

**TOWN OF ORANGETOWN
WORKSHOP/PUBLIC HEARING
TUESDAY, DECEMBER 5, 2017**

This Workshop Meeting was opened at 8:00 p.m. Supervisor Stewart presided and Charlotte Madigan, Town Clerk, called the roll.

Present were: Councilman Denis Troy
Councilman Thomas Diviny
Councilman Paul Valentine
Supervisor Andrew Stewart
Councilman Gerald Bottari

Also present: Charlotte Madigan, Town Clerk
John Edwards, Town Attorney
Teresa Kenny, Deputy Town Attorney
Jeff Bencik, Finance Director
James Dean, Superintendent of Highways
Jane Slavin, Director of OBZPAE
Aric Gorton, Superintendent of Parks, Recreation & Building Maint.

Pledge of Allegiance to the Flag of the United States of America: Town Board

Representatives from, The Musial Group, Mountainside, NJ presented a PowerPoint rendering of their various models for the proposal for Architectural & Space Planning Services at Town Hall. They discussed the pros and cons associated with each of the various models.

RESOLUTION NO. 604

**OPEN PH/ DECLARE INTENT TO BE LEAD
AGENCY/DIRECT CIRCULATION CHAPTER
43 §4.1 - PERFORMANCE STANDARDS
RELATING TO ODOR, PARTICULATE
MATTER, AND OPACITY**

Supervisor Stewart offered the following resolution, which was seconded by Councilman Valentine and was unanimously adopted:

RESOLVED that the public hearing on proposed amendments to Chapter 43 §4.1 - Performance Standards - relating to odor, particulate matter, and opacity, is hereby opened.

Ayes: Supervisor Stewart
Councilpersons Valentine, Troy, Diviny, Bottari
Noes: None

The Town Clerk presented the Affidavit of Publication and the Notice of Posting; copies are labeled Exhibit 12-A-17 and made a part of these minutes.

Summary of Public Comments:

John Curran, legal representative for (API) Aluf Plastic Industries, objects to the consideration of this item, stating proper procedures were not followed regarding the posting of items 3 days ahead to afford the opportunity to respond in time.

Heather Hurley, Pearl River, appreciates the continuation of this draft till January 9th 2018, and asked the Board if there will be any provisions or guidelines about incorporating State and Federal violations in order to back Town laws, include gasification paralysis with regards to fly ash and dust fumes, and ensure chemicals are not released through white steam.

Michael Mandel, Pearl River, asked if any Town employees were qualified with regards to qualified observers as a primary compliance surveillance tool for enforcement of emission control standards or if outside experts would be utilized and if Code Enforcers were trained.

Proposed Changes to Town Code Ch. 43 – Performance Standards Draft as of 12/5/17

PROPOSED LOCAL LAW NO. ____ OF 2017,
AMENDING CHAPTER 43, §4.1 PERFORMANCE STANDARDS
OF THE ZONING LAW OF THE TOWN OF ORANGETOWN

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

Section 1: Purpose: The Town Board (“Board”) of the Town of Orangetown, New York (“Town”) hereby finds that there is a critical and compelling need, in the public interests as set forth herein, to protect the health, safety and welfare of its residents to ensure that properties do not emit or cause to be emitted smoke, particulate matter, and odor. The objective of this local law is to clarify Chapter 43 (Zoning) §4.163, §4.164, and §4.182 of the Town Code of the Town of Orangetown, relating to emissions.

Section 2: Therefore, Chapter 43 (Zoning) §4.1 PERFORMANCE STANDARDS shall be amended as follows:

Language to be deleted is ~~struck~~
New language is underlined

4.163. Smoke. There shall be no emission and/or discharge into the atmosphere at any point from any chimney, stack, vent or otherwise, of visible black, gray or white smoke other than that caused by steam, of a shade darker than No. 1 on the Ringelmann Smoke Chart as published by the United States Bureau of Mines (Power's Micro-Ringelmann Chart, McGraw Hill Publishing Company, 1954, may be used), except that visible gray smoke of a shade not darker than No. 2 on said chart may be emitted for not more than four minutes in any 30 minutes. These provisions, applicable to visible gray smoke, shall also apply to visible smoke of a different color but with an equivalent apparent opacity., or exhibiting greater than 20 percent opacity (6-minute average) per EPA Method 9.

Exceedance during two consecutive days requires the opacity producer to conduct EPA Method 9 analysis within two business days of occurrence – or evaluate Continuous Opacity Monitoring System(s) (COMS) during the same period. - and Aa facility-responsible person must notify the Town within one business day of receiving the assessment results, as well as provide any other credible evidence. The Town will evaluate compliance and determine further action.

4.164.1 Fly ash, dust, fumes, vapors, gases and other forms of air pollution derived from combustion. There shall be no emission and/or discharge which can any cause damage to the health, to of humans or other animals, or vegetation, buildings or structures, or other forms of property, or which can cause any excessive soiling, of any point and in no event any emission from any chimney or otherwise of any solid or liquid particles in concentrations exceeding 0.3 grains per cubic foot of the conveying gas or air at any point. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of 500° F. and 50% excess air.

Emissions related to combustion must comply with the standards and regulations set forth in the New York State Department of Environmental Conservation's 6 NYCRR Subpart 227-1, Stationary Combustion Installations, as amended and/or supplemented from time to time, as applicable.

4.164.2 Ash, dust, fumes, vapors, gases and other forms of air pollution not derived from combustion. There shall be no emission and/or discharge which can cause any damage or injury to the health of humans and other animals, or vegetation, buildings or structures or other forms of property, or which can cause excessive soiling.

Emissions of air contaminants to the outdoor atmosphere from any process emission source or emission point are restricted in accordance with the New York State Department of Environmental Conservation's 6 NYCRR Subpart 212, Process Operations, as amended and/or supplemented from time to time, as applicable.

4.181.

Noise. ~~At the specified points of measurement, The~~ the sound-pressure level of noise radiated continuously from a facility at nighttime shall not exceed the values given in Table I in any octave band of frequency, in order to provide an environment free from noise that affects people’s well-being and use, enjoyment and value of property, or that interferes with the repose of life, or would unreasonably or unnecessarily interfere with public health, safety, and welfare.

In the event of noise complaints arising from residents, commercial, or other Town inhabitants, the The sound-pressure level shall be measured with a sound-level meter and an octave band analyzer that conforms to specifications published by the equipment manufacturers, and such standards as published by the American National Standards Institute (ANSI), the American Society for Testing and Material, or other contemporary standards-establishing organization accepted in the United States.

~~by the American Standards Association. (American Standard Sound Level Meters for Measurement of Noise and Other Sounds, Z24.3-1944, American Standards Association, Inc., New York, New York, and American Standard Specification for an Octave Band Filter Set for the Analysis of Noise and Other Sounds, Z24.10-1953, American Standards Association, Inc., New York, New York, shall be used.)~~

Unless otherwise resolved with the Town, the owner or operator of the location/source of such elevated, complaint-producing noise, shall prepare and provide a Noise Monitoring Plan to the Town within 10-business days of written notice by the Town, and such Plan shall be implemented within 10-business days of Plan approval by the Town, and the written report of such monitoring shall be provided to the Town within 10-business days following completion of noise monitoring. Failure to meet noise compliance will result in cessation of the offending noise source until compliance is met. The Noise Monitoring Plan will employ “A-weighting” unless another weighting scale is more appropriate, and shall address:

- i) The number and location of monitoring sites;
- ii) The timing and frequency of surveys;
- iii) Methods and standards to be followed. This will include methods used to identify and remove measurement results for time periods affected by sound associated with any temporary events or activities (such as noise from non-related construction or other activities), and during periods where wind speeds exceed 5 m/s or the rainfall rate exceeds 6 mm/hour; and
- iv) Timeframes for monitoring and reporting to the Town in the event they are otherwise than stated in this Performance Standard.

TABLE I

Maximum permissible sound-pressure levels at specified points of measurement for noise radiated continuously from a facility between the hours of 10:00 p.m. and 7:00 a.m.

<u>Frequency Band Cycles per second</u>	<u>Sound Pressure Level Decibels</u> <u>‘A-weighted’ scale (dBA) *</u> <u>Re. 0.002 dyne/cm.²</u>
20-75	69
75-150	54
150-300	47
300-600	41

TABLE I

Maximum permissible sound-pressure levels at specified points of measurement for noise radiated continuously from a facility between the hours of 10:00 p.m. and 7:00 a.m.

<u>Frequency Band Cycles per second</u>	<u>Sound Pressure Level Decibels</u> <u>'A-weighted' scale (dBA) *</u> <u>Re. 0.002 dyne/cm.²</u>
600-1200	37
1200-2400	34
2400-4800	31
4800-10,000	28

* 'A-weighted' scale (dBA) is the filtering of sound measurement to account for the perceived loudness of noise not necessarily correlating with sound levels. Sound level meters set to A-weighting minimize low-frequency noise similar to the human ear, Sound intensity is measured in units of decibels, dB.

If the noise is not smooth and continuous and is not radiated between the hours of 10:00 p.m. and 7:00 a.m., one or more of the corrections in Table II below shall be added to or subtracted from each of the decibel levels given above in Table I.

TABLE II

Type of Operation of Character of Noise	Correction in Decibels
Daytime operation only	Plus 5
Noise source operates less than 20% of any one hour	Plus 5*
Noise source operates less than 5% of any one-hour period	Plus 10*
Noise source operates less than 1% of any one-hour period	Plus 15*
Noise of impulsive character (hammering, etc.)	Minus 5
Noise of periodic character (hum, screech, etc.)	Minus 5

*** Apply one of these corrections only.**

4.182. Odors. ~~No emission of odorous gases or other odorous matter in such quantities as to be offensive at the specified points of measurement. Any process which may involving the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. There is hereby established, as a guide in determining such quantities of offensive odors, Table III (Odor Thresholds) in Chapter 5, Air Pollution Abatement Manual, Copyright 1951 by Manufacturing Chemists' Association, Inc., Washington, D.C.~~

No person, entity or process will emit, or cause or allow to be emitted, There shall be no emission and/or discharge of objectionable odors or other matter present in the ambient air that, by itself or in combination with other odors, gases or vapors is offensive, foul, unpleasant or repulsive to olfactory reception, beyond the property borders of the emitting source.

Odor(s) will be deemed objectionable when documented assessment by the Town shows evidence that the odor likely could, or does, cause injury, detriment, nuisance or annoyance to persons or to the public, based on observations of the odor's nature, intensity, duration, location, and level of complaint.

Upon documented assessment by the Town of the existence of an objectionable odor the Town will notify the odor producing facility and direct that an Odor Control Plan acceptable to the Town be submitted that outlines the operational cause of the violation, chemistry of the offending odor(s), literature evidence of odor thresholds and impacts, methods proposed to mitigate the problem, and the schedule by which the Plan will be implemented and completed.

To enforce this Performance Standard, objectionable odors will be considered detected and a violation of this Section 4.182 when either:

- A Town inspector/code enforcement officer detects an objectionable odor; or
- the Town receives initially five (5) or more complaints from individuals, households or businesses within seven (7) days, or fifteen (15) or more complaints within a 30-day period. The Town's odor complaint records will include:
 - Name, address, email and phone number of complainant.
 - Time and date of call.
 - Description of nuisance odor.
 - Estimated location or source of complaint.
 - If possible, prevailing wind or weather conditions observed
 - If OBZPAE or DEME finds noncompliance, as per above (first bullet), then there shall be deemed noncompliance;

and

- one (1) volume of the odorous air has been diluted with up to five (5) volumes of odor-free air and the odor is still perceptible, as measured by the Town through the use of reliable olfactometer field instruments, devices, or methods; and

Section 3: This local law shall become effective immediately upon filing with the Secretary of State.

PROPOSED AMENDMENTS TO ENFORCEMENT, AND PROCEDURAL, PROVISIONS (ONLY) OF TOWN OF ORANGETOWN CODE §6-5, AND ZONING CODE (CHAPTER 43) §4.11, §4.12 AND §4.13 (PERFORMANCE STANDARDS), AND §10.222, §10.323, §10.334 AND §10.335

By Dennis D. Michaels, Deputy Town Attorney (draft as of 10/25/2017)

Existing Language to be stricken/deleted is indicated by a ~~strikethrough~~.

New language to be inserted/added is underlined

§6-5. Duties and powers of Building Inspector.

- A. Except as otherwise specifically provided by law, ordinance or regulation, or except as herein otherwise provided, the Building Inspector shall administer and enforce all of the construction, alteration, repair, removal and demolition of buildings and structures, and in the installation and use of materials and equipment therein, and the location, use, occupancy and maintenance thereof.
- B. ~~He~~The Building Inspector shall receive applications and issue permits for the erection, alteration, removal and demolition of buildings or structures or parts thereof, and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of insuring compliance with laws, ordinances and regulations governing building construction.
- C. ~~He~~The Building Inspector shall issue all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to insure compliance during the entire course of construction with the requirements of such laws, ordinances or regulations. ~~He~~The Building Inspector shall make all inspections which are necessary or proper for the carrying out of his duties, except that he may accept written reports of inspection from Building Inspectors, or other employees of ~~the Building Department~~ Town of Orangetown's (hereinafter referred to as "Orangetown") Office of Building, Zoning and Planning Administration and Enforcement (hereinafter referred to as "OBZPAE"), or from generally ~~recognized and authoritative~~ reputable service and inspection bureaus, provided the same are ~~certified prepared and signed by a qualified professional responsible official thereof.~~

- D. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable statutes, codes, laws, ordinances or regulations covering relating to building construction, he the Building Inspector may require the performance of tests in the field/on-site by ~~experienced,~~ qualified professional(s) persons, or by ~~accredited and authoritative~~ reputable testing laboratories, or ~~service~~ bureaus or agencies.
- E. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable statutes, codes, laws, ordinances or regulations relating to the use, maintenance or occupancy of land or buildings, including, but not limited to, assuring compliance with the Performance Standards set forth in §4.1 of Chapter 43 (Zoning Code) of the Orangetown Code, and/or to assure compliance with the conditions of any applicable Orangetown land use board approval decisions, the Building Inspector may inspect, investigate and/or conduct tests, on-site, which may include, with regard to the Performance Standards, inspecting, investigating and/or conducting tests while all mechanical equipment, machinery, installations and systems, that are appurtenant to the use that is subject to the Performance Standards, are in full operation. For purposes of said inspections, investigations and/or tests, the Building Inspector may engage, employ or retain the services of the Orangetown Department of Environmental Management and Engineering (hereinafter referred to as "DEME"), and/or expert consultants, to the extent, type and/or degree that the Building Inspector, DEME, and/or the expert consultants, deems necessary.
- (i). If, as a result of the Building Inspector's said inspection, investigation and/or testing, relating to an alleged violation of, or non-compliance with, the Performance Standards (Zoning Code §4.1) on the part of any nonresidential use subject to the Performance Standards (hereinafter referred to as "industrial user"), the Building Inspector has reasonable grounds to believe that a violation, or non-compliance, exists, the Building Inspector shall notify the Zoning Board of Appeals of the occurrence or existence of such possible violation, or non-compliance, in accordance with Zoning Code §10.335.
- (ii). If, after public hearing on due notice, in accordance with Zoning Code §4.13, the Zoning Board of Appeals finds that a violation, or non-compliance, occurred or exists, and revokes and rescinds its Performance Standards (Zoning Code §4.1) approval decision, then the Building Inspector may revoke and rescind any Building Permit and/or Certificate of Occupancy that had been issued based upon such approval decision.

§4.1. Performance standards.

All references herein contained to certain standards which indicate a publisher and date are hereby deemed to mean the latest revised edition of such standard. Where a federal, state, county or local agency promulgates standards which are inconsistent with, or different from, those herein enumerated, the more restrictive standards shall control. Unless otherwise stated, all citations to statutory sections ("§") are from Chapter 43, the Zoning Code, of the Code of the Town of Orangetown (hereinafter referred to as "Orangetown" and "Zoning Code").

§4.11. Applicable to all nonresidential uses. No land or building shall be used or occupied for a nonresidential use in any manner as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazard; noise or vibration; smoke, dust, odor or other form of air pollution; electrical or

other disturbance; glare; liquid or solid refuse or wastes; a condition conducive to the breeding of rodents or insects or other substance, condition or element, all referred to herein as “dangerous or objectionable elements,” in a manner or amount as to adversely affect the surrounding area. However, any nonresidential use, except those expressly prohibited by ~~this code in §4.4~~, may be undertaken, and maintained, if it conforms to the district regulations, and the regulations of §4.1, ~~P~~performance standards, limiting dangerous and objectionable elements at the point of determination of their existence as provided in ~~this section~~§4.1.

§4.12. Performance standards procedure. Only those uses specified in the Zoning Code Use Table, Columns 2, 3 and 4, as are subject to the performance standards procedure of §10.334, §4.12, are subject to performance standards procedure requiring the Orangetown Zoning Board of Appeals’ (hereinafter referred to as “ZBA”) approval as specified in §10.334 in obtaining a building permit or certificate of occupancy, or both (hereinafter referred to as “industrial user”), unless the Building Inspector has reasonable grounds to believe that any other proposed use, including any building or use accessory to a use subject to performance standards procedure, is likely to violate performance standards, in which event the ~~applicant~~ industrial user shall comply with the procedure in §10.334 in obtaining a building permit or certificate of occupancy, unless the ~~ZBA Board of Appeals~~ finds that compliance therewith is unnecessary.

§4.13. Initial, and cContinued, enforcement provisions. ~~Whether or not compliance with performance standards procedure in §10.334, in obtaining a building permit or certificate of occupancy, is required for any particular use,~~

(a). ~~i~~Initial, and continued, compliance with performance standards is required of every new nonresidential use, or change in such use, including, but not limited to, §10.231(c), in all Zoning dDistricts, as provided in §10.335, for all nonresidential uses that are subject to §4.1. Pursuant, but not necessarily limited, to §4.13, §10.334(c) and §10.335, initial, and continued, compliance with the performance standards (§4.1) is required, and all building permits and certificates of occupancy, issued for a use subject to §4.1, is conditioned, and contingent, upon the industrial user conforming to the performance standards, and the industrial user’s paying of the fees, to the Town of Orangetown, for services of Orangetown’s own expert consultants deemed reasonable and necessary by Orangetown’s Department of Environmental Management and Engineering (hereinafter referred to as “DEME”), Orangetown’s Office of Building, Zoning and Planning Administration and Enforcement (hereinafter referred to as “OBZPAE”), and/or the ZBA, for said consultants’ inspections, investigations, research, studies, tests, advice and/or reports relating to determining compliance with the industrial user’s conformance to the performance standards (§4.1).

(b). The industrial user’s initial, and continued, compliance with the performance standards (§4.1) shall include the following:

(i). Inspections, investigations and/or testing, on-site, while all mechanical equipment, machinery, installations and systems, that are appurtenant to the use that is subject to the performance standards (§4.1), are in full operation, by OBZPAE, DEME, and/or the Orangetown-retained expert consultants, to the extent, type and/or degree that OBZPAE, DEME, and/or the Orangetown-retained expert consultants, deem necessary.

(ii). The industrial user’s full, and complete, compliance with any and all laws, statutes, rules and regulations of the NYS Department of Environmental Conservation

and federal Environmental Protection Agency, that also regulate the use that is subject to the performance standards (§4.1).

(iii). OBZPAE, DEME, and/or the Orangetown-retained expert consultants, shall investigate any alleged violation of, or non-compliance with, the performance standards (§4.1) by the industrial user, as per §4.13(b)(i); and, if there are reasonable grounds to believe that a violation, or non-compliance, exists, OBZPAE, DEME, and/or the Orangetown-retained expert consultant(s), shall notify the ZBA, in writing, of the occurrence, or existence, of a probable violation, or non-compliance, thereof. Upon receiving such notification, the ZBA may further investigate the alleged violation or non-compliance, if the ZBA deems it necessary in its discretion; and, for such further investigation, the ZBA may utilize, or retain, the services of OBZPAE, DEME, and/or the Orangetown-retained expert consultants. Thereafter, after holding a Public Hearing on due notice, including notice to the industrial user (except for posting of signs at the industrial user's subject site, which signs shall not be required), the fees for which Public Hearing shall be paid for by the industrial user, if the ZBA finds that a violation, or non-compliance, occurred or exists, the ZBA may revoke and rescind its performance standards (§4.1) approval decision, and any building permit and/or certificate of occupancy that has been issued, based upon such approval decision, shall also be deemed revoked and rescinded; which shall be in addition to any other legal remedies that the Town of Orangetown may pursue, including, but not necessarily limited to, prosecution of violations in the Orangetown Justice Court pursuant to §10.2 and/or §10.6, and/or commencement of a civil action or proceeding in the NYS Supreme Court, pursuant to NYS Town Law §135(1) and/or §268(2).

§10.222. Permits granted only in conformance with regulations.

- A. No permit shall be issued unless the proposed construction ~~of~~ and use is ~~are~~ in full conformity with all the provisions of this Zoning Code, and all other applicable land use and/or building statutes, codes, laws, ordinances or regulations. Any permit issued in violation of the provisions of this this Zoning Code shall be null and void, and of no effect, without the necessity of any proceedings for revocation or nullification thereof, and any work undertaken, or use established, pursuant to any such permit shall be unlawful.
- B. After the effective date of ~~this~~ this Zoning Code, division of any parcel of land shall conform to all the applicable bulk regulations, except as permitted under §5.21 of this Code.
- C. The Inspector may revoke a permit theretofore issued, and approved, in the following instances:
 - (~~ai~~) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans, drawings, plat or specifications on which the permit was based;
 - (~~bi~~) ~~Where~~ where he finds that the permit was issued in error, and should not have been issued in accordance with the applicable law(s);
 - (~~cii~~) ~~Where~~ where he finds that the work performed under the permit is not being ~~prosecuted~~ conducted in accordance with the provisions of the application, plans, drawings, plat or specifications; ~~or~~

(div) ~~W~~where the person to whom a permit has been issued fails or refuses to comply with a stop order issued by the Inspector;

(v) where he finds that the conditions of any applicable Orangetown land use board approval decisions have not been complied with.

D. Whenever the Inspector has reasonable grounds to believe that work on any land, building or structure is being ~~prosecuted~~ conducted in violation of the provisions of ~~the~~ any applicable land use and/or building statutes, codes, laws, ordinances or regulations, or not in conformity with the provisions of an application, plans, drawings, plat or specifications, or the conditions of any applicable Orangetown land use board approval decisions, on the basis of which a permit was issued, or in an unsafe and dangerous manner, ~~he~~ the Inspector shall notify the owner of the property, or the owner's agent, or the person performing the work, to suspend all work, and any such persons shall forthwith stop such work, and suspend all building activities, until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed, and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by ~~certified mail~~ U.S. Postal Service First Class Mail.

E. If, after holding a Public Hearing on due notice, in accordance with Zoning Code §4.13, the Orangetown Zoning Board of Appeals finds that a violation of, or non-compliance with, the Performance Standards (Zoning Code §4.1) occurred or exists, and revokes and rescinds its Performance Standards approval decision, then the Building Inspector may revoke and rescind any Building Permit and/or Certificate of Occupancy that had been issued based upon such approval decision, in accordance with Zoning Code §4.13(b)(iii).

§10.323. Findings and conclusions. After such public hearings, the Orangetown Zoning Board of Appeals (hereinafter referred to as "ZBA") shall make written findings of fact and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. As to any proposed use, such findings of fact and conclusions shall be made concerning such use, as described and represented by the applicant. In addition, the ~~ZBA Board of Appeals~~ shall, in appropriate cases, impose additional conditions and safeguards in granting a special permit or variance, or in approving an application requesting approval of conformance to the performance standards (Zoning Code §4.1), in harmony with the general purpose and intent of ~~this~~ the Zoning eCode, and to ensure that such use is established and maintained in conformity with the special findings, and the additional requirements and conditions, upon which such permit, variance(s) or approval of conformance to performance standards (Zoning Code §4.1), is granted.

§10.334. Permit for a use subject to performance standards procedure.

(a) Application. An application for a permit for a use subject to performance standards procedure shall be submitted to the Inspector in quadruplicate on a form prescribed by the Zoning Board of Appeals (hereinafter referred to as "ZBA"), which shall include, but not be limited to, a Resume of Operations, on a form prescribed by the ZBA, which shall be prepared, and signed, by a person who is qualified to answer the questions and submit documentation on behalf of the applicant; and shall be referred by the Inspector to the ZBA Board of Appeals. The ZBA may reject the Resume of Operations if the ZBA determines that it has

not been prepared, and signed, by a qualified person, regarding which the ZBA may engage or retain expert consultants to advise the ZBA with respect to the qualifications of the preparer/signatory, the fees of which consultants shall be paid by the applicant. The applicant shall also submit in duplicate a plan of the proposed construction or development, including a description of the proposed machinery, operations, ~~and~~ products and specifications for the mechanism and techniques to be used in restricting the emission of dangerous and objectionable elements referred to in §4.1, in accordance with rules prescribed by the ZBA Board specifying the type of information required in such plans and specifications, and an affidavit by the applicant acknowledging his understanding of the applicable performance standards and agreement to conform with same at all times. No applicant will be required to reveal any secret processes, and any information submitted will be treated as confidential, if requested by the applicant. The fee for such application shall include the anticipated estimated costs of the ~~special~~ the ZBA's expert consultants' reports required to process it, described in Subsection (b) below.

- (b) Report by expert consultants. ~~The Board of Appeals, if there is~~ the ZBA has any reasonable doubt as to the likelihood of conformance to the performance standards, the ZBA shall refer the application, for investigation and report, to one or more expert consultants selected by the ZBA Town Board as qualified to advise as to whether a proposed use will conform to the applicable performance standards specified in §4.1, in accordance with §4.13. ~~The applicant shall be informed of the estimated costs for such investigation and report before such referral is made. Such consultant or consultants shall make such report within 30 days after his or their receipt of such application. A copy of such report shall be promptly furnished to the applicant.~~
- (c) Decision of the Board of Appeals. At the next regular meeting of the ZBA Board of Appeals, but in no event more than ~~30~~ 62 days after the ZBA Board has received the aforesaid expert consultants' report(s) and after the closing of the Public Hearing, or within such further period as agreed to by the applicant and ZBA, the ZBA Board shall decide whether the proposed use will conform to the applicable performance standards and, on such basis, shall ~~authorize or refuse to authorize the issuance of a permit or certificate of occupancy or require a modification of the proposed plan of construction~~. Such decision of the ZBA Board shall be in written ~~the form of a written report~~, which shall be immediately filed in the office of the Orangetown Town Clerk and shall be a public record. Any permit or certificate of occupancy issued by the Inspector shall be conditioned on, among other things, the applicant's completed buildings, structures, ~~and~~ installations, machinery, equipment and appurtenances, in operation, conforming to the applicable performance standards, and the applicant's paying the fees for services of the expert consultant, or consultants, deemed reasonable and necessary by the ZBA Board of Appeals for advice as to whether or not the applicant's completed buildings, structures, ~~and~~ installations, machinery, equipment and appurtenances, will in operation conform to the applicable performance standards.

§10.335. Continued enforcement.

- A. The Inspector shall investigate any alleged violation of, or non-compliance with, the performance standards (Zoning Code §4.1) on the part of any nonresidential use subject to the performance standards (hereinafter referred to as "industrial user"); and, if there are reasonable grounds to believe that a violation, or non-compliance, exists, ~~he~~ the Inspector shall notify the ZBA Board of Appeals of the occurrence or existence of a ~~probable~~ such possible violation or non-compliance thereof. The ZBA Board shall investigate the alleged violation, or non-compliance, in accordance with Zoning Code §4.13, and for such investigation may employ

engage or retain qualified experts. If, after public hearing on due notice, in accordance with Zoning Code §4.13, the ZBA Board of Appeals finds that a violation, or non-compliance, occurred or exists, a copy of said findings shall be forwarded to the Inspector; and, in addition thereto, the ZBA may revoke and rescind its performance standards (Zoning Code §4.1) approval decision, and any building permit and/or certificate of occupancy that has been issued, based upon such approval decision, shall also be deemed revoked and rescinded Town Board. The services of any qualified experts, employed retained or engaged by the Town ZBA to investigate and report regarding an alleged advise in establishing a violation of, or non-compliance with, the performance standards, in accordance with Zoning Code §4.13, shall be paid for by the industrial user violator, if a violation, or non-compliance, is proved found by the ZBA, and otherwise by the Town. No new certificate of occupancy shall be issued, as provided in §10-236, unless such charges have been paid to the Town.

- B. (i). Each and every year, beginning on a date that is between eleven and twelve months after the issuance of a certificate of occupancy that was issued pursuant to Zoning Code §4.1, every industrial user shall submit an affidavit to the Inspector, sworn to and signed, under oath, by a qualified professional, attesting that the operations, processes and methods, and the completed buildings, structures, installations, machinery, equipment and appurtenances, that were approved by the ZBA as part of a performance standards application, have not been altered, modified or changed, in any manner whatsoever, other than routine maintenance. If the Inspector determines that the said affidavit has not been executed by a qualified professional, the Inspector may reject the affidavit, or may engage or retain expert consultants to advise the Inspector with respect to the qualifications of the signatory, the fees of which consultants shall be paid by the industrial user.
- (ii). If the operations, processes or methods, or the completed buildings, structures, installations, machinery, equipment or appurtenances, that were approved by the ZBA as part of a performance standards application, have been altered, modified or changed, in any manner whatsoever, other than routine maintenance, then the industrial user shall submit, to the Inspector, a new Resume of Operations, in form and substance as described in §10.334(a); and, in addition, the industrial user shall apply for performance standards approval, as per Zoning Code §4.1, if determined to be necessary by the Inspector. In making such determination, the Inspector may engage or retain expert consultants to advise the Inspector with respect to such alterations, modifications or changes, the fees of which consultants shall be paid by the industrial user.

RESOLUTION NO. 605

ADJOURN PH / JANUARY 9, 2018 PROPOSED AMENDMENTS TO CHAPTER 43 §4.1 - PERFORMANCE STANDARDS - RELATING TO ODOR, PARTICULATE MATTER, AND OPACITY

Supervisor Stewart offered the following resolution, which was seconded by Councilman Bottari and was unanimously adopted:

RESOLVED that the public hearing on proposed amendments to Chapter 43 §4.1 - Performance Standards - relating to odor, particulate matter, and opacity, is hereby adjourned to January 9, 2018, at 8:05 p.m.

Ayes: Supervisor Stewart
Councilpersons Bottari, Troy, Diviny, Valentine,
Noes: None

RESOLUTION NO. 606

AIR MONITORING PROPOSAL / TRC SOLUTIONS

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

RESOLVED, that the Town Board hereby accepts and approves the Aluf Odor Study Proposal (“contract”), as submitted by TRC Solutions, to include the identification of odor sources;, odor sampling and analysis;, and odor modeling, for a cost not to exceed \$28,200; and be it further

RESOLVED, that the full cost of the contract will be charged to API Industries, Inc. d/b/a Aluf Plastics, per pursuant, but not necessarily limited, to the Specific Conditions set forth in the Orangetown Zoning Board of Appeals’ ZBA Decision ZBA #17-31, dated 05/11/2017, and §10.334(c) of the Zoning Code (Chapter 43) of the Orangetown Town Code.

Ayes: Supervisor Stewart
Councilpersons Troy, Diviny, Valentine, Bottari
Noes: None

RESOLUTION NO. 607

OPEN PUBLIC COMMENT /MEMORANDUM OF AGREEMENT & UDERSTANDING / CSEA COLLECTIVE BARGAINING AGREEMENT JANUARY 1, 2017 - DECEMBER 31, 2020

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

RESOLVED, that the public comments regarding the CSEA Contract is hereby opened.

Ayes: Supervisor Stewart
Councilpersons Diviny, Troy, Valentine, Bottari
Noes: None

Summary of Public Comments:
No comments from the Public

RESOLUTION NO. 608

CLOSE PUBLIC COMMENT MEMORANDUM OF AGREEMENT & UDERSTANDING / CSEA COLLECTIVE BARGAINING AGREEMENT JANUARY 1, 2017 - DECEMBER 31, 2020

Supervisor Stewart offered the following resolution, which was seconded by Councilman Bottari and was unanimously adopted:

RESOLVED, that the public comments regarding the CSEA Contract is hereby closed.

Ayes: Supervisor Stewart
Councilpersons Bottari, Troy, Diviny, Valentine
Noes: None

RESOLUTION NO. 609

MEMORANDUM OF AGREEMENT & UDERSTANDING/CSEA COLLECTIVE BARGAINING AGREEMENT JANUARY 1, 2017 - DECEMBER 31, 2020

Supervisor Stewart offered the following resolution, which was seconded by Councilman Bottari and on a roll call was unanimously adopted:

RESOLVED, the Town Board hereby approves the Collective Bargaining Agreement and Memorandum of Understanding by and between the Town of Orangetown and the Civil Service Employees Association, Inc., AFSCME, AFL-CIO, for the Town of Orangetown Unit 8353, CSEA,

RESOLUTION NO. 609 (cont)

effective January 1, 2017 through December 31, 2020, as attached hereto as part of this resolution, are hereby approved; and be it further

RESOLVED, the Town Supervisor is hereby authorized to sign and fully execute said agreements and related documents as may be necessary.

Ayes: Supervisor Stewart
Councilpersons Bottari, Troy, Diviny, Valentine
Noes: None

RESOLUTION NO. 610

**APPROVE COMPENSATION EMPLOYEES ON
CSEA EXCLUSION LIST
(INCLUDING RETROACTIVE PAY)**

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

RESOLVED that all employees with job titles that are specifically itemized below from the CSEA Exclusion List (Schedule A) should receive salary increases of .35% for 2017 (including retroactive pay), 2.00% for 2018, 2.00% for 2019, and 2.00% for 2020:

- ASSOCIATE JUSTICE COURT CLERK
- ASSESSOR
- COMMISSIONER OF ENVIRONMENTAL MANAGEMENT & ENGINEERING
- CONFIDENTIAL ASSISTANT TO TOWN SUPERVISOR
- COURT CLERK
- COURIER
- DEPUTY TOWN ATTORNEY
- DIRECTOR OF AUTOMATED SYSTEMS
- DEPUTY COMMISSIONER OF ENVIRONMENTAL MANAGEMENT & ENGINEERING
- DIRECTOR OF FINANCE
- DIRECTOR OF OFFICE OF BUILDING, ZONING & PLANNING ADMINISTRATION & ENFORCEMENT
- HIGHWAY MAINTENANCE SUPERVISOR III
- HUMAN RESOURCES COORDINATOR
- LEGAL STENOGRAPHER
- SECRETARIAL ASSISTANT LEGAL
- SENIOR ADMINISTRATIVE ASSISTANT
- SUPERINTENDENT OF PARKS & RECREATION
- TOWN ATTORNEY
- TOWN CURATOR
- TOWN HISTORIAN (PT)

Such employees shall also receive the other benefits as specified in the Collective Bargaining Agreement between the Town of Orangetown and the Civil Service Employees Associations, Inc., dated December 5, 2017.

Ayes: Supervisor Stewart
Councilpersons Diviny, Troy, Valentine, Bottari
Noes: None

RESOLUTION NO. 611

**TAX CERTIORARI SETTLEMENT
PEARL RIVER MEDICAL AND
PROFESSIONAL OFFICES / 180 EAST
CENTRAL AVE., PEARL RIVER
(68.20-2-10. 1101-2208) / 2014-2017**

RESOLUTION NO. 611

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

RESOLVED, that upon the recommendation of the Assessor, approve and authorize Dennis D. Michaels, Deputy Town Attorney, to sign settlement documents regarding the tax certiorari proceeding Pearl River Medical and Professional Offices v. Town of Orangetown, et al., Tax Map designation 68.20-2-10./1101 through 2208 (eight units total) (180 East Central Ave., Pearl River) for the tax assessment years 2014 through 2017 for a total refund by the County of \$2,958, a total refund by the Town of \$8,342 and a total refund by the School District of \$40,413. Interest on the Town's liability as a result of assessment decrease or refund is waived if payment is made within sixty (60) days after a copy of the order based upon the settlement is served on the Town (and Rockland County Finance Dept.).

Ayes: Supervisor Stewart
Councilpersons Diviny, Troy, Valentine, Bottari
Noes: None

RESOLUTION NO. 612

**TAX CERTIORARI / BLAUVELT MINI-MALL
INC. (70.14-4-36) / 135 EAST ERIE ST.,
BLAUVELT / 2012-2017**

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

RESOLVED, upon the recommendation of the Assessor, approve and authorize Dennis D. Michaels, Deputy Town Attorney, to sign settlement documents regarding the tax certiorari proceeding Blauvelt Mini-Mall Inc. v. Orangetown, Town of, et al., Tax Map designation 70.14-4-36 (135 East Erie St., Blauvelt) for the tax assessment years 2012 through 2017 for a total refund by the County of \$21,896, a total refund by the Town of \$64,305 and a total refund by the School District of \$219,862. Interest on the Town's liability as a result of assessment decrease or refund is waived if payment is made within sixty (60) days after a copy of the order based upon the settlement is served on the Town (and Rockland County Finance Dept.).

Ayes: Councilpersons Diviny, Bottari, Troy Valentine
Supervisor Stewart
Noes: None

RESOLUTION NO. 613

ADJOURNED/MEMORY

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

RESOLVED, at 9:36 p.m., the Town Board adjourned in memory of Ed Cook Sr, formerly employed at OBZPAE for 20 Years, retiring in 2006.

Ayes: Supervisor Stewart
Councilpersons Troy, Diviny, Valentine, Bottari
Noes: None

Charlotte Madigan, Town Clerk