# TOWN OF ORANGETOWN REGULAR TOWN BOARD MEETING TUESDAY, MARCH 8, 2011

This Town Board Meeting was opened at 7:33 p.m. Supervisor Whalen presided and the Town Clerk called the Roll. Present were:

Councilman Denis Troy

Councilwoman Nancy Low-Hogan Councilman Michael Maturo Councilman Thomas Diviny

Also present: Charlotte Madigan, Town Clerk

Teresa Kenny, First Deputy Town Attorney

AnnMarie Hahr, Executive Assistant to the Supervisor

Charles Richardson, Director of Finance

Scott Burton, Director of Environmental Management & Engineering

John Giardiello, Director of OBZPAE

Aric Gorton, Superintendent of Parks-Rec & Building Maint.

Charlotte Madigan led the Pledge of Allegiance to the Flag.

Supervisor Whalen announced that the Orangetown Highway Department has received the APWA North American Snow Award, excellence in snow and ice control, from the American Public Works Association.

Summary of Public Comments (RTBM):

Mike Mandel, Pearl River, said the Police Chief exam should have been on the Workshop agenda. The CANDLE services which are supported by the entire Town must be returned in an equal fashion to the whole Town.

Eileen Larkin, Palisades, spoke about Cablevision, FIOS and solicitation. She congratulated the Highway Department.

Carol Baxter, Palisades, requested sidewalks and other traffic calming measures be installed between Rt. 9W and the Palisades Community Center. She is concerned with safety issues along this route, particularly at the Rt. 9W intersection.

Maria Gagliardi, Palisades Library, is in favor of sidewalks because they would support an important safety feature to encourage children and residents to walk to the library.

Annmarie Uhl, Sparkill, spoke in favor because of the importance of sidewalks and safety. Susan Nemesday, Palisades, asked when these issues are addressed, could the Town Board also consider better Post Office parking.

Carol Knudson, Presbyterian Church, said the church is highly in favor of safety and sidewalks for the children and adults.

Marina Harrison, Palisades, said sidewalks would give the elderly, parents, and children a greater sense of security and consistency.

Lynne Fawler, Palisades, said the sidewalks would be a win, win situation for everyone.

#### **RESOLUTION NO. 163**

#### **CLOSE PUBLIC COMMENTS**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the public portion is hereby closed.

Ayes: Councilpersons Low-Hogan, Maturo, Troy, Diviny

Supervisor Whalen

Noes: None

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**RESOLUTION NO. 164** 

OPEN PH/AMEND TOWN CODE CHAPTER 14B, ARTICLE III, SECTION 6 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the 8:00 p.m. public hearing to amend the Town Code, Chapter 14B, Article III, Section 6, "Basis for Establishing the Areas of Special flood Hazard" is hereby opened.

Ayes: Councilpersons Low-Hogan, Diviny, Troy, Maturo

Supervisor Whalen

Noes: None

Charlotte Madigan, Town Clerk presented the Affidavit of Publication and the Notice of Posting; copies are labeled Exhibit 03-A-11 and made a part of these minutes.

John Giardiello, Director of OBZPAE, explained Chapter 14B, Article 3, of the Town Code should be amended to show a decrease in the Sparkill Creek flood plain. NYS and the DEC advised updated flood plain maps, at a cost to NYS, will be available in April. The Short Environmental Assessment Form shows this is an unlisted action only approving new elevation that will be shown on the maps.

Summary of Public Comments:

Eileen Larkin, Palisades, requested that the Sparkill Creek in Northvale (Bergen County) be added and she asked what is Northvale's accountability.

**RESOLUTION NO. 165** 

CLOSE PH/CHAPTER 14B, ARTICLE III, SECTION 6 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that the Public Portion is hereby closed.

Ayes: Councilpersons Low-Hogan, Troy, Maturo, Diviny

Supervisor Whalen

Noes: None

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**RESOLUTION NO. 166** 

LEAD AGENCY/CHAPTER 14B, ARTICLE III, SECTION 6 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Town Board declares itself Lead Agency in this matter.

Ayes: Councilpersons Maturo, Diviny, Troy, Low-Hogan

Supervisor Whalen

### **RESOLUTION NO. 167**

SEQRA DECLARATION/CHAPTER 14B, ARTICLE III, SECTION 6/BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

Councilman Troy offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that a SEQRA Declaration of non-significance, indicating that the action the Town Board is contemplating will not have a significant negative impact on the environment, is hereby adopted. A copy is labeled Exhibit 03-B-11, and made a part of these minutes.

Ayes: Councilpersons Troy, Maturo, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

# TOWN OF ORANGETOWN LOCAL LAW 1, 2011

Be it enacted by the Town Board of the Town of Orangetown as follows:

Sect. 1: Chapter 14B, Article III, § 6 is hereby repealed, and a new § 6 adopted which shall read as follows:

# 14B-6 Basis for Establishing the Areas of Special Flood Hazard

The areas of special flood hazard for the Town of Orangetown, Community Number 360686, are identified and defined in the following documents prepared by the Federal emergency Management Agency:

- (1) A scientific and engineering report entitled "Flood Insurance Study, Town of Orangetown, New York, Rockland, dated August 2, 1982.
- (2) Flood Insurance Rate Maps enumerated as Map Index No. 360686 0001-0008, dated August 2, 1982.
- (3) Flood Boundary and Floodway Maps enumerated on Map Index no. 360686 0001-0005, dated August 2, 1982.
- (4) Letter of Map revision issued on October 26, 1995, as FEMA Case No. 95-02-101P and expanding the delineated limits of the Special Flood Hazard Area on Panel 0006 C.
- (5) Letter of Map Revision, Case Number 10-02-0398P, effective April 4, 2011, amending Panel 36023C004C of the Flood Insurance Rate Map, Panel 3606860003 of the Flood Boundary and Floodway map, and Flood Insurance Study Table 3 and Profile 09P.
- Sect. 2: This Local law shall take effect immediately upon filing with the Secretary of State.

**RESOLUTION NO. 168** 

ADOPTED/LOCAL LAW 1, 2011/CHAPTER 14B, ARTICLE III, SECTION 6 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

### **Resolution No. 168 - Continued**

RESOLVED, that the Town Board hereby adopts Local Law 1, 2011, amending the Town Code, Chapter 14B, Article III, Section 6, "Basis for Establishing the Areas of Special Flood Hazard".

Ayes: Councilpersons Low-Hogan, Diviny, Troy, Maturo

Supervisor Whalen

Noes: None

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### **RESOLUTION NO. 169**

# APPROVE AID/VOLUNTEER COMMUNITY SERVICES (VCS)

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the request from Volunteer Community Services (VCS) for use of the Showmobile on Sunday, June 12, 2011, from 8:00am to 5:00 pm for Gay Pride Rockland Sunday for a rental fee of \$350.00 and a certificate of insurance listing the Town of Orangetown as additionally insured is hereby approved.

Ayes: Councilpersons Low-Hogan, Maturo, Troy, Diviny

Supervisor Whalen

Noes: None

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#### **RESOLUTION NO. 170**

# AID/PEARL RIVER CHAMBER OF COMMERCE/PEARL RIVER DAY

Councilman Diviny offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that the request from the Pearl River Chamber of Commerce, for six porto-sans (2 handicapped accessible), barricades, trash receptacles and use of the show mobile, for a rental fee of \$350.00 for Pearl River Day to be held October 1, 2011 is hereby approved.

Ayes: Councilpersons Diviny, Troy, Low-Hogan, Maturo

Supervisor Whalen

Noes: None

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# **RESOLUTION NO. 171**

# APPROVE AID/DENNIS P. MCHUGH FOUNDATION

Councilman Troy offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the request from the Dennis P. McHugh Foundation, for six port-osans (two handicapped accessible), for their 8<sup>th</sup> Annual Run for Fun and Family Fair, to be held on May 14, 2011 in Piermont is hereby approved.

Ayes: Councilpersons Troy, Maturo, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

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# **RESOLUTION NO. 172**

# APPROVE AID/JOHN BELLEW 5K RUN/WALK

Councilman Troy offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

# **Resolution No. 172 - Continued**

RESOLVED, that aid to the John Bellew 5K Run/Walk, by providing trash receptacles, barricades and two port-o-sans, on Saturday, April 16, 2011, is hereby approved.

Ayes: Councilpersons Troy, Diviny, Low-Hogan, Maturo

Supervisor Whalen

Noes: None

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### **RESOLUTION NO. 173**

### APPROVE CONTRACT/CANDLE, INC

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the contract with CANDLE for 2011, in the amount of \$60,965.00, for the purpose of substance abuse prevention is hereby approved.

Ayes: Councilpersons Low-Hogan, Maturo, Troy, Diviny

Supervisor Whalen

Noes: None

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### **RESOLUTION NO. 174**

# APPROVE FUNDING/(SOCASA) SOUTH ORANGETOWN COMMUNITY AWARENESS OF SUBSTANCE ABUSE

Councilman Troy offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that \$200.00 to South Orangetown Community Awareness of Substance Abuse (SOCASA) toward the breakfast for the Pride Symposium on April 29, 2011 at Dominican College is hereby approved.

Ayes: Councilpersons Troy, Maturo, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

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# **RESOLUTION NO. 175**

# CERTIFICATE OF REGISTRATION 2011 SEWER WORK

Supervisor Whalen offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that upon the recommendation of the Town Attorney and the Director of the Department of Environmental Management and Engineering, a Certificate of Registration for 2011 Sewer Work is approved to the following:

- Phoenix Excavators Corporation, 4 Ruhe Lane, West Nyack, NY 10994
- TOBAR Excavating, Inc., 385 High Street, Norwood, NJ 07648
- Roto-Rooter Services Company, 525 Waverly Avenue, Mamaroneck, NY 10543
- Carmelo Scaffidi & Sons, Inc., 26 Dickens Street, Stony Point, NY 10980
- Victor P. Zugibe, Inc., 66 West Railroad Avenue, Garnerville, NY 10923
- Coppola Services, Inc., 28 Executive Parkway, Ringwood, NJ 07456
- Environmental Construction, Inc., 21 Holt Drive, Stony Point, NY 10980
- Cal Mart Enterprises, Inc., 4 Burts Road, Congers, NY 10920
- MRJ Excavating, Inc., 7 Beaver Court, New City, NY 10956

Ayes: Councilpersons Maturo, Troy, Low-Hogan, Diviny

Supervisor Whalen

# **RESOLUTION NO. 176**

APPROVE AMENDMENT RESTRICTIVE COVENANT/FRANK & ROSEANNE MICELOTTA/203 EHRHARDT RD. PEARL RIVER/69.05-3-39

Councilman Troy offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

Whereas, in October of 2000 the Zoning Board of Appeals, by Decision # 00-96, approved certain variances with special conditions to the then owners, Frank and Roseanne Micelotta, for the premises known as 203 Ehrhardt Road, Pearl River, New York (hereafter "Premises"); and

Whereas, a Declaration of Restrictive Covenant was filed at the Rockland County Clerk, which Covenant stated that it could only be amended by an agreement executed by the owners of the Premises and the Town of Orangetown; and

Whereas, the new property owners, Kevin and Mary Phelan, having submitted an affidavit to substantiate that they have a family situation similar to that of Mr. and Mrs. Micelotta, have asked the Town Board to amend the Restrictive Covenant to apply to their ownership of the Premises and under the same terms and conditions as set forth in the current Covenant (the removal of the kitchen in the second unit and the reversion of the residence to single family at such time as Mrs. Phelan's parents are no longer in occupancy of the second unit or the ownership or possession of the residence changes from its current ownership or possession);

RESOLVED, that the request for an amendment to the Declaration of Restrictive Covenant is hereby approved, subject to the drafting of the Restrictive Covenant by the Town Attorney and the filing of same in the Office of County Clerk, with the cost of filing to be paid by the homeowners.

Ayes: Councilpersons Troy, Maturo, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

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**RESOLUTION NO. 177** 

APPROVE CARETAKER
AGREEMENTS NIKE LANE/BLUE
HILL/BORST PARK/2% INCREASE

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the caretaker agreements, with a 2% increase, between the Town and the following individuals are hereby approved and the Supervisor is hereby authorized to sign same: IACOBELLIS – Nike Lane; BELLO – Blue Hill; LIMANDRI – Borst Park

Ayes: Councilpersons Low-Hogan, Diviny, Troy, Maturo

Supervisor Whalen

Noes: None

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# **RESOLUTION NO. 178**

#### **ACCEPT MINUTES**

Councilman Troy offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the January 25, 2011 Regular Town Board Meeting, Audit Meeting and Executive Session minutes; the February 2, 2011 Police Commission and Executive Session minutes; the February 8, 2011 Regular Town Board Meeting, Audit Meeting and Executive Session minutes are hereby accepted.

Ayes: Councilpersons Troy, Maturo, Low-Hogan, Diviny

Supervisor Whalen

### **RESOLUTION NO. 179**

# AGREEMENT/ROCKLAND COUNTY YOUTH-POLICE INITIATIVE PROGRAM RECEIVED/FILED

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Agreement between the County of Rockland and the Town for the Youth-Police Initiative Program is received and filed in the Town Clerk's Office.

Ayes: Councilpersons Low-Hogan, Diviny, Troy, Maturo

Supervisor Whalen

Noes: None

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### **RESOLUTION NO. 180**

AGREEMENT/GOOSETOWN
COMMUNICATIONS/POLICE RADIO
LEASE/RECEIVED/FILED

Councilman Maturo offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that the Lease Agreement between Goosetown Communications and the Police Department for Police radios is hereby received and filed in the Town Clerk's Office.

Ayes: Councilpersons Maturo, Troy, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

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**RESOLUTION NO. 181** 

AUTHORIZE/INDEXED LUMP SUM MUNICIPAL SNOW AND ICE AGREEMENT

Councilman Troy offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

RESOLVED, that the Supervisor is hereby authorized to sign the Agreement to Extend Indexed Lump Sum Municipal Snow and Ice Agreement between the Town of Orangetown and the New York State Department of Transportation. The amount for the 2011/2012 Agreement is increasing by \$2,339.15 from \$210,812.42 to \$213,651.55.

Ayes: Councilpersons Troy, Low-Hogan, Maturo, Diviny

Supervisor Whalen

Noes: None

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**RESOLUTION NO. 182** 

PERMISSION GRANTED/APWA NORTH AMERICAN SNOW CONFERENCE/HIGHWAY

Councilman Maturo offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that permission is hereby granted to James J. Dean and Stephen Munno to attend the APWA North American Snow Conference in Spokane, WA, April 10-13, 2011, to accept a national award on behalf of the Town of Orangetown, at a cost of \$2,322.00 to be charged to Acct. No. A5010.441 and \$1,400.00 to be charged to Acct No. A5010.480, for a total amount of \$3,722.00.

Ayes: Councilpersons Maturo, Troy, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

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# **RESOLUTION NO. 183**

# PERMISSION GRANTED/GFOA CONFERENCE/FINANCE

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Troy and was unanimously adopted:

RESOLVED, that permission is hereby granted to Ann Maestri and Natalie Schutter to attend the NY Government Finance Officer's Association conference in Albany, New York, from April 6 through April 8, 2011, at a cost of \$1,800.00, to be charged to Acct. No. A 1310.441 and .480.

Ayes: Councilpersons Low-Hogan, Troy, Maturo, Diviny

Supervisor Whalen

Noes: None

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#### **RESOLUTION NO. 184**

# EVICTION/BACK NINE, LLC/BLUE HILL GOLF COURSE RESTAURANT

Councilman Troy offered the following resolution, which was seconded by Councilwoman Low-Hogan and was unanimously adopted:

WHEREAS, the Town of Orangetown ("the Town" or "Orangetown") is the Licensor under a 12/29/2006 license Agreement ("License Agreement") with Back Nine, LLC, the latter whom is the Licensee under the License Agreement, which License Agreement granted a License to the Licensee to operate the food and beverage restaurant facility commonly known as the Blue Hill Café, The Mansion and/or the Players Club, at the Orangetown Blue Hill Golf Course, Pearl River, NY ("the Premises");

WHEREAS, Back Nine, LLC, was, and is, in possession and occupancy of the Premises strictly by reason of the License Agreement, and as the Licensee of the Town, the latter being the Licensor, owner in fee simple title, and party entitled to possession and occupancy of the Premises at the time the License was granted;

WHEREAS, Back Nine, LLC, has not fully paid its License Fee owed to the Town under the License Agreement, which outstanding License Fee arrears is \$73,750 (through March 2011);

WHEREAS, by failing and/or refusing to fully remit said License Fee to the Town, Back Nine, LLC, has not operated, carried-out and/or performed in material compliance with the terms and provisions of the License Agreement;

WHEREAS, Back Nine, LLC's failure and/or refusal to fully remit said License Fee to the Town was, and is, a material breach and/or default under, and/or a violation of, the License Agreement;

WHEREAS, Back Nine, LLC, did not cure its said breach, default and/or violation within thirty days after the Town sent Back Nine, LLC, a 30-day written notice to cure;

WHEREAS, the License Agreement was terminated and cancelled by the Town Board on February 8, 2011, by Resolution No. 93 of 2011, and Back Nine, LLC, did not vacate, surrender possession and occupancy of, and remove itself from, the Premises within 72 hours after the Town duly served a certified copy of said Resolution upon Back Nine, LLC;

WHEREAS, no landlord-tenant relationship exists between Back Nine, LLC, and the Town;

WHEREAS, Back Nine, LLC's right to possession and occupancy of the Premises was terminated and cancelled, and it is no longer entitled to occupancy and possession of the Premises, and the Town is now entitled to exclusive possession and occupancy thereof; and

WHEREAS, Back Nine, LLC, did not vacate, surrender possession and occupancy of, and remove itself from, the Premises, within ten days after the Town duly served a ten-day Notice to Quit upon Back Nine, LLC, which Notice stated that the Town will commence summary proceedings against Back Nine, LLC, pursuant to Article 7 of NYS Real Property Actions and

# **Resolution No. 184 - Continued**

Proceedings Law ("RPAPL"), to remove, dispossess and evict Back Nine, LLC, from the Premises if Back Nine, LLC, did not so vacate, surrender possession and occupancy of, and remove itself from, the Premises.

*Now*, based on all of the information before the Town Board, and the findings hereinbefore made;

BE IT RESOLVED that the Town Board hereby authorizes and directs the Town Attorney to commence a summary proceeding against Back Nine, LLC, pursuant to Article 7 of the RPAPL (i.e., an eviction proceeding), and to execute all necessary legal papers, for the purpose of: (i) evicting/dispossessing Back Nine, LLC, from the Premises; (ii) obtaining a money judgment against Back Nine, LLC, for all License Fee payments, and other monies, due and owing from Back Nine, LLC, to the Town; and (iii) preserving, safeguarding and securing all fixtures, equipment, machinery, chattel and personalty owned by the Town at the Premises. All such legal remedies to be pursued to the extent, degree and scope as may be determined in the discretion of the Town Attorney.

Ayes: Councilpersons Troy, Low-Hogan, Maturo, Diviny

Supervisor Whalen

Noes: None

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#### **RESOLUTION NO. 185**

# APPROVE/CONTRACT/WRAFTER BROADACRES PRO SHOP

Councilman Troy offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the Agreement with Joseph Wrafter to manage the operation of the pro shop at the Broadacres Golf Course, at an annual cost of \$63,500.00 per year for a three year term, with an option for an additional two years upon mutual agreement of the parties, is hereby approved and the Supervisor is authorized to sign same.

Ayes: Councilpersons Troy, Maturo, Low-Hogan, Diviny

Supervisor Whalen

Noes: None

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### **RESOLUTION NO. 186**

### **ENTERED AUDIT**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the Town Board entered the Audit Meeting at 8:35 p.m.

Aye: Councilpersons Low-Hogan, Maturo, Troy, Diviny

Supervisor Whalen

Noes: None

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# **RESOLUTION NO. 187**

# **PAY VOUCHERS**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the Finance Office is hereby authorized to pay vouchers for the General Fund, Town Outside Village, Blue Hill, Broadacres, Highway, Sewer, Capital Projects, Risk Retention, and Special Parking Funds in the amount of \$2,749,733.92.

Ayes: Councilpersons Low-Hogan, Maturo, Troy, Diviny

Supervisor Whalen

# **RESOLUTION NO. 188**

# **ENTER EXECUTIVE SESSION**

Councilwoman Low-Hogan offered the following resolution, which was seconded by Councilman Maturo and was unanimously adopted:

RESOLVED, that the Town Board entered Executive Session at 8:40 p.m.

Ayes: Councilpersons Low-Hogan, Maturo, Troy, Diviny

Supervisor Whalen

Noes: None

Resolution Nos. 189 and 190 see Executive Session.

### **RESOLUTION NO. 191**

### **ADJOURNMENT**

Councilman Maturo offered the following resolution, which was seconded by Councilman Diviny and was unanimously adopted:

RESOLVED, that the Town Board adjourned, in memory of Arthur Kanning, Retired Orangetown Police Officer; Denise Jensen, Blauvelt; Mary Vera Minichiello, Blauvelt; Martin Dunbar, W. Nyack; and Dr. Martha M. MacGuffie, New City, at 9:10 p.m.

Ayes: Councilpersons Maturo, Diviny, Troy, Low-Hogan

Supervisor Whalen

Charlotte Madigan, Town Clerk