Windward Road for approximately 12-weeks. The topsoil will be generated from OPSP Medical Building project at 250 Windward Road; and

**WHEREAS**, the Engineering Department has reviewed the plans and have found them to be acceptable. All necessary fees have been paid, and the Site Improvement Bond and Contractor's Insurance Certifications were provided. This permit excludes the provisions under Town Code 144-26. D and P (erecting corner posts with signage and construction fencing), because code sections were combined with other Town Codes in error. One sign will be erected near the construction entrance of the stockpile vacant industrial lot site.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does approve the application for the Excavation, Removal, and Storage of Materials Permit No. 2024-02 to stockpile approximately 4,900 Cubic Yards (CY) of topsoil, which will be generated from the OPSP Medical Building project at 250 Windward Road, on the vacant industrial lot across the street from 250 Windward Road as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #7 Authorize Advertisement for bids for the Thorn Ave.-Duerr Rd. OPLL 90ft Baseball Diamond construction.**

9) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER HONER WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MARIANO, TO WIT:

**WHEREAS**, the Orchard Park Engineering Department is finalizing plans, specifications and bid documents for the Orchard Park Little League proposed 90' Baseball Diamond at the Thorn Ave. / Duerr Road Facility. Plans and specifications for this project are available for review in the Engineering Department Office; and

**WHEREAS** the work will entail the installation of a new 90' Baseball Diamond, including earthwork, underdrain installation, irrigation connection and parking lot expansion and regrading. Fencing, dugouts and Baseball supplies will be bid separately at a future date. Bid documents will be available May 15, 2024.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby authorize advertisement in the Orchard Park BEE for sealed bids for the Orchard Park Little League proposed 90' Baseball Diamond at the Thorn Ave. / Duerr Road Facility to be opened on May 29, 2024 at 10:00am at the Orchard Park Municipal Center, Basement Meeting Room as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #8 Authorize a step increase for Thomas Ostrander, Asst. Municipal Engineer.**

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

**WHEREAS**, at the December 3, 2008 Town Board Meeting, the Town Board approved the appointment of Thomas Ostrander to the position of Assistant Municipal Engineer off an open competitive examination and Civil Service List; and

**WHEREAS**, an Assistant Municipal Engineer must be a graduate from a regionally accredited or NYS registered college or university with a Bachelor Degree in Engineering and three years of experience in engineering, one year of which must be in a supervisory capacity; and

**WHEREAS**, an Assistant Municipal Engineer supervises and performs engineering duties and liaison work in connection with the design, construction and maintenance of municipal projects; assists in planning projects; supervises the preparation of special district maps (water, sewer, drainage, refuse, lighting, park) and suggests financing for same; supervises the preparation of descriptions for special districts; supervises the preparation of reports and estimates for districts; advises assessors on special district cost distribution; designs sanitary sewer systems and storm drainage systems and other municipal projects makes applications for government projects; monitors construction projects; advises on maintenance projects using sound engineering practices; computes engineering data; supervises the preparation of engineering drawings and specification for municipal projects; acts as engineer in charge on minor construction projects; designs minor heating, ventilating, electrical, plumbing, recreation and architectural projects; and

**WHEREAS**, Thomas Ostrander has 14 years experience in the private sector in Civil Engineering related work and an additional 20 years for the Town of Orchard Park Engineering Department, assisting in the management and completion of various Town projects since April 1, 2004 as the Junior Engineer and as the Assistant Municipal Engineer promoted in 2008. Thomas has accepted the challenge of the added duties and responsibilities of this position with enthusiasm and has performed his assignments with diligence and effectiveness. Throughout his 20-years of service with the Town, Thomas Ostrander has proven to be a dedicated and dependable employee; and

**WHEREAS**, although, all union positions have six steps with five yearly step increases, this non-union position has only received two steps out of five step increases originally relayed. With the budget discussion and the short staffing, funding has been appropriated in the 2024 Budget, Tom Ostrander's 2024 current NU Classification salary is \$88,252/yr. with the proposed step increase of \$2,600 the NU Classification proposed salary would be \$90,852/yr. Please note currently two union positions, overseen, Civil Engineer and Land Surveyor titles, normal hourly wage without overtime is more per year.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby approve the third step increase in the civil service classification of Assistant Municipal Engineer for Thomas Ostrander, 16 Hazel Court, West Seneca, NY 14224, to Job Class increase to the non-union wage schedule for an additional \$2600/yr. effective May 20, 2024 as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #9 Approve the 2024 Bond authorization resolution for various capital projects.**

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

**WHEREAS**, required by bond counsel, the Town Board must declare its intent to act as lead agency for SEQR for the following 2024 Bonding of the following Capital Projects:

- Police Radios
- Multi-use Maintenance Building, Phases 1, 2, and 3
- OPSD Walkability Project (sidewalks)
- O.P.L.L. 90' Baseball Diamond, Thorn Avenue / Duerr Road Facility

**WHEREAS**, the Town has completed the long SEQR forms for the Type 1 Projects and needs to send out for a coordinated review, after responses from involved agencies or 30 days, the Town can declare themselves lead agency for SEQR.

**NOW, THEREFORE be it**

**RESOLVED**, that the Town Board does hereby authorize the Supervisor to sign the Type 1 SEQR forms for the above named projects; and be it further

**RESOLVED**, that the Town Board does hereby adopt the resolution prepared by bond counsel for notification at involved agencies regarding the Town's intent to act as Lead Agency for SEQR as recommended by the Town Engineer.

**The resolution was unanimously adopted.**

**New Business #10 Approve the appointment of a Director of the Parks and Grounds Department.**

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

**WHEREAS**, the retirement of Ed leak has created a vacancy for a Director of the Parks and Grounds Department; and

**WHEREAS**, there are funds in the 2024 budget to appoint a Director of the Parks and Grounds Department; and

**WHEREAS**, Andrew Slotman has been performing the duties of the Director of the Parks and Grounds Department on an interim status; and

**WHEREAS**, the Town of Orchard Park has determined that the Parks and Grounds department will maintain staff and function year round beginning January 1, 2025.

**NOW, THEREFORE be it**

**RESOLVED**, that Andrew Slotman be appointed the Director of the Parks and Grounds Department and receive the remainder of the stipend (\$6,000.00) approved in the 2024 budget for a term of May 15, 2024 to December 31, 2024.

**The resolution was unanimously adopted.**

**New Business #11 Sign and approve the creation and appointment of a Working Crew Chief to the Parks and Grounds Department.**

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

**WHEREAS**, the Town of Orchard Park has determined the Parks and Grounds department will maintain 2 full time employees for 12 months beginning January 1, 2025; and

**WHEREAS**, this new structure in the Parks and Grounds Department requires the creation of a Working Crew Chief position for the Parks and Grounds Department; and

WHEREAS, with the creation of this position there is a vacancy in the Parks and Grounds Department for a working crew chief; and

WHEREAS, there are funds to be transferred within the budget to hire a working crew chief; and

WHEREAS, Michael Carey is currently performing the duties of a working crew chief for the Parks and Grounds Department on an interim status; and

WHEREAS, Michael Carey is ready, willing, and able to transfer to the Parks and Grounds department to fill the permanent position of working crew chief.

WHEREAS, Michael agrees to the following conditions: The position of Parks and Grounds working crew chief is a full time, non-exempt, and non-union position with an hourly pay rate of \$36.25 per hour. His full time hire date and anniversary date for future accruals will remain September 29, 2008. His current accrual balances for sick, personal, and vacation time will remain the same and transfer with Michael from the Highway Department (non-union) to the Parks and Grounds (non-union) position. His future benefits will continue to be based from his original full time hire date of September 29, 2008.

**NOW, THEREFORE be it**

**RESOLVED**, that Michael Carey be transferred from the Highway Department to the Parks and Grounds Department and be appointed to the position of working crew chief of the Parks and Grounds Department in the Town of Orchard Park effective, May 15, 2024.

**The resolution was unanimously adopted.**

**New Business #12 Approve the Appointment of Kenneth Urbanczyk to the position of Blue Collar Laborer in the Highway Department.**

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

WHEREAS, the Orchard Park Highway Department has a vacant laborer position; and

WHEREAS,, there are funds in the 2024 budget to fund a laborer position; and

WHEREAS,, Andrew Slotman, Orchard Park Highway Superintendent, has determined that Kenneth Urbanczyk is ready and able to serve as a laborer in the Orchard Park Highway Department.

**NOW, THEREFORE be it**

**RESOLVED**, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, Kenneth Urbanczyk is appointed as a laborer in the Orchard Park Highway Department as a Blue Collar Laborer at Step 1 of the Blue Collar Contract at a rate of \$23.68 per hour effective May 20, 2024.

**The resolution was unanimously adopted.**

**New Business #13 Approve the appointment of Ryan Marino to the position of Blue Collar Laborer in the Highway Department.**

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



WHEREAS, the Orchard Park Highway Department has a vacant laborer position; and

WHEREAS, there are funds in the 2024 budget to fund a laborer position; and

WHEREAS, Andrew Slotman, Orchard Park Highway Superintendent, has determined that Ryan Marino is ready and able to serve as a laborer in the Orchard Park Highway Department.

**NOW, THEREFORE be it**

**RESOLVED**, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, Ryan Marino is appointed as a laborer in the Orchard Park Highway Department as a Blue Collar Laborer at Step 1 of the Blue Collar Contract at a rate of \$23.68 per hour effective May 28, 2024.

**The resolution was unanimously adopted.**

**New Business #14 Approve the Appointment of Mike Kane to the seasonal position of Laborer in the Parks & Grounds Department.**

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

WHEREAS, the Orchard Park Parks and Grounds Department has a vacant full time seasonal laborer position; and

WHEREAS, there are funds in the 2024 budget to fund a seasonal laborer position; and

WHEREAS, Andrew Slotman, Orchard Park Highway Superintendent, has determined that Mike Kane is ready and able to serve as a seasonal laborer in the Orchard Park Parks and Grounds Department.

**NOW, THEREFORE be it**

**RESOLVED**, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, Mike Kane is appointed as a seasonal laborer in the Orchard Park Parks and Grounds Department as a non-union seasonal Laborer at a rate of \$21.50 per hour effective May 28, 2024.

**The resolution was unanimously adopted.**

**New Business #15 Accept the Planning Board’s recommendation regarding Miranda Holdings Inc. “Special Exception Use Permit”**

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

WHEREAS, the Town Board does hereby DENY the request for a “Special Exception Use Permit” regarding Miranda Holdings, Inc to operate a Drive-through Service Facility for a Tim Hortons at 4956 & 4968 Chestnut Ridge Road, V/L north westerly corner of New Armor Duels and Chestnut Ridge Roads, Zoned B-2, based on the May 9, 2024 Planning Board meeting and their recommendations based on the following:

WHEREAS, pursuant to Town of Orchard Park Zoning Ordinance (“Ordinance”) certain uses within the Town of Orchard Park (“Town”) are considered special uses (“Special Use”) and are permitted subject to issuance of a Special Permit by the Town Board and upon recommendation by the Planning Board; and

**WHEREAS**, pursuant to the Ordinance, a Special Use is a use which, because of its unique characteristics, requires additional consideration in each case by the Planning and Town Boards before it may be permitted; and

**WHEREAS**, Miranda Holdings, Inc. (“Miranda”) proposes a development at 4956 and 4968 Chestnut Ridge Road, SBL Nos. 172.20-1-17 & 172.20-1-16, respectively, (“Project Site”) consisting of a Tim Horton’s drive-in service facility and 1,232 gsf speculative retail space (“Project”); and

**WHEREAS**, the Project Site is zoned B-2 Commercial where a “drive-in service facility” is considered a Special Use under Ordinance Attachment 8, Schedule of Use Controls, B-2 Commercial, and the Project requires, in addition to other approvals, issuance of a Special Permit from the Town Board; and

**WHEREAS**, by letter dated January 31, 2024, Miranda submitted a Special Permit application to the Town; and

**WHEREAS**, on March 6, 2024, the Town Board referred Miranda’s request for a Special Permit to the Planning Board; and

**WHEREAS**, the Planning Board considered Miranda’s request for a Special Permit on March 14, 2024.

**NOW, THEREFORE be it**

**RESOLVED**, having duly considered Miranda’s request for a Special Permit and all Planning Board Members having thoroughly reviewed and considered Miranda’s application materials and related documents, the Planning Board renders its recommendation as follows:

1. The Planning Board recommends the Town Board disapprove Miranda’s request for a Special Permit to authorize a drive-in service facility.
2. Under the criteria set forth in Ordinance § 144-43(C)(1–11), the Planning Board’s reasons for recommending disapproval are as follows:
  - (1) The relation of the proposed project to the long range or comprehensive plan of development of the town.  
Planning Board Response:

The Town of Orchard Park Comprehensive Plan (“Comprehensive Plan”) sets forth numerous goals and other objectives relevant to the Project. The goal to Preserve Community Character (Comprehensive Plan p. D1) offers the following objectives and considerations to meet this important goal:

- Maintain the integrity of the Town’s residential neighborhoods by using all available means to preserve the quality of residential life in all sectors of Orchard Park. The cumulative effects of environmental, aesthetic, safety, and related issues must be foremost in the decision-making process of future development proposals.
- Preserve and protect important historic, cultural, and educational resources.
- Insure that new development is compatible with the character of Adjacent existing development. Consider design overlay districts where appropriate.
- Carefully manage growth by implementing an appropriate balance between residential, commercial, and industrial development and open space preservation.
- Where appropriate, promote the reuse and rehabilitation of existing buildings before building new ones.

- Encourage the filling of existing developments before permitting development of new lands in the Town.
- Use traditional town planning techniques that support public interaction and a sense of community.

Introducing a drive-in service facility as part of the Project undermines the carefully crafted community character, nurtured through meticulous planning decisions and municipal initiatives. Situated within the Town's Architectural Overlay District ("AOD"), established in alignment with the Comprehensive Plan, the Project Site holds a pivotal position at the southern gateway to the Village of Orchard Park ("Village"). The Project Site is surrounded by a burgeoning network of sidewalks and pedestrian-friendly infrastructure, and it neighbors the Orchard Park Country Club, as well as an ice cream shop, a neighborhood pharmacy, and a brewery and bourbon bar—distinctive to our town. These neighboring businesses not only serve as unique features but also offer outdoor seating or gathering spaces, fostering a sense of community. By championing local, homegrown establishments that beckon residents and visitors alike, we preserve and enrich the small-town ambiance of our commercial district, harmonizing with the ethos of the adjacent Village.

Additionally, the unique street layout, where Ellicott Road diverges from the intersection of Chestnut Ridge Road and Armor Duells Road, presents a chance for a secondary commercial hub and neighborhood. This would complement the Village center, where numerous local eateries and commercial spots line the street. In contrast, the Project's drive-in service facility lacks the authentic character suitable for this area.

Moreover, a sidewalk runs along the west side of Chestnut Ridge Road where the Project Site is situated. It stretches from the extensive interconnected residential neighborhood off Breezewood Drive, south of the Project, all the way into the Village. This sidewalk serves as a crucial pedestrian pathway in both the Town and Village, facilitating access for residents to commercial and recreational areas. Enhancing pedestrian accessibility and neighborhoods aligns closely with the Comprehensive Plan's central policies (Comprehensive Plan pp. E2, D1). However, the Project's focus on serving drivers for a quick cup of coffee undermines these objectives. It neglects pedestrians, reducing the sidewalk to a mere inconvenience to be hurried past.

The Town's Economic Development Committee echoed similar sentiments in its letter to the Planning Board dated October 30, 2018 regarding the proposed site plan for the Project, stating that the Project fails to foster positive, sustainable economic growth in the Town. This contradicts the Applicant's claims that the Project aligns with the goals of the 2016-2021 Strategic Plan for the Town, overseen and implemented in part by the Town Economic Development Committee. The Strategic Plan outlines policies and actions aimed at strengthening Orchard Park's identity and maximizing real estate assets (Strategic Plan pp. 6-4 to 6-8). However, the proposed drive-in service facility fails to cultivate a sense of community and pride in Orchard Park's local character and spirit. It also fails to ensure compatibility among adjacent, unique uses, thereby undermining the objectives of both the Strategic Plan and Comprehensive Plan to preserve and enhance the community's distinctive character.

Furthermore, a drive-in service facility at the Project Site contradicts the Town's Comprehensive Plan goal of establishing a safe and efficient transportation network, which includes bicyclists and pedestrians (Comprehensive Plan p. D2). The Project undermines this goal by diminishing walkability and connectivity among Town and Village destinations. Despite the Project's location at the corner of New Armor Duells Road and Chestnut Ridge Road, it lacks a secondary access point onto New Armor Duells Road. Consequently, all traffic—including left-out, right-out, and incoming traffic—enters via a 74' wide driveway on

Chestnut Ridge Road, approximately 160' from the corner. In May 2023, the New York State Department of Transportation announced significant improvements to this section of Chestnut Ridge Road to enhance pedestrian accommodations, which the proposed drive-in service facility impedes by providing access via a single point. While the Comprehensive Plan also encourages new commercial enterprises, it emphasizes maintaining convenient access to commercial corridors (Comprehensive Plan p. D4). The drive-in service facility discourages walkability and convenient access for pedestrians.

Overall, the Project fails to meaningfully advance a central tenet of the Comprehensive Plan—balancing growth with preserving the high quality of life in the Town. As stated in the Comprehensive Plan:

“Since the Zoning Commission of the mid-1980s until the present, the elected Town Board and all the appointed boards and committees have been well aware of the pressures of growth. They have also been actively engaged in developing creative ways to preserve the charm, attractiveness, desirability, and the high quality of life in Orchard Park for which people have and continue to come to the community” (Comprehensive Plan p. A7).

The goal to “Maintain the Existing High Quality of Life in the Community” is guided by a key principle to “promote controlled and orderly development, incorporating public involvement in the planning process” (Comprehensive Plan p.D3). Historically, public involvement has been incorporated in the planning process for the Project. In 2014, the Town received a petition in opposition to the Project totaling more than 200 signatures. The Town also received written opposition from the owner and operator of the local insurance company across the street from the Project Site at 4955 Chestnut Ridge Road, the owner of 5056 Chestnut Ridge road at the corner of Breezewood Drive and Chestnut Ridge Road, as well as other residents. The Planning Board, in considering the Comprehensive Plan, Strategic Plan and public input, expresses grave concerns over a commercial enterprise that prioritizes automobile access over pedestrian accommodations at a premier corner of the Town and gateway to the Village. The proposed drive-in service facility does not promote orderly development.

- (2) The need for the proposed project at the present time.

Planning Board Response:

Other similar establishments already serve the area and Town, the closest being a Tim Horton’s with a drive-in service facility located 1.7 miles away off state Route 20A—a 3 minute drive from the Project Site. Another Tim Horton’s (without a drive-in) is located 1.2 miles due north on Chestnut Ridge Road. While Miranda’s location may be financially viable, the Planning Board finds no actual need for a drive-in service facility that fails to address specific requirements in the Town’s Comprehensive Plan or Strategic Plan.

- (3) The compatibility of the proposed project with adjoining land uses and with other proposed development, having particular reference to its probable effect on the value of other land and to the adequacy of features intended to promote public safety and the general purposes of this chapter.

Planning Board Response:

Although the value of land may rise, the Project introduces discordant elements to the area and lacks compatibility with adjoining land uses, which predominantly focus on maintaining and enhancing community character and serving the public through a variety of transportation modes.

- (4) The orderly flow of traffic or effect on normal traffic patterns and satisfactory methods of ingress and egress.

Planning Board Response:

The drive-in service facility, with its single access point, will disrupt existing and planned pedestrian amenities, promoting vehicle-centric activity in an area that should prioritize pedestrian-friendly commercial uses, particularly south of the Village.

- (5) The design and suitable location of parking facilities.

Planning Board Response:

While the Applicant asserts sufficient queuing for the drive-in service facility, the unknown surrounding the future retail tenant complicates the evaluation of parking adequacy for the entire Project. Additionally, the single access point to parking facilities conflicts with pedestrian accommodations, undermining community character. Should the drive-in service facility experience high traffic, customers may resort to parking and entering the establishment, potentially exacerbating existing parking concerns. Although the Applicant argues that a majority of customers will use the drive-in service facility, this underscores the need for a thorough evaluation of the potential impacts of the drive-in service facility on the pedestrian experience and community character.

- (6) The use of landscaping for screening purposes.

Planning Board Response:

While the landscape plan was approved by the Town Conservation Board on June 4, 2019 indicating no immediate concerns about screening, the Planning Board remains mindful of broader issues, such as compatibility with pedestrian access and vehicular circulation. Despite the approved landscaping, the Board maintains reservations regarding the overall impact of the drive-in service facility on the surrounding community character.

- (7) The intelligent design of free areas for recreational use.

Planning Board Response:

While the item is not applicable, the Board observes the absence of an outdoor seating area to offset the drive-in service facility. This reinforces the Project's focus on quick, drive-in, drive-out transactions, rather than fostering a community oriented space where patrons can gather or pause between recreational or commercial destinations.

- (8) The nearness and impact on schools and other public utilities.

Planning Board Response:

With regards to schools and public utilities, the Project is anticipated to have minimal impact. However, the Board remains focused on preserving community character and ensuring safe pedestrian access.

- (9) The health and safety of the residents or workers on adjacent properties and in the general neighborhood.

Planning Board Response:

The Project does not contribute to the health and safety of residents. The auto centric nature of the development, which is decidedly designed for quick trips, exacerbates pedestrian conflicts and diminishes walkability, posing risks to public health, safety, and community welfare.

(10) Lot areas, type of construction, fire hazards, offensive odors, smoke, fumes, noise and light.

Planning Board Response:

The operation of a drive-in service facility may contribute to offensive odors, smoke, fumes, noise, and light. Queuing vehicles emitting fumes, noise, and light not only create a nuisance for nearby residents but also pose safety risks by increasing pedestrian conflicts and traffic congestion. Furthermore, the cumulative effects of these disturbances detract from the overall quality of life and undermine efforts to preserve the community’s character and well-being. While the lot area meets physical requirements, it poses access constraints, exacerbating concerns related to pedestrian safety and vehicular circulation.

(11) Other pertinent requirements of this chapter.

Planning Board Response:

The Project Site occupies a prominent corner of the Town and serves as the southern gateway to the Village. As one of the final B2 zoned properties before the southern area transitions to residential zoning, its significance cannot be overstated. Situated within the South Buffalo Street/Ellicott Road AOD as per Ordinance § 144-75, the Project Site’s development profoundly impacts the community fabric. Nearly every resident traveling by car, bike, or foot to the Village from the southern portion of the Town will pass by this corner. A generic drive-in service facility, easily replicated elsewhere, does not align with the vision outlined in the Comprehensive Plan, Strategic Plan, or the existing character of the Town. Preserving the Town’s unique, small-town character necessitates a more thoughtful approach to development in this vital planning area.

On the question:

Councilmember Mariano asked to Table this motion but failed due to lack of a Second.

Councilmember Liberti inquired about an independent Traffic Study.

Supervisor Majchrzak	Aye
Councilmember Mariano	Nay
Councilmember Liberti	Aye
Councilmember Honer	Aye

**The resolution was duly adopted.**

**New Business #16 Town Board to approve the presented Site Plan and Authorize a Building Permit for 200 Sterling Dr.**

**18) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER HONER, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER LIBERTI, TO WIT:**

**RESOLVED**, that the Town Board does hereby approve the presented Site Plan and authorize a Building Permit regarding 200 Sterling Drive, to construct a parking lot expansion for a net increase of 30-spaces to accommodate the current and a future tenant, per the plan received on 3/28/2024, based on the following conditions and stipulations as recommended by the Planning Board:

1. All public notices have been filed.
2. This is an UNLISTED SEQR Action, based on the Short EAF submitted on 3/24/2024, and a Negative Declaration is made.
3. 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.
4. No outside storage or display is permitted.

- 5. The Landscape Plan, received 2/16/2024, was approved with the Total Green Space meeting the Town requirement of 20%. In accordance with Section 144-44(c)(1)(a)(2) a Certified Check amounting to 50% of the \$27,775 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$13,887.50) Conservation Board approval was granted on 3/05/2024.
- 6. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
- 7. The applicant is to provide the Town of Orchard Park Assessor with an “independent” appraisal for the completed project by a Certified Commercial Appraiser
- 8. Engineering Approval was granted on 5/09/2024.

**The resolution was unanimously adopted.**

**New Business #17 Schedule a Public Hearing for the Special Exception Use request regarding V/L, 4297 & 4309 Abbott Rd.**

19) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER MARIANO, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER LIBERTI, TO WIT:

**RESOLVED**, that upon recommendation of the Planning Board, the Town Board does hereby schedule a Public Hearing regarding V/L, 4297 & 4309 Abbott Road, located on the south east corner of Abbott & Big Tree Roads, Route 20A, across from Danny’s South, Zoned B-2 for July 3, 2024 at 7:00pm in the Municipal Building of Orchard Park. Ellicott Development is requesting a “Special Exception Use Permit” be granted to construct a new Gas Station with a Convenience Store Building, including a pick-up window, a six (6) dispenser fueling canopy, and driveway access to Abbott Road. Note: Zoning Board of Appeals granted an Area Variance on 1/16/2024; Planning Board declared themselves Lead Agency on 5/9/2024.

**The resolution was unanimously adopted.**

**BUSINESS FROM THE FLOOR**

Paul Zak spoke of his discontent regarding how long it is taking to get a reduced speed limit sign on Bieler Rd.

Mary Chase inquired about how long it will take to turn on the traffic light at Benzing & Lake Ave. She also complained about the traffic on Bieler Rd.

Beth Dicember would like to see the speed limit reduced on Jewett Holmwood Rd.

**ELECTED OFFICIALS & DEPARTMENT MANAGERS**

Supervisor Eugene Majchrzak spoke of the traffic on Bieler Rd and Jewett Holmwood Rd.

Councilmember Joseph Liberti congratulated Ernest Matthews and Officer Kowalski and welcomed Ken and Ryan.

Councilmember Scott Honer spoke of Bieler Road traffic and congratulated Ernie on his retirement.

Councilmember John Mariano congratulated Ernie on his retirement after 38 years of service. He also inquired if the Town Board Meeting agendas and supporting documentation could be posted sooner.

Town Clerk Remy Orffeo spoke of New Business #16 and the timing of the Town Board Agenda’s posting.

Town Engineer Wayne Bieler congratulated Ernie Matthews on his retirement. He also spoke of the traffic light at Benzing/Lake Ave and that Jewett Holmwood is a county road.

Building Inspector Tom Minor acknowledged the Board’s advice about new hires.

Highway Superintendent Andrew Slotman stated the traffic light on Lake & Benzing will be turned on soon.

Police Chief Patrick Fitzgerald congratulated Officer Kowalski on his Erie County STOP DWI Awards.

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

**RESOLVED**, that the Town Board does hereby authorize the approval of all entries on Warrant #10 following auditing by members of the Town Board and in the funds indicated:

<b>General Fund</b>	\$590,714.07
<b>Public Safety Fund</b>	\$71,534.53
<b>Part Town Fund</b>	\$688.87
<b>Risk Retention</b>	-0-
<b>Cemetery Fund</b>	-0-
<b>Highway Fund</b>	\$163,568.89
<b>Special Districts</b>	\$5,793.53
<b>Trust &amp; Agency</b>	\$46,363.02
<b>Capital Fund</b>	\$431,473.94

**The resolution was unanimously adopted.**

**COMMUNICATIONS**

21) THE FOLLOWING RESOLUTION WAS OFFERED BY COUNCILMEMBER LIBERTI, WHO MOVED ITS ADOPTION, SECONDED BY COUNCILMEMBER MARIANO, TO WIT:

**RESOLVED**, that the Town Board does hereby receive and file: The Public Hearing Notice regarding revisions to the Erie County Sanitary Code, Article XXIII, Permitting , Inspection and Enforcement of Retail Tobacco Product Businesses, Retail Vapor Businesses and Retail Smoking Paraphernalia Businesses. These proposed revisions are hereby being filed pursuant to the Erie County Administrative Code, Section 5.OS(b)

**The resolution was unanimously adopted.**

There being no further business, on a motion by Supervisor Majchrzak, seconded by Councilmember Mariano, the meeting adjourned at 8:20 pm (local time).

**Respectfully Submitted,**

**Remy C. Orffeo**  
**Town Clerk**